

# NON-CONFIDENTIAL



## **Borough of Tamworth**

8 May 2017

Dear Councillor

You are hereby summoned to attend a **meeting of the Council of this Borough** to be held on **TUESDAY, 16TH MAY, 2017** at 6.00 pm in the **TOWN HALL, MARKET STREET, TAMWORTH**, for the transaction of the following business:-

### **AGENDA**

#### **NON CONFIDENTIAL**

- 1 Apologies for Absence**
- 2 Mayor's Cadet**
- 3 To elect a Mayor**
- 4 To elect a Deputy Mayor**
- 5 To elect the Leader of the Council**
- 6 Declarations of Interest**

*To receive any declarations of Members' interests (pecuniary and non-pecuniary) in any matters which are to be considered at this meeting.*

*When Members are declaring a pecuniary or non-pecuniary interest in respect of which they have dispensation, they should specify the nature of such interest. Members should leave the room if they have a pecuniary or non-pecuniary interest in respect of which they do not have a dispensation.*

- 7 To receive the Minutes of the previous meeting (Pages 1 - 10)**
- 8 To receive any announcements from the Mayor, Leader, Members of the Cabinet or the Chief Executive**
- 9 Question Time:**

- (i) To answer questions from members of the public pursuant to Procedure Rule No. 10.
- (ii) To answer questions from members of the Council pursuant to Procedure Rule No. 11

**10 Appointment of Cabinet and Allocation of Responsibilities**

To receive the Membership of Cabinet for 2017/18 (to be circulated at the meeting)

**11 Appointment of Committees**

To receive the Constitution and Membership of Committees for 2017/18 (to be circulated at the meeting)

**12 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) Rules 2012 (Pages 11 - 12)**

(The Report of the Leader of the Council)

**13 Review of the Constitution and Scheme of Delegation (Pages 13 - 280)**

(The Report of the Leader of the Council and the Solicitor to the Council and Monitoring Officer)

**14 Small Business Grants (Pages 281 - 290)**

(The Report of the Portfolio Holder for Regeneration)

**15 Taxi Licensing - Amendment and Update (Pages 291 - 378)**

(The Report of the Portfolio Holder for Environment and Culture)

**16 Anti-Money Laundering Policy (Pages 379 - 400)**

(The Report of the Solicitor to the Council and Monitoring Officer)

**17 Regulation of Members Conduct (Pages 401 - 404)**

(The Report of the Solicitor to the Council and Monitoring Officer)

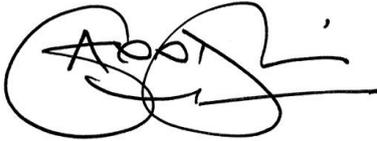
**18 Updated RIPA Policy (Pages 405 - 454)**

(The Report of the Solicitor to the Council and Monitoring Officer)

**19 Calendar of Meetings (Pages 455 - 466)**

To receive the Calendar of Meetings for 2017/18

Yours faithfully

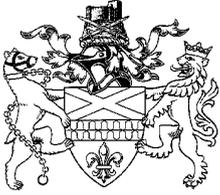
A handwritten signature in black ink, appearing to be 'A. D. D.' with a flourish extending to the right.

**CHIEF EXECUTIVE**

*People who have a disability and who would like to attend the meeting should contact Democratic Services on 01827 709264 or e-mail [committees@tamworth.gov.uk](mailto:committees@tamworth.gov.uk) preferably 24 hours prior to the meeting. We can then endeavour to ensure that any particular requirements you may have are catered for.*

Marmion House  
Lichfield Street  
Tamworth

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## **Minutes of a meeting of the COUNCIL HELD ON 4th APRIL 2017**

**PRESENT:** Councillors K Norchi (Chair), J Chesworth (Vice-Chair), R Bilcliff, S Claymore, T Clements, D Cook, C Cooke, A Couchman, S Doyle, J Faulkner, R Ford, M Gant, J Goodall, S Goodall, M Greatorex, R Kingstone, A Lunn, A James, T Madge, J Oates, T Peale, R Pritchard, R Rogers, P Seekings, P Standen, M Summers, M Thurgood and P Thurgood

The following officers were present: Anthony E Goodwin (Chief Executive), John Wheatley (Executive Director Corporate Services), Andrew Barratt (Corporate Director Growth, Assets and Environment), Jane Hackett (Solicitor to the Council and Monitoring Officer), Christie Tims (Head of Organisational Development) and Janice Clift (Democratic and Elections Officer)

### **46 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors M Oates and S Peale

### **47 TO RECEIVE THE MINUTES OF THE PREVIOUS MEETING**

The minutes of the meeting held on 9 March 2017 were approved and signed as a correct record.

*(Moved by Councillor D Cook and seconded by Councillor P Standen)*

### **48 DECLARATIONS OF INTEREST**

There were no Declarations of Interest.

### **49 TO RECEIVE ANY ANNOUNCEMENTS FROM THE MAYOR, LEADER, MEMBERS OF THE CABINET OR THE CHIEF EXECUTIVE**

The following announcements were made:-

Councillor J Faulkner:-

First of all I would like to thank all Councillors and Officers for their very kind thoughts over the last few weeks and obviously I have had a great deal to cope with. You all know that Pam was part of the Labour Party but what you didn't know is that she was once a Conservative. Basically growing up in Coventry it was the young conservative gentlemen who had the flash cars and used to go for suppers at Kenilworth Castle which she much enjoyed. However when it came to an election and she was told to go out and canvass she went round the doors and suddenly a person spouted off at Pam and she decided she didn't believe in any of that and left the Conservative Party. Whichever party we represent here we have the interests of Tamworth at heart. We have different approaches towards it but ultimately this is our goal. You are all welcome if you so wish to attend Pam's funeral. You are not my enemies. We should remember that nothing is meant personally its agreeing to ways forward and therefore I would like to thank you again and if you so wish to attend tomorrow you are welcome.

The Leader of the Council, Councillor D Cook:-

I would like to request a change of the order of business under procedure rule 4.13 (c). I would like to request that Green Waste Subscription Scheme be brought forward to the first item after Question Time.

The Mayor of Tamworth, Councillor K Norchi:-

Bank holiday weekend sees a weekend of entertainment. Firstly on Friday night at Elford Club there will be a Rock 'N' Roll night tickets are £5.00. Following on to the Saturday night at Bolehall Manor where there will be a full DJ night with different DJ's, myself being included. Tickets are £10.00 and food will be available and fancy dress if you so wish. On the Sunday night you can test your brain with a quiz night being held at the Castle hotel. There will be teams of 4 and it is £10.00 per team to enter and food will be available.

## 50 QUESTION TIME:

### QUESTIONS FROM MEMBERS OF THE PUBLIC NO. 1

**Under Procedure Rule No 10, Mr Gordon Moore of Tamworth will ask the Leader of the Council, Councillor D Cook, the following question:-**

"Would the Leader of the Council please invite all parties to forget their political allegiances and join together to take on the fight against Lichfield District Council to tell them we won't allow them to build on the borders of our town anymore? The people of Tamworth are fed up with their constant dumping on our town?"

**Councillor D Cook gave the following reply:-**

Thank you Mr Moore. The simple answer is yes, as I have already stated in my piece in the Herald 3 weeks ago we need to come together this time. This is about Tamworth.

This Council's position on the matter has been clear from the outset and formed the basis of several representations to Lichfield District Council Members and officers. We even objected to elements of LDC's Local Plan. I reiterated this position which was reported in the local press.

It is not a new position for political reasons, it is a battle we have fought for quite a few years and I intend, with support to win.

I have asked officers to prepare a report to Cabinet later this month setting out the options available to us in respect of the current and any potential future developments with a view to drawing them to the attention of the relevant minister/Secretary of State.

We are working out the precise figure, so forgive the crude example. The urban footprint in Tamworth could grow by over 10% certainly the number of homes may because of the decisions of other Councils to park development on our doorstep. Tamworth Borough Council has very little say in this and certainly the town sees no new required infrastructure.

We are making the government aware.

**Gordon Moore asked the following supplementary question:-**

"Would Councillor Cook please confirm to me whether all parties are in agreement with my question, as I feel this is an important issue to the people of Tamworth?"

**Councillor D Cook gave the following reply:-**

I would hope so I would genuinely hope so. I've heard some mutterings but haven't had a full conversation yet. We are waiting on an answer from the Secretary of State currently with regards to Arkhall Farm. As soon as I have that I will meet with all party leaders to discuss the way forward.

**QUESTIONS FROM MEMBERS OF THE COUNCIL NO. 1**

**Under Procedure Rule No 11, Councillor P Standen will ask the Leader of the Council, Councillor D Cook, the following question:-**

"During the State of Tamworth Debate last month, the Leader of the Council when referring to the Homeless Night Shelter scheme run by Tamworth Churches said "The problem that we have with some of the voluntary groups around homelessness and shelters they own is that they don't carry safeguarding policies"; Does the Leader accept the feedback from members of local clergy that they do have safeguarding policies?"

**Councillor D Cook gave the following reply:-**

Firstly Mr Mayor can I genuinely thank Cllr Standen for the question and an opportunity to apologise in this chamber. At the State of the Borough debate my intention was to be positive about the work which is done by churches and voluntary organisations to tackle homelessness in Tamworth and to help those most vulnerable in our community, not just because this is one of the key priorities of the Borough Council, but because by working together, I believed we could do more. I am extremely sorry that my remarks have been taken out of context if you did not hear the whole speech and have thus caused hurt and upset.

I did not mean to suggest that the churches have no safeguarding policies in place – I know that they do and that they have responsible, nominated officers. What I was trying to convey was that the levels of safeguarding required of a church or voluntary group may differ from that required by Tamworth Borough Council, which also legislates for safeguarding, and that the expectations on the Council sometimes go further than those of other organisations. The complication was aligning our policies which I believe has been resolved.

The example I gave of trying to accommodate a 15-year-old-girl and a 55-year-old man in the same night shelter was an extreme example which I used to illustrate to my newer council colleagues the challenges faced every day in respect of safeguarding - the dilemma of 'do we help the people or do we comply with the rules?' I in no way intended to suggest it had actually happened in any Church. It was neither an attack nor a criticism of the work the churches do – I was trying to be positive and praise the hard work they do in difficult circumstances. The bizarre thing is everyone in the room that night knew exactly what I was trying to say, but it loses context when written down.

In the cold light of day I can see this example for colleagues was an entirely wrong choice of words and subject matter, I retract the example and offer my absolute and unreserved apologies to those who work and volunteer in tackling these issues in our society. While trying to be positive and promote this fine work and trying to explain the complication from our side of the issue my choice of words were clearly wrong and I should not have used them. For this I have already promised to write to the Churches in Tamworth apologising for the poor choice of words.

What is clear is that both the Tamworth churches and Tamworth Borough Council have an on-going and genuine commitment to working hard to help those people who find themselves homeless in Tamworth and to tackle those issues which lead to homelessness.

**Councillor P Standen asked the following supplementary question:-**

“Does the Leader of the Council like me believe that members of this council would benefit from working as volunteers in schemes such as the Winter Night Shelter?”

**Councillor D Cook gave the following reply:-**

Again I would like to thank Councillor Standen. It's actually a rarity when questions are submitted to this Council to receive an e-mail asking questions of what the extent

is. Councillor Standen is very genuine about this and I would really like to thank him. I believe everyone in the room knew what I was trying to say but I just got the wording wrong. I would benefit every member in this Chamber or society would benefit in the issue that you raised but in other aspects of volunteering around Tamworth. The third sector in Tamworth is something that we desperately need to protect while other authorities around us put that money from commissioning of what the voluntary sector this Council keeps pushing forward because we do not believe in the third sector. Councillor Standen is fundamentally correct to raise it.

## QUESTIONS FROM MEMBERS OF THE COUNCIL NO. 2

**Under Procedure Rule No 11, Councillor P Standen will ask the Leader of the Council, Councillor D Cook, the following question:-**

“Could you please advise what the cost of consultation with residents, local businesses and Community and Voluntary Groups has been for Tamworth Listens by year for the last three years?”

**Councillor D Cook gave the following reply:-**

Thank you Councillor Standen

I can confirm that for the Tamworth Listens member’s event the costs for the last three years were

2014/15 £689.50  
 2015/16 £448.50  
 2016/17 £347.50

In regards the total consultation budget, as Tamworth Listens is the overarching banner for all consultation, the total consultation budget for 2017/18 is £3,470 (for external support excluding internal staff time). However, Budget consultation costs around £3k p.a. and the Local Council tax reduction scheme consultation costs around £3k p.a. with the average cost of corporate consultation at £7,216 for the past 3 years.

Housing Tenant Participation (within the HRA) also has a tenant consultation budget of £19,050 (for external support excluding internal staff time) – the total budget for tenant participation (including staffing) is £199,450.

I have with me a full breakdown of the GF budgets you mention per year for the last three years. I won’t read out the whole thing, but happy to give it to you and submit it for the minutes if members are comfortable with this approach.

Consultation Costs	2017/18	2016/17	2015/16	2014/15
Budget	3470	3470	8480	9490

Costs				
Tamworth Listens Theatre Hire		347.50	448.50	454.50
Budget Consultation		2915	2790	6020
Local Council Tax Reduction Scheme consultation		2790	2220	incl above
SNAP Survey subscription		664.50	664.50	899.25
Fast hosts Website domain subscriptions		27.96	17.96	10.98
Stationery		83.92	183.54	85.50
LG Inform plus / ESD toolkit		809	0	0
Question time postcards		0	0	215
Total	0	7637.88	6324.50	7685.23

### QUESTIONS FROM MEMBERS OF THE COUNCIL NO. 3

**Under Procedure Rule No 11, Councillor T People will ask the Portfolio Holder for Environment and Culture, Councillor J Goodall, the following question:-**

“Are there any plans to end our co-operation with Lichfield in terms of waste disposal?”

**Councillor J Goodall gave the following reply:-**

As Members will be aware all services across all directorates of the Council are monitored and regularly reviewed to ensure they are providing effective and efficient services to our residents.

If improvement or greater efficiencies can be made, it will be carefully considered on a business case type approach to ensure we are always providing services that are delivering effectively to our community.

**Councillor T People asked the following supplementary question:-**

“It was stated in the Tamworth Herald by Councillor Kingstone that many Councillors are considering ending the partnership as an act of retaliation over the Arkhall Farm development. Do you believe we should consider ending it for that reason?”

**Councillor J Goodall gave the following reply:-**

Each one should judge for themselves. I don't think it is my place to answer for everyone.

### QUESTIONS FROM MEMBERS OF THE COUNCIL NO. 4

**Under Procedure Rule No 11, Councillor T People will ask the Portfolio Holder for Housing Services, Councillor M Thurgood, the following question:-**

“How many people are currently being housed by this council in temporary hotel accommodation and how many have been in the last few months?”

**Councillor M Thurgood gave the following reply:-**

Mr Mayor

I thank Councillor Peaple for his question. This is an incredibly important area for this Council's housing team and especially for those who are currently in Bed and Breakfast accommodation.

As of 3<sup>rd</sup> April 2017 there are 26 Households in Bed and Breakfast accommodation plus a further 8 accommodated in Private Sector Leased properties.

Over the 6 months from October 2016 to March 2017 a total of 59 households were placed in Bed and Breakfast Accommodation.

This is in comparison to 61 households in October 2015 to March 2016.

This includes 16 households where there are children of which there are a total of 20 children.

Homeless households are awarded priority under the Council's allocations scheme and I can confirm that all of those who are currently calling a Bed and Breakfast home have move on plans and we will shortly be implementing personal housing plans in preparation for the new Homeless Reduction Bill

Thank you

**51 GARDEN WASTE SUBSCRIPTION SCHEME**

The Portfolio Holder for Environment and Culture presented her report and added a new recommendation number 4 with the existing recommendation 4 becoming recommendation number 5. The Portfolio Holder moved all 5 recommendations of the report, which was seconded by Councillor D Cook. After a full debate and on a request for a recorded vote being demanded it was resolved that Members approved proposals to introduce a chargeable Garden Waste Collection Service from 1 January 2018.

**RESOLVED:**

- That Members approved
- 1 the cessation of the current free garden waste collection service from 31<sup>st</sup> December 2017;
  - 2 the introduction of a chargeable (opt in) garden waste collection service from 1<sup>st</sup> January 2018. The annual charge will be £36 per bin;
  - 3 to delegate authority to the Corporate Director of

Growth, Assets and Environment in consultation with the Portfolio Holder for Environment and Culture the setting of the subscription rate for future years (in line with the Councils Fees and Charges Policy) and to take all steps necessary to implement the proposal, making any necessary minor amendments as identified during project implementation;

- 4 that authority be granted to the Corporate Director Growth, Assets and Environment in consultation with the Portfolio Holder for Environment and Culture to have delegated authority to amend the charging regime, should it prove necessary during the detailed project work, to remove the two tier structure and replace with a single £36.00 charge per bin per year if this be agreed across the shared service, given there are no financial implications arising from this change due to the modelling being based upon the flat £36.00 level; and
- 5 to finance all the project start-up costs using the funds held in the Joint Waste Service Reserve and fully reimburse the Reserve with the receipts from the subscription charge.

*(Moved by Councillor J Goodall and seconded by Councillor D Cook)*

**FOR**

Councillor J Chesworth  
 Councillor S Claymore  
 Councillor T Clements  
 Councillor D Cook  
 Councillor S Doyle  
 Councillor R Ford  
 Councillor M Gant  
 Councillor J Goodall  
 Councillor S Goodall  
 Councillor M Greatorex  
 Councillor A James  
 Councillor R Kingstone  
 Councillor A Lunn  
 Councillor J Oates  
 Councillor R Pritchard  
 Councillor R Rogers  
 Councillor M Summers  
 Councillor M Thurgood  
 Councillor P Thurgood

**AGAINST**

Councillor R Bilcliff  
 Councillor A Couchman  
 Councillor J Faulkner  
 Councillor T Madge  
 Councillor T Peaple  
 Councillor P Seekings  
 Councillor P Standen

**ABSTAIN**

Councillor C Cooke  
 Councillor K Norchi

**52 AUDIT AND GOVERNANCE ANNUAL REPORT**

The Report of the Chair of Audit and Governance Committee advising Members on the action taken by the Audit and Governance Committee for the municipal year 2016/17 was considered.

**RESOLVED:** That the contents of the report be endorsed

*(Moved by Councillor J Chesworth and seconded by Councillor J Faulkner)*

**53 SCRUTINY CHAIRS' REPORT**

The Annual Report of the Chair of Aspire and Prosper Scrutiny Committee were received.

**RESOLVED:** That the contents of the report be endorsed

*(Moved by Councillor S Goodall and seconded by Councillor P Thurgood)*

The Annual Report of the Chair of Healthier and Safer Scrutiny Committee were received.

**RESOLVED:** That the contents of the report be endorsed

*(Moved by Councillor A James and seconded by Councillor C Cooke)*

**54 PAY POLICY REPORT 2017**

The Leader of the Council reported details on Tamworth Borough Council's Pay Policy Statement so that statutory guidance as set out in Section 38 of the Localism Act is adhered to.

**RESOLVED:** That the Members formally approved the Pay Policy 2017 for adoption and publication in line with the Localism Act 2011

*Moved by Councillor D Cook and seconded by Councillor P Standen)*

The Mayor

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## COUNCIL

16 MAY 2017

### REPORT OF THE LEADER OF THE COUNCIL

#### THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND ACCESS TO INFORMATION) REGULATIONS 2012

##### EXEMPT INFORMATION

None

##### PURPOSE

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012 specify and require *inter alia* under Regulation 19 that the Executive Leader must submit a report on a regular basis to Council containing details of particulars of each urgent Executive decision and a summary of the matters in respect of which the decision was made.

##### RECOMMENDATIONS

**That the Council endorse the Annual Executive Arrangements Report.**

##### EXECUTIVE SUMMARY

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012 came into force on 10 September 2012 making provision for public access to meetings and to information relating to decisions of Local Authority Executives and their Committees and access to documents where executive decisions are made by individual Members or Officers.

At Tamworth Borough Council the regulations did not significantly change previous practice. The regulations were seen as a method of introducing greater openness and transparency in the decision making process and extended the circumstances in which Local Authority executive decisions were to be open to the public. The Regulations require a document to be published of key decisions (a decision likely to result in the local authority incurring expenditure, which is, or the making of savings which are, significant having regard to the Local Authority's budget for the service or function to which the decision relates) with 28 days notice of an intended key decision whether it contains exempt information or not as the case may be. As the Council already produced and published a forward plan it retains this document adding additional information in terms of the regulations to ensure compliance. There are also regulations to deal with general exceptions and cases of special urgency including publicity requirements in relation thereto.

The Regulations also impose a requirement on the executive leader to produce an annual report to the authority to demonstrate that the Executive is using its powers appropriately and complying with the regulations particularly in relation to urgent Executive decisions.

Regulation 19 places an obligation on the Executive Leader to submit one report annually to the authority to include particulars of each urgent Executive decision made and a summary of the matters in respect of which each decision was made. Since the regulations came in force on 10 September 2012 for the period 01 May 2016 until 30 April 2017 I can confirm that no such decisions have been taken by the Executive under Regulation 11, cases of special urgency.

#### **RESOURCE IMPLICATIONS**

Implementation of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012 has no additional resource implications for the Authority. Democratic Services have taken steps to ensure compliance with the regulations and produce a document compliant with the statutory provisions thus maintaining high standards of good governance.

#### **LEGAL/RISK IMPLICATIONS BACKGROUND**

The Authority has put measures in place to ensure compliance with the Regulations by utilising existing software and publishing on the website a document, as required in terms of the said regulations, which we have named the Forward Plan.

#### **SUSTAINABILITY IMPLICATIONS**

It is essential that the Executive operate in a lawful manner and in an open and transparent manner embodying good governance and leading the Authority and setting examples as a consequence.

#### **BACKGROUND INFORMATION**

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

#### **REPORT AUTHOR**

If members would like further information or clarification prior to the meeting please contact Jane M Hackett, Solicitor to the Council & Monitoring Officer on ext 258.

#### **LIST OF BACKGROUND PAPERS**

None.

#### **APPENDICES**

None.

## COUNCIL

16 MAY 2017

### REPORT OF THE LEADER AND SOLICITOR TO THE COUNCIL & MONITORING OFFICER

#### REVIEW OF THE CONSTITUTION AND SCHEME OF DELEGATION

#### EXEMPT INFORMATION

None

#### PURPOSE

To obtain Council comments, endorsement and approval of the Constitution and Scheme of Delegation as required by legislation.

#### RECOMMENDATIONS

That the Council:

- 1) **Endorse the changes to the Constitution and Scheme of Delegation as presented in Appendix 1 and then**
- 2) **adopt and approve the changes to the then reviewed Constitution and Scheme of Delegation**

#### EXECUTIVE SUMMARY

The Constitution and Scheme of Delegation as reviewed are adopted by Council at the first business meeting each year to ensure probity and legal compliance. Each year new legislation requires to be taken into account as well as any political arrangements and changes that have arisen from practical considerations.

A comprehensive review of the Constitution was undertaken a few years ago. In the last municipal year the Constitution Working Group consisting of the Leader and Deputy Leader of the Controlling group, Leader and Deputy Leader of the larger Opposition group and the leader of the minor Opposition group met on 23 February 2017 the focus of the group being the functionality of the overview and scrutiny committees. As a result a working party was set up and its recommendations put to the Constitution Working Group on 27 April 2017. The group consider that the overview and scrutiny purpose will be improved by the creation of a third committee. Thus the proposition to create three overview and scrutiny committees:-

- Health and Wellbeing Scrutiny
- Infrastructure, Safety and Growth Scrutiny and
- Corporate Scrutiny

With nine members in each committee, which committees shall meet at least 4 times in each municipal year. Five meetings of each of the proposed overview and scrutiny committees have been out into the draft calendar of meetings before Council for approval tonight. It is also a recommendation that the Special Responsibility Allowance payable to the chair of each committee is sourced from adding the current

two Special Responsibility Allowances and dividing into three. This will mean that there is no additional direct financial cost to the establishment of the three overview and scrutiny committees. The Special Responsibility Allowance for each Chair of overview and scrutiny committee under the proposition will be £3,967, subject to any annual increase that may apply.

Detail of the proposition is contained with the draft constitution at Article 6. Schedule 5 relative to the conduct of overview and scrutiny committee proceedings has also been amended to assist the operational aspects of the scrutiny function. All of the advocated changes are tracked within the draft Constitution at Appendix 1.

The other proposed changes tracked within the draft documents relate to:

1. Responsibility for Council Functions, the inclusion of start-up business grant applications to be dealt with by Cabinet Grants Sub-committee
2. Procedure Rules
  - (i) Committees Chairs will be appointed at the Annual Council meeting ( this will commence from Annual Council in 2018)
  - (ii) substitution shall be extended to the three overview and scrutiny committees and the statutory officers and chief officers conduct committees
3. Scheme of Delegation in particular statutory updates to Council Tax duties, in Section (C) Resources; Annex 2 Development Management Functions; Annex 3 Environmental Health and Community Safety Functions and some minor changes to Officer delegations

All other amendments are either statutory, minor, formatting or factual references. The amendments are designed to improve and enhance the democratic process for the public engaging with the Council.

Articles 13 and 15 of the Constitution require the Solicitor to the Council to maintain, monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. It also requires formal approval and adoption by the Council at the beginning of each municipal year. Year on year a raft of new legislation requires to be taken into account when updating and reviewing the constitution and Scheme of Delegation prior to adoption at full Council.

The Scheme of Delegation forms part 3 of the Constitution and also requires approval and adoption by the Council at the beginning of each municipal year in relation to those functions arising from the Local Government Act 1972 and subsequent legislation as well as those functions approved by the Leader in accordance with Section 14 of the Local Government Act 2000.

## **RESOURCE IMPLICATIONS**

There is no extra financial resource required despite the addition of another overview and scrutiny committee to the Council as the two current Special Responsibility Allowances for overview and scrutiny committees are being divided into three. No external advice was required for the review this municipal year.

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

Without a Constitution and Scheme of Delegation the Council could not operate effectively. The Council would run the risk of failure to comply with statutory requirements which in turn would expose the organisation to further vulnerability in relation to legal challenge and ultra vires operation. Such challenges could lead to serious financial and reputational damage.

## **SUSTAINABILITY IMPLICATIONS**

It is essential that the Constitution and Scheme of Delegation are lawful, fit for purpose and utilised with a pragmatic approach to improve and enhance the democratic process of the Council and operation of its associated services. In addition there is no provision to cover the cost of legal challenge within any envisaged contingency

## **BACKGROUND INFORMATION**

The Local Government Act 1972 (as amended) provides *inter alia* for a Constitution and Scheme of Delegation.

The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose. Accordingly the Constitution governs the Council's business.

The Scheme of Delegation is a document whereby the Council delegates to certain officers powers to undertake functions and duties on behalf of the Authority. Tamworth Borough Council has operated a Scheme of Delegation for officers for several years. The proposed Scheme of Delegation does not purport to grant officers any additional authority to which is already provided, it merely seeks to formulate arrangements into a workable document.

## **REPORT AUTHOR**

If members would like any further information or clarification prior to the meeting please contact Jane M Hackett, Solicitor to the Council and Monitoring Officer , Ext 258

## **LIST OF BACKGROUND PAPERS**

The Local Government Act 1972  
The Local Authorities ( Functions and Responsibilities) (England) Regulations 2000  
The Localism Act 2011  
The Local Authorities (Standing Orders)\_(England) (Amendment) Regulations 2015

## **APPENDICES**

**Appendix 1** – Proposed Constitution and Scheme of Delegation 2017-18 with tracked changes

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# TAMWORTH BOROUGH COUNCIL



## CONSTITUTION

15<sup>th</sup> Edition  
As approved at the meeting of the Council on the 16<sup>th</sup> May 2017

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## 1 Part 1 - Summary and Explanation

### Summary and Explanation

Tamworth Borough Council is the democratically elected authority for Tamworth. The Council provides community leadership to develop Tamworth and enhance the experiences of those who live here, work here and visit the Borough. It has statutory responsibility for the provision of a range of services, some of which are delivered directly by the Council, others are delivered on its behalf by a range of organisations and partners. The Council works in partnership with other organisations such as Staffordshire County Council and other District Councils, the Police, Health bodies and the voluntary and community sector.

### The Council's Constitution

Tamworth Borough Council's constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

The Constitution is divided into 17 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

### What's in the Constitution?

Article 1 of the Constitution commits the Council to provide clear transparent and effective community leadership. Articles 2 – 17 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2).
- Citizens and the Council (Article 3).
- The Council meeting (Article 4).
- Chairing the Council (Article 5).
- Overview and scrutiny of decisions (Article 6).
- The executive (Article 7).
- Regulatory committees (Article 8).
- The Audit and Governance Committee (Article 9).
- Nominations Committee (Article 10).
- Area Committees (Article 11).
- Joint Arrangements (Article 12).
- Officers (Article 13).
- Decision making (Article 14).
- Finance, contracts and legal matters (Article 15).
- Review and revision of the Constitution (Article 16).
- Suspension, interpretation and publication of the Constitution (Article 17).

### How the Council operates

The Council is composed of 30 Councillors with one-third elected three years in four. Councillors are democratically accountable to residents of their ward. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. Councillors receive training and advice on the code of conduct.

All councillors meet together as the Council. Meetings of the Council are normally open to the public. Here councillors decide the Council's overall policies and set the budget each year. The Council appoints the Leader of the Council, and Members of the various committees and sub committees, receives reports from the Leader and its scrutiny committees, answers questions from the public and holds an annual state of Tamworth debate.

### 1.1 **How Decisions are made**

The executive is the part of the Council which is responsible for most day-to-day decisions. The Executive (also referred to in this constitution as the cabinet) is made up of the Leader, who is elected by the Council, and a cabinet of a maximum of nine councillors whom s/he appoints.

When major decisions are to be discussed or made, these are published in the executive's forward plan in so far as they can be anticipated. If these major decisions are to be discussed with council officers at a meeting of the executive, this will generally be open for the public to attend except where personal or confidential matters are being discussed. The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

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There are some decisions, mostly those of a regulatory nature such as planning and licensing, which the law does not allow the executive to make. These are made by committees appointed by the full Council.

In many cases decisions are delegated by Members, both from the executive and from the Council committees, to officers. The Scheme of Delegation at Part 3 gives details of the delegations which are in force.

### 1.2 **Overview and Scrutiny**

There are three Overview and Scrutiny Committees which hold the executive to account and support the work of the Executive and the performance delivery of the Council as a whole. They allow citizens to have a greater say in Council matters by holding public inquiries into matters of local concern. These lead to reports and recommendations which advise the executive and the Council as a whole on its policies, budget and service delivery. Overview and scrutiny committees also monitor the decisions of the executive. They can 'call-in' a decision which has been made by the executive but not yet implemented. This enables them to consider whether the decision is appropriate. They may recommend that the executive reconsider the decision. They may also be consulted by the executive or the Council on forthcoming decisions and the development of policy.

The Council also has other committees such as Audit and Governance Committee and Nominations Committee. Non councillors may be co-opted onto Overview and Scrutiny Committees.

#### **The Council's Staff**

The Council has people working for it (called 'Officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationships between Officers and Members of the Council.

## **Citizens' Rights**

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

Where members of the public use specific council services, for example as a council tenant, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the Council and its committees except where, for example, personal or confidential matters are being discussed;
- petition to request a referendum on a change back to a Committee system or for an elected Mayor;
- participate in the Council's question time and contribute to investigations by the overview and Scrutiny Committees;
- find out, from the Executive's forward plan, what major decisions are to be discussed by the Executive or decided by the executive or officers, and when;
- attend meetings of the Executive where key decisions are being discussed or decided;
- see reports and background papers, and any record of decisions made by the Council and Executive;
- complain to the Council through the comments compliment and complaints procedure;
- complain to the Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- complain to the Council if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct; and
- inspect the Council's accounts and make their views known to the External Auditor.

The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the main switchboard on 01827 709709.

## **2 Part 2 - Articles of the Constitution**

### **2.1 Article 1 – The Constitution**

#### **2.1.1 Powers of the Council**

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

#### **2.1.2 The Constitution**

This Constitution, and all its appendices, is the Constitution of the Tamworth Borough Council.

#### **2.1.3 Purpose of the Constitution**

The purpose of the Constitution is to:

- enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- support the active involvement of citizens in the process of local authority decision-making;
- help councillors represent their constituents more effectively;
- enable decisions to be taken efficiently and effectively;
- create a powerful and effective means of holding decision-makers to public account;
- ensure that no one will review or scrutinise a decision in which they were directly involved;
- ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- provide a means of improving the delivery of services to the community.

#### **2.1.4 Interpretation and Review of the Constitution**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 16.

## 2.2 Article 2 – Members of the Council

### 2.2.1 Composition and eligibility

- (a) **Composition.** The Council will comprise 30 Members, otherwise called Councillors. The Borough is divided into 10 Wards and 3 Councillors are elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the borough or those living or working there will be eligible to hold the office of councillor.

### 2.2.2 Election and terms of councillors

- (a) The ordinary election of a third of all councillors will be held on the first Thursday in May in each year beginning in 2003 except that in 2005 and every fourth year after there will be no regular election. The terms of office of councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.
- (b) The overriding duty of Councillors is to the whole community of the Borough, but they have a special responsibility to each one of their constituents. Councillors are democratically accountable to residents of their ward.

### 2.2.3 Roles and functions of all councillors

- (a) **Key roles.** All Councillors will:
  - (i) collectively be the ultimate policy-makers and carry out a number of Strategic and Corporate Management functions;
  - (ii) represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;
  - (iii) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - (iv) balance different interests identified within the ward or electoral division and represent the ward or electoral division as a whole;
  - (v) be involved in decision-making;
  - (vi) be available to represent the Council on other bodies;
  - (vii) maintain the highest standards of conduct and ethics; and

(viii) have the power to refer to an Overview and Scrutiny Committee by inclusion in the agenda for discussion any local government matters which is relevant to the functions of the committee.

(b) **Rights and duties**

(i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.

(ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.

(iii) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Rules in Part 4 of this Constitution.

(iv) Members of overview and Scrutiny Committees or a sub-committee of such a committee may refer for inclusion in the agenda for discussion by the Committee any matter which is relevant to the functions of the Committee.

(v) A councillor who is not a member of an Overview and Scrutiny Committee may refer for inclusion on the agenda for discussion at that Committee any local government matter which is relevant to the functions of the Committee.

**2.2.4 Conduct**

Councillors will at all times observe the Members’ Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

**2.2.5 Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Part 6 of this Constitution.

## 2.3 Article 3 – Citizens and the Council

### 2.3.1 Citizens' rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and petitions.** Citizens on the electoral roll for the area have the right to vote and to request a referendum for an elected Mayor form of Constitution. Citizens may request a Councillor at Council meetings in July, September, December and March to present a petition to the Council on their behalf. The petition is thereafter processed as provided in the Petition Scheme.
- (b) **Information.** Citizens have the right to:
  - (i) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) attend meetings of the cabinet when key decisions are being considered;
  - (iii) find out from the Forward Plan what key decisions will be taken by the cabinet and when;
  - (iv) see reports and background papers, unless these contain confidential or exempt information and any records of decisions made by the Council and the cabinet
  - (v) inspect the Council's accounts and make their views known to the external auditor; and
  - (vi) seek information held by the Council under the Freedom of Information Act 2000.
- (c) **Participation.** Citizens have the right to participate in the Council's question time and contribute to investigations by overview and scrutiny committees.
- (d) **Complaints.** Citizens have the right to complain to:
  - (i) the Council itself under its comments compliments and complaints scheme;
  - (ii) the Ombudsman after using the Council's own complaints scheme;
  - (iii) the Council about a breach of the Councillor's Code of Conduct.

### 2.3.2 **Citizens' responsibilities**

Citizens must not be violent, abusing or threatening to councillors or officers and must not wilfully harm things owned by the council, councillors or officers.

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## 2.4 Article 4 – The Full Council

### 2.4.1 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-
- Tamworth Strategic Partnership;
  - Community Safety Plan;
  - Plans and strategies which together comprise the Local Plan;
  - The Healthier Housing Strategy, and
  - The Housing Revenue Account Business Plan and Investment.
- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.
- (c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

### 2.4.2 Functions of the full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) appointing the Leader;
- (e) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them (except where the appointment to a committee is required to give effect to the wishes of a political group); and ensuring that, with the exception of the Mayor, members are appointed to at least two committees (one of which shall not include the Budget

Review Joint Scrutiny Committee); except for Executive Members who are appointed to one Committee;

- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (g) adopting an allowances scheme under Article 2.2.5;
- (h) changing the name of the area, conferring the title of honorary alderman, Freeman, or freedom of the borough;
- (i) confirming the appointment or dismissal of the head of paid service; Monitoring Officer and s151 Officer;
- (j) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (k) approving the Councils Code of Conduct;
- (l) approving the Chief Officers Pay Scheme (JNC Conditions) as part of Annual Pay Policy;
- (m) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the executive;and
- (n) all other matters which, by law, must be reserved to Council.

#### 2.4.3 **Council meetings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

#### 2.4.4 **Responsibility for functions**

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Executive.

## 2.5 **Article 5 – Chairing the Council**

### 2.5.1 **Role and function of the Mayor**

The Mayor and in their absence, the Deputy Mayor will have the following roles and functions:

The Mayor will be elected by the Council annually. The Mayor will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
- (c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not on the executive are able to hold the executive to account;
- (d) to promote public involvement in the Council's activities;
- (e) to be the conscience of the Council,;and
- (f) to attend such civic and ceremonial functions as the Council and s/he determine appropriate.

## 2.6 Article 6 – Overview and Scrutiny Committees

### 2.6.1 Terms of reference

The Council will appoint the overview and scrutiny committees set out in the left hand column of the table below to discharge the functions conferred by sections 21 and 21A of the Local Government Act 2000 or regulations under section 32 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the same table. The membership of the committees and any sub-committees will be politically balanced with representation from each political group on the Council. Members of the Executive may not be members of overview and scrutiny committees.

Committee	Primary Scope
<p><b>Health and Wellbeing</b> Scrutiny</p> <p>(The Committee shall comprise 9 members of the Council and one co-opted member with voting rights being a member nominated by Staffordshire County Council)</p>	<p>To provide effective scrutiny of the achievement of the Council's strategic priorities by scrutinising the performance of the Cabinet and external providers in securing a safe environment in which local people can reach their full potential and live longer, healthier lives :-</p> <ul style="list-style-type: none"> <li>• Statutory Health Obligation</li> <li>• County Council Agreement</li> <li>• Leisure</li> <li>• Voluntary Sector</li> <li>• Non HRA Housing</li> <li>• Disability Service</li> <li>• Social Care</li> <li>• Elderly and Vulnerable People Services</li> </ul> <p>To undertake such other scrutiny activities as may be required in relation to the performance of the Council, governance, financial management and discharge of statutory functions.</p>
<p><b>Infrastructure, Safety and Growth</b> Scrutiny</p> <p>(The Committee shall comprise 9 members of the Council)</p>	<p>To provide effective scrutiny of the achievement of the Council's strategic priorities and external providers in securing the primary outcome of creating a safe and sustaining thriving local economy and making Tamworth a more aspirational and competitive place to do business:-</p> <p>Statutory Crime and Disorder obligation; the Committee shall act as the Crime and Disorder Committee for the purposes of section 19 of the Police and Justice Act 2006 and may co-opt additional members subject to the Crime and Disorder Overview and Scrutiny) Regulations 2009.</p> <ul style="list-style-type: none"> <li>• Highways (full Council decision)</li> </ul>

	<ul style="list-style-type: none"> <li>• Education</li> <li>• Employment/Inward Investment</li> <li>• Town Centre</li> <li>• Open Space and Play</li> </ul>
<p><b>Corporate Scrutiny</b> (The Committee shall comprise 9 members of the Council)</p>	<p>To provide effective scrutiny of the achievement of the Council's strategic priorities by scrutinising the performance of the Executive</p> <p>To review and scrutinise the performance and functions of other public bodies, statutory undertakers or other such organisations, including voluntary and not for profit institutions, who provide or facilitate the provision of public services within the Borough.</p> <ul style="list-style-type: none"> <li>• The Committee shall review and scrutinise matters relating to:-</li> <li>• <b>Forward Plan</b></li> <li>• Quarterly performance reports</li> <li>• Corporate plan</li> <li>• <b>Major Council lead projects</b></li> <li>• <b>Commercial Investment strategy</b></li> <li>• <b>HRA function</b></li> </ul>
<p><b>Budget Review Joint Scrutiny Committee</b></p> <p>The Committees membership includes all non executive members of the Council</p>	<p>The Committee meets up to twice a year to consider the budget proposals being put forward by the executive and may make comments and recommendations back to the executive on their budget proposals.</p>
<p><b>For All Committees</b></p>	<p>All Committees will consider the following matters as they carry out their primary functions</p> <ul style="list-style-type: none"> <li>• Policy Development</li> <li>• Service Delivery &amp; Performance</li> <li>• Use of technology to ensure access and equality</li> <li>• Use of Corporate assets</li> <li>• Finance</li> </ul>

## 2.6.2 General role

Within their terms of reference, overview and scrutiny committees and sub-committees will:

- (a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions including consideration at each meeting of the Forward Plan;
- (b) prepare an annual scrutiny work plan covering two successive periods of six months and make reports and/or recommendations bi-annually to the full Council and/or the executive and/or any policy, joint or area committee in connection with the discharge of any functions;
- (c) liaise regularly with each other to ensure that there is no duplication between them in respect of scrutiny and review activity
- (d) consider any matter affecting the area or its inhabitants;
- (e) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the executive and/or any policy or area committees; and
- (f) appoint Task and Finish Groups as and when required with no more than two operating at any one time. Normally the Chairman or Vice-Chairman of the Committee would Chair such groups and there would be an expectation that any such groups would co-opt external expertise. **No external appointees will be able to vote on any matter.**

### 2.6.3 Specific functions

- (a) **Policy development and review.** Overview and Scrutiny Committees and Sub-Committees may:
  - (i) assist the Council and the executive in the development of its budget and policy framework by in-depth analysis of **the budget and** policy issues;
  - (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
  - (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
  - (iv) question members of the executive, other committees and chief officers about their views on issues and proposals affecting the area and receive a reply/progress statement from the responsible body or member within 3 calendar months, relating to any recommendations accepted by Full Council or Cabinet which have been referred from the scrutiny process; and
  - (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

- (b) **Scrutiny.** Overview and scrutiny committees and sub-committees may:
- (i) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
  - (ii) review and scrutinise members of the executive and chief officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
  - (iii) make recommendations to the executive and Council arising from the outcome of the scrutiny process;
  - (iv) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the overview and scrutiny committee and local people about their activities and performance; and
- (c) **Finance.** Overview and scrutiny committees and sub-committees may exercise overall responsibility for **any** finances **that may be** made available to them.
- (d) **Annual report.** Overview and scrutiny committees must report annually to full Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

#### 2.6.4 **Proceedings of overview and scrutiny committees and sub-committees**

Overview and scrutiny committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules **and the Non Regulatory Committee Procedure Rules** set out in Part 4 of this Constitution.

## 2.7 Article 7 – The Executive

### 2.7.1 Role

The executive will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

### 2.7.2 Form and composition

The executive will consist of the executive leader together with not more than nine councillors appointed to the executive by the executive leader.

### 2.7.3 Leader

The Leader will be a councillor elected to the position of Leader by the Council at the Annual Council meeting. The Leader will hold office from the date s/he is elected as leader until the next annual Council meeting or until:

- (a) s/he resigns from the office; or
- (b) s/he is removed from office by resolution of the Council; or
- (c) s/he is disqualified from being a councillor

### 2.7.4 The Leader will

- (a) Determine the size of the executive
- (b) Appoint members of the executive
- (c) Allocate portfolio areas to members of the executive
- (d) Remove and replace members of the executive
- (e) Appoint and replace member champions

### 2.7.5 Other executive members

The Leader will nominate one member of the executive as a Deputy Leader to exercise the powers of the Leader when the Leader is unable to act or in the event of the office of Leader being vacant.

The Deputy Leader will hold office until the end of the Leader's term of office unless removed from office by the Leader or ceases to hold office as provided in this article.

The Leader shall give notice in writing to the Chief Executive of appointments made of the Deputy Leader and other Executive Members.

The Deputy Leader and other executive members shall hold office until:

- (a) they resign from office; or
- (b) they are disqualified from being councillors; or
- (c) they are no longer councillors; or

- (d) they are removed from office by the Leader who must give written notice of any removal to the Chief Executive. The removal will take effect two working days after receipt of the notice by the Chief Executive.

#### 2.7.6 **Proceedings of the executive**

Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution.

#### 2.7.7 **Responsibility for functions**

The Leader will inform the Chief Executive which individual members of the executive, committees of the executive, officers or joint arrangements are responsible for the exercise of particular executive functions and the Monitoring Officer will maintain the list in Part 3 of this Constitution.

- 2.7.8 The executive may appoint a committee or committees, which committees may discharge executive functions.

#### 2.7.9 **Member Champions**

The Leader may at the Annual meeting of the Council or such other time as s/he decides, appoint members to act as champions in such areas as he deems appropriate.

#### 2.7.10 **Champions**

A champion is a Member who will champion an issue on behalf of the Council, as appointed by the Leader of the Council. Examples are issues like heritage, youth, sports, housing, business, town centre. This is not exhaustive but is an example of issues to champion.

Champions are expected to become very knowledgeable on their issue and report to Council cabinet, and relevant committees on their subject as required

They have no authority to decide Council actions, policy or direct to staff to act on their issue.

All policy and decision making authority is the exclusive role of the Executive.

A champion cannot be a Tamworth Borough Council Executive member, committee chairman, vice chairman, Deputy Mayor or Mayor / or in receipt of a Special Responsibility Allowance.

A champion will -

Act as a lead person to gather, collect and research an issue on behalf of the Executive

Represent the Council, if authorised by the cabinet, at relevant internal or external events and or meetings

Engage external partners and agencies on the issue if authorised by the Executive.

Engage the public on the issue if authorised by the Executive.

Act as a project spokesperson or council representative on a body group, such as youth council, if required by the Executive.

Engage external agencies in the course of researching or investigating an issue or subject

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## 2.8 **Article 8 – Regulatory Committees**

### 2.8.1 **Regulatory Committees**

The council will appoint such regulatory Committees as it considers necessary and appropriate from time to time to discharge non-executive functions. The committees to be appointed and their detailed terms and references are set out in Part 3 of this Constitution (Responsibility of Functions).

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## 2.9 Article 9 – Audit & Governance Committee

### 2.9.1 Audit & Governance Committee

The Council meeting will establish an Audit & Governance Committee.

### 2.9.2 Composition

- (a) **Membership.** The Audit & Governance Committee will be composed of at least seven councillors other than a member of the Executive or the Chairman of any Scrutiny Committee
- (b) **Independent members.** The Committee may co-opt up to two independent (non-elected) non-voting persons as and when it deems appropriate, for a period or periods it may determine.
- (c) **Chairing the Committee.** The Chairman and Vice-Chairman will be appointed in accordance with Council Procedure Rules.

### 2.9.3 Role and Function

The Audit & Governance Committee will have the following roles and functions:

- (a) **Audit Activity**
  - (i) Receive, but not direct, internal audit's strategy and audit plan;
  - (ii) Consider reports dealing with the management and performance of Internal Audit;
  - (iii) Consider the head of Internal Audit's annual report and opinion, and the level of assurance Internal Audit can give over the Council's corporate governance arrangements;
  - (iv) Consider periodic reports from Internal Audit on the main issues arising from their work and "high priority" recommendations not implemented within a reasonable timescale, and seek assurance that action has been taken where necessary; and
  - (v) Consider the final external audit Annual Audit and Inspection letter and any other relevant reports to "those charged with governance".
- (b) **Regulatory Framework**
  - (i) Maintain an overview of the Council's Constitution, including Contract Procedure Rules, Financial Regulations and Codes of Conduct;
  - (ii) Consider the internal control environment and the level of assurance that may be given as to its effectiveness, to include the review of the Statement on Internal Control and the recommendation to the Council of its adoption;
  - (iii) Satisfy itself that the Authority's assurance statements, including the Statement on Internal Control, properly reflect the risk environment and any actions required to improve it.

- (iv) Monitor the effectiveness of the authority's risk management arrangements, including the actions taken to manage risks and to receive regular reports on risk management;
- (v) Monitor the effective development and operation of the corporate governance framework in the Council and to recommend to the Cabinet or the Council, as appropriate, the actions necessary to ensure compliance with best practice; and
- (vi) Monitor the effectiveness of the Council's policies and arrangements for anti-fraud and corruption and whistle-blowing, complaints handling, RIPA and Ombudsman investigations.

(c) **Accounts**

Approve the Annual Statement of Accounts, External Auditor's opinion and reports to Members and monitor management action in response to the issues raised by External Audit.

(d) **Reports to Council**

Reports in the form of Minutes detailing action taken by the Committee and recommendations will be submitted to Council on an annual basis.

(e) **Delegated Powers**

The Committee is empowered to deal with the functions detailed above.

(f) **Standards of Conduct**

This Committee shall exercise all the functions of the Council relating to Codes of Conduct as provided in the Localism Act 2011 except for those functions which under Chapter 7 of the Localism Act 2011 may only be exercised by the full Council.

## 2.10 Article 10 – Nominations Committee

2.10.1 The Council will establish a Nominations Committee

### 2.10.2 Composition

- (a) **Membership.** The nominations committee will be composed of at least:
  - (i) seven Councillors
  - (ii) one person who is not a councillor or an officer of the Council (“Independent members”).
- (b) **Chairing the Committee.** The Chairman and Vice-Chairman will be appointed in accordance with Council Procedure Rules.
- (c) **Independent members.** Independent members will be entitled to vote at meetings.

### 2.10.3 Role and Function

The Nominations Committee will have the following roles and functions:

- (a) Consider nominations to be made to the Council pursuant to section 249(1) of the Local Government Act 1972 for conferring the title of honorary aldermen or honorary alderwomen on persons who have, in the opinion of the Council, rendered eminent services to the Council;
- (b) Consider nominations to be made to the Council pursuant to section 249(5) of the Local Government Act 1972 to admit to be honorary freemen or honorary freewomen of the Borough of Tamworth persons who are of distinction and who have, in the opinion of the Council, rendered eminent services to the Borough;
- (c) Maintain a publicly accessible application process for the two above honours;
- (d) Any approved applications are referred to Full Council for Full Council approval;
- (e) Act as a sponsor to a new application, make referral to, or support an existing application that nominates a Tamworth resident to any outside bodies’ awards or recognition scheme;
- (f) Seek nominations from the Tamworth public, persons worthy of public recognition for their service or work for the Borough of Tamworth; and
- (g) Bi-annually insert on the Council website and local newspaper an article providing details of the operation and function of the Committee.

## 2.11 **Article 11 – Area Committees and Forums**

### 2.11.1 **Area Committees and Forums**

The Council may appoint area committees and forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

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## 2.12 Article 12 - Joint Arrangements

### 2.12.1 Arrangements to promote well being

The Council, in respect of non executive functions, and the executive in respect of executive functions and in order to promote the economic, social or environmental well-being of its area or to carry out activities falling within its powers under the General Power of Competence may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

Subject, in all cases, to compliance with the statutory requirements.

### 2.12.2 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities to exercise functions which are not executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- (b) The executive may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below the executive may only appoint executive members to a joint committee and those members need not reflect the political composition of the Council as a whole.
- (d) The executive may appoint members to a Joint Committee from outside the executive in the following circumstances:
  - (i) the Joint Committee has functions for only part of the authority and that area is smaller than two fifth of the authority by areas or population. In such cases the executive may appoint to the Joint Committee any Councillor who is a member for a ward which is wholly or partly contained within the area;
  - (ii) the Joint Committee is discharging a function in relation to five or more authorities;
  - (iii) the function which the Joint Committee is discharging is a function which is required by statute to be discharged by a Joint Committee; and

- (iv) political balance requirements do not apply to such appointments.
- (e) Details of any joint arrangements including delegations to Joint Committees will be found in Part 3 of this Constitution.

**2.12.3 Access to information**

The Access to Information Rules in Part 4 of this Constitution will apply.

**2.12.4 Delegation to and from other local authorities**

- (a) The Council may delegate functions to another local authority or, in certain circumstances, the executive of another local authority.
- (b) The executive may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.
- (c) The decision whether or not to accept or refuse such a delegation from another local authority shall be reserved to the Council meeting.

**2.12.5 Contracting out**

The Council in respect of non-executive functions and the executive in respect of executive functions may contract out to another body or organisation functions which may be exercised by an Officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

## 2.13 Article 13 – Officers

### 2.13.1 Management structure

- (a) **General.** The full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The full Council will engage persons for the following posts, who will be designated chief officers:

Post

Chief Executive

Executive Director – Corporate Services  
Solicitor to the Council & Monitoring Officer

Director – Transformation & Corporate Performance  
Corporate Director – Communities, Partnerships & Housing  
Corporate Director – Growth, Assets & Environment  
Director – Finance  
Director – Technology and Corporate Programmes

- (c) **Head of paid service, monitoring officer and chief financial officer.** The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Solicitor to the Council & Monitoring Officer	Monitoring Officer
Executive Director – Corporate Services	Chief Finance Officer

Such posts will have the functions described in Article 12.13.2–12.13.4 below.

- (d) **Structure.** The head of paid service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.

### 2.13.2 Functions of the head of paid service

- (a) **Discharge of functions by the Council.** The head of paid service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The head of paid service may not be the monitoring officer but may hold the post of chief finance officer if a qualified accountant.

2.13.3 **Functions of the monitoring officer (to be exercised after consultation with the Head of Paid Service)**

- (a) **Maintaining the Constitution.** The monitoring officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the head of paid service and chief finance officer, the monitoring officer will report to the full Council or to the executive in relation to an executive function if s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered in accordance with s5 of the Local Government and Housing Act 1989
- (c) **Supporting the Audit & Governance Committee.** The monitoring officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the relevant committee.
- (d) **Conducting investigations or other action.** The monitoring officer will conduct investigations or take other action into matters referred by the Audit & Governance Committee in accordance with the Complaints Procedure.
- (e) **Proper officer for access to information.** The monitoring officer will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible and will advise upon issues relating to confidential and exempt information
- (f) **Advising whether executive decisions are within the budget and policy framework.** The monitoring officer will advise whether decisions of the executive are in accordance with the budget and policy framework.
- (g) **Providing advice.** The monitoring officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors.
- (h) **Restrictions on posts.** The monitoring officer cannot be the chief finance officer or the Head of Paid Service.

2.13.4 **Functions of the Chief Finance Officer (to be exercised after consultation with the Head of Paid Service)**

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the head of paid service and the monitoring officer, the Chief Finance Officer will report to the full Council or to the executive in relation to an executive function – and the Council's external auditor if s/he considers that any proposal, decision or

course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.
- (e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

2.13.5 **Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

2.13.6 **Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

2.13.7 **Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

## 2.14 Article 14 – Decision Making

### 2.14.1 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

### 2.14.2 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome) and having regard to the Council's Diversity and Equality Scheme;
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights (see below for further details);
- (d) a presumption in favour of openness; and
- (e) clarity of aims and desired outcomes.

### 2.14.3 Types of decision

- (a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4 ii will be made by the full Council and not delegated.
- (b) Key decisions.
  - (i) Key decision means any decision to spend or forego income or raise additional income which is significant having regard to the Council's budget for the service or function to which the decision relates. For the purposes of this paragraph the Council interprets as "significant" any decision to spend or forego income or raise additional income exceeding £100,000 in one financial year. For any amounts between £50,000 and £100,000 compliance must be in accordance with Financial Guidance

or

  - (ii) any decision that has a significant affect on two or more wards. For the purposes of this paragraph the Council interprets as "significant" any proposal which will make a substantial physical alteration to the appearance of the area of two or more wards, or any proposal which will substantially alter the level of a Council service given to people who live or work in the area.

- (iii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

**2.14.4 Decision making by the full Council**

Subject to Article 2.14.8, the Council at their meetings will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

**2.14.5 Decision making by the executive**

Subject to Article 2.14.8, the Executive will follow the Executive Procedures Rules set out in Part 4 of this Constitution when considering any matter.

**2.14.6 Decision making by overview and scrutiny committees**

Overview and scrutiny committees will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

**2.14.7 Decision making by other committees and sub-committees established by the Council**

Subject to Article 2.14.8, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

**2.14.8 Decision making by Council bodies acting as tribunals**

The Council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights and the duties placed on the Council under the Equality Act 2010.

## 2.15 **Article 15 – Finance, Contracts and Legal Matters**

### 2.15.1 **Financial management**

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Part 4 of this Constitution.

### 2.15.2 **Contracts**

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.

### 2.15.3 **Legal proceedings**

The Solicitor to the Council is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Solicitor to the Council considers that such action is necessary to protect the Council's interests.

### 2.15.4 **Authentication of documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Solicitor to the Council or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract with a value exceeding £50,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the council attested by at least one officer.

### 2.15.5 **Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Solicitor to the Council. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Solicitor to the Council should be sealed. The affixing of the Common Seal will be attested by the Chief Executive or the Solicitor to the Council or some other person authorised by either.

## 2.16 Article 16 – Review and Revision of the Constitution

### 2.16.1 Duty to monitor and review the constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

#### **Protocol for monitoring and review of constitution by monitoring officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

- (a) observe meetings of different parts of the member and officer structure;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
- (d) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

### 2.16.2 Changes to the Constitution

**Approval.** Any changes to the constitution must be approved by the full Council after consideration of the proposal by the Monitoring Officer and the Audit and Governance Committee (as necessary). Changes to factual references and those required as a result of legislative changes may be made by the Monitoring Officer.

## 2.17 Article 17 – Suspension, Interpretation and Publication of the Constitution

### 2.17.1 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension.** The following Rules may be suspended in accordance with this Article:

The Council's Procedure Rules to the extent provided 4.24 and Schedule 1, 18.

### 2.17.2 Interpretation

The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### 2.17.3 Publication

- (a) The Solicitor to the Council will ensure that copies are published on the Council's website and made available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.

## 2.18 Schedule 1: Description of Executive Arrangements

The following parts of this Constitution constitute the executive arrangements:

- 2.18.1 Article 6 (Overview and Scrutiny committees) and the Overview and Scrutiny Procedure Rules;
- 2.18.2 Article 7 (The Executive) and the Executive Procedure Rules;
- 2.18.3 Article 11 (Area Committees) where the Area Committee is exercising Executive functions;
- 2.18.4 Article 12 (Joint Arrangements) where the Joint committee is exercising Executive functions;
- 2.18.5 Article 14 (Decision making) and the Access to Information Procedure Rules;
- 2.18.6 Part 3 (Responsibility for Functions).

### 3 Part 3 - Responsibility for Functions

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended or replaced) specify which functions are not the responsibility of the executive, functions which may be the responsibility of the executive (local choice functions) and functions which are partly the responsibility of the executive and partly the Council.

#### 3.1 RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

The following local choice functions shall be the responsibility of the executive:-

Appointments under paragraph 19 of Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended or replaced).

All other local choice functions shall be the responsibility of the Council but may be delegated to committees.

#### 3.2 RESPONSIBILITY FOR COUNCIL FUNCTIONS

Committee	Membership	Functions	Delegation of functions
Planning	Thirteen members	<p>Planning and conservation Functions conferred on the Council relating to town and country planning, development control, highways and environmental protection as specified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended):</p> <p>Schedule 1 Part A 1-27            Schedule 1 Part B 47-55, Part I 1-34, 46-47            Schedule 2 – 10-12, 14-15 and 16,17 and 18 (except the powers reserved to the Cabinet)</p>	<p>Corporate Director – Growth, Assets &amp; Environment            In accordance with any arrangements approved from time to time by the Planning Committee</p>
Licensing Committee	Thirteen Members	<p>Those functions conferred on the Council in relation to licensing (including liquor licensing), registration, health &amp; safety as contained in Schedule 1, Part B (1-46, 56-70), Part C</p>	

		(whole), Part I (42) of the Local Government (Functions & Responsibilities) (England) Regulations 2000 (as amended) To determine matters under the Licensing Act 2003 and the Gambling Act 2005	
Appointments and Staffing Committee	Five Members, of which one must be a member of the Executive	To recommend to full Council the appointment or dismissal of the Head of Paid Service and Posts designated as Chief Officer (including any such Officers on Chief Officer conditions), including the Monitoring Officer and S151 Officer.  To determine the terms and conditions on which all staff hold office including procedures dealing with grievance and dismissal.  In respect of Chief Officers and Officers appointed on Chief Officer conditions, to be the appeal Committee for appeals against decisions made on matters of grievance and discipline by an Investigating Committee or the Chief Officer Conduct Committee.	
Chief Officer Conduct Committee	Five Members of which one must be a member of the Executive	To act as the (Investigating Committee or the) first stage Committee to hear the case against an employee appointed in accordance with Joint Negotiating	

		<p>Committee terms for Chief Executives or Chief Officers.</p> <p>The Committee will not act as an appellate Committee as such provisions are preserved to the Appointment &amp; Staffing Committee.</p>	
Audit & Governance Committee	Seven Members	<p>Those functions conferred on the Council in relation to Audit and Governance matters including Audit Activity, Regulatory Framework and Accounts</p> <p>To advise the council on the adoption or revision of its Code of Conduct</p> <p>To monitor and advise the council about the operation of its Code of Conduct in the light of best practice and in terms of the Localism Act 2011</p> <p>Assistance to members and co-opted members of the authority.</p> <p>To ensure that all members of the Council have access to training in all aspects of the member Code of Conduct, that this training is actively promoted, and that members are aware of the standards expected from local councillors under the Code</p> <p>1) Other functions</p>	

		<p>Functions relating to standards of conduct of members under any relevant provision of, or regulations made under, the Localism Act 2011</p> <p>The Council's complaints procedure.</p>	
Statutory Officer Conduct Committee	Seven comprised of five elected members of whom one must be a member of the Cabinet and two voting Independent Persons	To recommend to Council any disciplinary action etc.	
Cabinet (Grants) Sub Committee	<ul style="list-style-type: none"> <li>• To determine applications under the grants to voluntary organisations scheme (small grants)</li> <li>• To determine applications under the Arts Grants Fund</li> <li>• To determine applications under the Sports Grants Fund</li> <li>• To determine applications under the Start-up Business Grants Scheme</li> </ul>		

### 3.3 RESPONSIBILITY FOR EXECUTIVE FUNCTIONS

Executive functions shall subject to the provisions of Section 9E of the Local Government Act 2000 (as amended) be the responsibility of the Leader of the Council who may discharge executive functions or arrange for their discharge by the executive, by another member of the executive, by a committee of the executive or by an officer of the Council.

The Leader shall as required by Article 7 (2.7.7) maintain a list of delegations of functions which shall form part of this constitution.

Who is responsible	Responsibilities (provided the decision is within any guidance or direction from the Leader and/or the Cabinet)	Onward limits on delegations (provided the decision is within any guidance or direction from the Leader and/or the Cabinet and/or the
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		<b>Portfolio Holder</b>
Leader	Corporate Assessments Engagement Overview Financial Planning Performance Management Member Development Strategic Overview Strategic Partnerships Budget Consultation Participatory Budgeting Tamworth Listens Reputation Organisational Capacity Corporate Consultation/Engagement (GF and HRA) Delivering Quality Services Overview	Chief Officers with responsibilities for these functions
Portfolio Holder for <b>Assets &amp; Finance</b>	Corporate Finance & Procurement Audit and Governance Service Transformation Customer Services, HR and ICT GF/HRA Commercial Property and Asset Management Constitution Treasury Management Revenues and Benefits Community Health and Safety Corporate Health and Safety PR and Coms Management (GF and HRA) Graphics and Publications Town Centre Car Parks Civil Parking Enforcement Council Tax and NNDR recovery Legal & Demo Services	Chief Officers with responsibilities for these functions
Portfolio Holder for <b>Communities</b>	Safer and Stronger Communities Community Safety, ASB Reduction and Crime Tackling Fear of Crime Integrated Enforcement/Clean Streets Enforcement CCTV Management Community Development and Locality Working Police & Crime Commissioner Engagement Civil Parking Enforcement	Chief Officers with responsibilities for these functions

	<p>Third Sector Engagement  Voluntary Sector Engagement &amp; Funding  Locality/Integrated Commissioning  CCT/PCT Engagement  Healthier Communities/Lifestyles  Community Wardens  Safeguarding Children &amp; Vulnerable Adults  Child Protection/Every Child Matters Agenda</p>	
<p>Portfolio Holder for <b>Regeneration</b></p>	<p>Education/Educational Attainment  Careers Skills and Training  Business Development  Town Centre Development  Town Centre Economy/Enterprise Quarter  Business Liaison  Development Management  Building Control  Town Centre Market Development  Planning  Local Plan/Regeneration  Southern Staffordshire Partnership (SSP)  LEP Board Member/Combined Authority  Infrastructure/Transport/LTB  Gateways Project  Housing Regeneration Projects</p>	
<p>Portfolio Holder for <b>Housing Services</b></p>	<p>Strategic Housing  Homeless Prevention  Housing Advice  Landlord Services/Council Housing  Private Rented Sector Housing  HRA Neighbourhood Renewal  Healthier Housing  Public Sector Garages  HRA Business Planning  Tenant Engagement  Decent Homes Standard  Housing Repairs Services  Service Charges  RSL Engagement  Decent &amp; Affordable Housing Development</p>	

<p>Portfolio Holder for <b>Environment &amp; Culture</b></p>	<p>Strategic Waste Management Refuse Collection Recycling Services Waste Minimisation Joint Waste Board with LDC Staffordshire Joint Waste Management Board Cemeteries Nature Reserves, Parks &amp; Play Street Furniture Maintenance Streetscene Tamworth in Bloom Licensing Environmental Health Sports Development &amp; Leisure Services Tourism/Destination Tamworth Outdoor Events Heritage Conservation/Promotion Culture and the Arts Services for Young People/Youth Council</p>	
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### 3.4 SCHEME OF DELEGATION TO OFFICERS

#### 3.4.1 Introduction

- (a) In accordance with Article 14 of the Constitution this Scheme forms part of Part 3 of the Council's Constitution.
- (b) This Scheme is approved by the Council in respect of those functions which by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended or replaced) are not the responsibility of the Cabinet and which in accordance with Section 101 of the Local Government Act 1972 and all other powers enabling such delegation are delegated by the Council to officers.
- (c) This scheme is approved by the Leader of the Council in respect of those functions which under the Council's executive arrangements are the responsibility of the Cabinet as the executive and which in accordance with Section 9E of the Local Government Act 2000 are delegated by the Leader of the Council to officers.
- (d) This Scheme is adopted with the intent that it should lead to a streamlining and simplification of the decision-making processes of the Council, and accordingly it should be interpreted widely rather than narrowly.
- (e) This Scheme delegates to Directors and other Authorised Officers the powers and duties necessary for the discharge of the Council's functions within the broad functional description set out, together with

the specific delegations therein, and should be taken to include powers and duties within those descriptions under all present and future legislation, and all powers incidental to that legislation including the application of the incidental powers under Section 111 of the Local Government Act 1972, including the power to affix the Common Seal of the Council.

(f) An Officer may decline to exercise delegated powers and instead report to the Council or appropriate Committee.

(g) For the purpose of this Scheme:

(i) “the estimates” means the revenue estimates approved by the Council.

(ii) “the establishment” means the staff establishment of the Council for which funds have been provided in the estimates.

(iii) “the Council” includes any committee or officer of the Council acting within delegated powers and acting as agent for another body or person.

(iv) “Authorised Officer” means an Officer who is specified under this Scheme as having the authority to exercise delegated powers and duties on behalf of the Council. This includes the Chief Executive, Executive Director Corporate Services, Director Transformation & Corporate Performance, the Solicitor to the Council & Monitoring Officer, Corporate Director Growth, Assets and Environment, Corporate Director Communities, Partnerships & Housing, Director of Finance, Director Technology & Corporate Programmes..

(v) “function” includes any power or duty

(vi) “legislation” and “statute” includes subordinate legislation and “legislative” and “statutory” shall be construed accordingly

(vii) “proceedings” includes any tribunal, inquiry, arbitration or other legal or quasi-legal proceedings

(viii) “Portfolio Holder” shall be taken to mean a Councillor (including the Leader of the Council if so nominated) nominated in writing to the Proper Officer by the Leader of the Council as a Member of the Cabinet.

(ix) “Leader of the Council” shall mean the person elected to that position at the Annual Council meeting.

(x) “Proper Officer” shall be taken to mean the Officer appointed by the Council for the purpose of the Scheme, or in default of such appointment the Chief Executive of the Council.

(xi) “Statutory Officer” means:

- the Head of Paid Service in respect of the manner in which the co-ordination by the Council of the discharge of their different functions is co-ordinated, the number of staff required for the discharge of those functions, the organisation of those staff and the appointment and proper management of those staff;
- the Monitoring Officer in respect of any proposal, decision or omission which has given rise to or is likely to give rise

to a breach of law or of any statutory code of practice, or maladministration;

- the Section 151 Officer in respect of the proper administration of the Council's financial affairs.
- "Ward Member" means a Councillor for any electoral area, which is identified in an Officer's report for a decision as being particularly affected by the proposed decision.

(h) Where an Authorised Officer designation has ceased to exist eg because of a re-organisation of services the Authorised Officer shall be that person who has taken over responsibility for the function classified in this Scheme.

### 3.4.2 Limitations

(a) This Scheme does not delegate to Officers:

- (i) any matter reserved by law or by the constitution, Terms of Reference of the Cabinet, Committees and Sub-Committees to the Council, or to a Committee or Sub-Committee of the Council;
- (ii) any matter which by law may not be delegated to an officer;
- (iii) any matter which is specifically excluded from delegation by this Scheme or by resolution of Council, the Cabinet or a Committee or Sub-Committee.

(b) Officers may only exercise delegated powers in accordance with the:

- (i) Policies, Plans and Programmes approved by or on behalf of the Council;
- (ii) budget and policy framework and executive procedural rules;
- (iii) officer employment procedural rules;
- (iv) Financial Regulations, Contract Procedure Rules and Financial Guidance;
- (v) any statutory restrictions, statutory guidance/circulars or statutory code of practice; and
- (vi) the provisions of the Council's Constitution.

(c) In exercising delegated powers, Officers shall act only within the revenue and capital budgets for the relevant service as approved by the Council, subject to any variation thereof which is permitted by the Council's Financial Regulations, Contract Procedure Rules and Financial Guidance.

### 3.4.3 Sub-Delegation

- (a) This Scheme includes the power for Officers to further delegate any function which has been delegated to them under this Scheme, to another Officer or to other Officers. Every such sub-delegation shall be in writing, setting out the name of the delegate, the terms and conditions upon which that function is to be performed, and accountability for the performance of the sub-delegated function. The Officer making such sub-delegation shall record the sub-delegation in a register maintained for the purpose by the Authorised Officer responsible for the function.
- (b) Authorised Officers shall devolve operational responsibilities for day to day service delivery and management to the nearest practicable point to the service user.
- (c) The Officer named shall have the power to act for the purposes of these delegated matters as if he/she were the Authorised Officer. Sub-delegated decisions are taken in the name of the Authorised Officer.
- (d) Delegated Decision-Making – General Principles
  - (i) In exercising any delegated function, Officers shall have regard to the requirement to comply with the limitations set out in paragraph 3.4.2 above, and shall be responsible for undertaking any appropriate consultation with the Council's Statutory Officers before taking any decision.
  - (ii) If a function, power or responsibility has not been specifically reserved to the Council, a committee or the executive, the Authorised Officer within whose remit the matter falls is authorised to act.
  - (iii) Where any matter involves professional or technical considerations not within the sphere of competence of the Authorised Officer concerned, he shall consult with the appropriate Statutory Officer of the Council before authorising action. Such constraints are kept to the absolute minimum necessary for internal check.
  - (iv) The Officers exercising such powers shall take account of any previous decision of the Council on any relevant policies or procedures.
  - (v) All decisions shall be taken in the name of, but not necessarily personally by, the Officer(s) to whom the power is delegated. Arrangements shall be made for the recording of action taken pursuant to these powers.
  - (vi) In any case, where an Officer, exercising a delegated power or duty considers that a new departure in policy, procedure or a significant change in financial practice is likely to be involved, he/she shall consult with the Statutory Officer(s),

who shall, if necessary, refer the matter to the appropriate decision-making process.

- (vii) Where there is a dispute between Authorised Officers, either Officer may refer the matter to the Chief Executive for appropriate action.
- (viii) The Chief Executive as the Head of Paid Service shall monitor the exercise of delegated powers and duties other than statutory functions for which other Authorised Officers have responsibility. The Chief Executive may require any Officer to cease the exercise of such powers and duties pending a report to the next meeting of the Council, Cabinet or appropriate Committee.

#### 3.4.4 Interpretation

- (a) References in the Scheme to any statute, statutory instrument, regulation, rule, circular, agency or other agreement or any such matter in respect of which a power or duty is delegated shall be deemed to include any modification or re-enactment of the same as may be made from time to time.

### 3.5 GENERAL DELEGATIONS OF POWERS AND DUTIES TO AUTHORISED OFFICERS

Subject to the general principles and requirements of the Scheme, the following powers/duties are exercisable by the Authorised Officer.

#### 3.5.1 Employment

Subject always to:

- (a) Budget provision;
- (b) The policies and practices adopted by the Council from time to time; and
- (c) Observance of contracts of employment and conditions of service including any discretions incorporated within them.

The Chief Executive and in addition the Authorised Officers shall be fully empowered in the following matters of HR Management as regards their respective Directorates and employees (other than those specifically subject to Appointments and Staffing Committee).

- To re-grade posts, hold posts vacant, amend the titles of posts and to make interim arrangements as necessary (where no budgetary impact)
- To make minor changes to Job Descriptions to be agreed with the appropriate Chief Officer prior to any changes being made. Changes to Job Descriptions should not include:
  - additional responsibilities warranting salary increases

- not exceeding 25% of the existing job description (Consultation with staff prior to any change)

(d) Job Share/Reduced Hours

All posts should be available for job share (as specified in the local policy for job share), with the following exceptions:

Jobs with tied accommodation.

Chief Executive.

Monitoring Officer.

Returning Officer.

Section 151 Officer (Executive Director Corporate Services)

Job share/reduced hours which would disrupt management arrangements (e.g. the reduction in hours meant that the remaining hours were impossible to cover).

Employee contracts, for time limited periods e.g. fixed term contracts.

(e) Unpaid leave up to a maximum of 10 days may be granted subject to the demands of the service in the following circumstances:

Extended holidays

For reasons set out in the Employment Rights Act 1996 and 1999 (e.g. parental leave).

Compassionate grounds.

Exceptional circumstances

Religious observance.

NB: Annual leave and flexi leave should be taken into account.

(f) Secondment to another Service Unit or to an external organisation may be granted in accordance with the Council Policies in effect at the time of the secondment.

NB: Increase in salary may be available subject to existing budget; otherwise the secondment must be on the basis of a staff loan (this may include budget virement).

(g) Training within available budget

All training should be notified to the appropriate Chief Officer, for monitoring purposes and identification as to whether it is to be considered as corporate training. It should be job related and for the purpose of:

Changes to job requirements

To meet an employee's skills gap

Personal development

To meet the business needs of the Service Unit

Succession planning and the future needs of the Council.

Such training will involve:

CPD

Training in-house

External courses/seminars.

NB:

Any other forms of training must be approved by the appropriate Chief Officer and the cost met out of the corporate training budget.

Training expenses and time off for attendance will be in accordance with the appropriate policies and procedures.

Records of all training must be kept by the appropriate Chief Officer.

(h) Paid Leave

Allowable as provided in current policies (Consult Human Resources for advice).

(i) To action matters arising from the application of the Council's Human Resource policies and procedures.

(j) To deal with the appointment of staff and disciplinary/grievance proceedings in accordance with the Council's approved scheme. (Dismissal is referred to the Chief Executive, in accordance with Council Policy)

3.5.2 Subject always to budget provision to appoint and instruct when necessary temporary or agency staff provided there is no increase in the Council's permanent establishment, and outside agents or consultants to carry out specific work within the normal terms of reference of the Directorate of the relevant Director and to authorise overtime working for officers; and in consultation with the Chief Executive to authorise planned overtime for officers above the overtime limit..

3.5.3 To nominate an officer to deputise in the Director's absence.

B. Finance

Subject to:

- (a) Budget provision;
- (b) Having due regard to the professional advice pertinent to the particular matter;
- (i) All Authorised Officers in respect of financial matters for which they are responsible can authorise expenditure within approved revenue budgets and decisions on works programmes within those budgets except any items reserved by the Council or Cabinet for further approval.
- (ii) Approve expenditure within approved capital budgets and decisions on work programmes within those budgets. Authority to approve additional expenditure in accordance with current financial guidance.
- (iii) Authorise the transfer of funds (virement) between approved revenue budget headings within a service area subject to there being no commitment to recurring expenditure in future years as determined by financial guidance.
- (iv) In consultation with the Executive Director Corporate Services and where necessary the Portfolio Holder, to set unless the charge requires Cabinet approval rent, fee, charges and other income levels unless any changes:-
- exceed inflation by more than 3% and/or
  - involve a change in policy, or
  - potentially have significant political implications.
- (v) To authorise the write-off of individual sums in line with current financial guidance.
- (vi) Are responsible for the carrying forward from one financial year to another any approved planned expenditure that remains unspent (excluding wages and salaries budgets) provided a decision to approve is taken by Cabinet before the end of June in the new financial year.

#### C. Contracts

All Authorised Officers shall comply with financial guidance in respect of contract tendering and procurement making use of the internal system where appropriate.

To include:

- (a) Hiring of plant and engaging of specialist sub-contractors
- (b) Any special requirements or directions given by the Council, its Committees or the Cabinet.

- (c) To sign all contracts which fall outside the categories set out in Financial Guidance.

D. Miscellaneous

- (a) To exercise any power of the Council in relation to the Local Government Act 1972, the Local Government and Housing Act 1989, the Local Government Act 2000, the Local Government and Public Involvement in Health Act 2007, the Local Democracy Economic Development and Construction Act 2009 and the Localism Act 2011 as appropriate.
- (b) In consultation with Group Leaders and other Directors as appropriate to respond to consultation papers on matters which are routine or which do not have significant policy or financial implications.
- (c) In consultation with the Chief Executive, other Directors and/or the Communications Team as appropriate to respond to the press or otherwise to make personal statements on behalf of their service which are routine or do not have significant policy or financial implications.
- (d) Subject to securing independent valuation advice, to sell surplus vehicles, stores, equipment and services. All such sales shall be notified to the Executive Director Corporate Services before the property is handed over to the purchaser.
- (e) To exercise the Council's powers under Section 41 of the Local Government (Miscellaneous Provisions) Act 1982 (disposal of lost and unconnected property) and to notify the Executive Director Corporate Services before actual disposal.
- (f) After consultation with the Director Transformation & Corporate Performance to authorise the installation, replacement or removal of telephones in Council establishments and in premises occupied by employees.
- (g) To formulate the requirements for property use and occupation of the services and Directorates for which he is responsible.
- (h) To authorise the provision of equipment at Council premises.
- (i) To accept on behalf of the Authority contributions by individuals or bodies towards approved capital or revenue projects subject to the concurrence of the Solicitor to the Council and Executive Director Corporate Services as appropriate and reported to the next meeting of the Cabinet or relevant committee; provided always that any modifications or additions to Council property to be funded by third parties shall be agreed by the Director concerned subject to the advice of the Solicitor to the Council.
- (j) To issue, sign and serve all statutory notices and orders properly authorised by the Council, any decision-making body or an officer

exercising delegated powers under this scheme and not specifically delegated under this Scheme to an Authorised Officer.

- (k) To liaise with and advise public, private, voluntary and community groups and other stakeholders relating to corporate issues.
- (l) To provide/contractually receive goods and services to/from adjoining authorities (subject to any requirement for competitive tendering), and (within the powers of the Authority) to supply/receive them to other bodies. (In accordance with Financial Regulations)
- (m) To prepare and sign any corporate policies and strategies authorised by the Council as appropriate.
- (n) In consultation with the relevant portfolio holder, to consultation on behalf of the authority where time prohibits the matter being referred to a Committee for consideration.
- (o) To assist the Chief Executive in any conflict regarding employment matters.
- (p) All authorised officers to be responsible for obtaining all relevant grants and awards that may be available to their service area.
- (q) Subject to the Council's Constitution (Contracts Procedure Rules), within their respective responsibilities for the functions of the Council, to accept a quotation submitted to the Council for the provision of goods, materials, services or works in respect of a relevant function.
- (r) To attend meetings of professional and local government bodies of which they are members and to authorise the attendance of members of their departments at similar meetings.
- (s) To formulate responses and respond to any Freedom of Information enquiries.

### 3.6 SPECIFIC DIRECTORATE DELEGATIONS

Subject to the general principles and requirements of the Scheme the following powers/duties (expressed as functions) are delegated to the specified Authorised Officer.

#### (A) CHIEF EXECUTIVE

Delegations to the Chief Executive also include to the Executive Director Corporate Services in his absence.

	<b>FUNCTION</b>	<b>AUTHORISED OFFICER</b>
1.	<b>Urgent Action</b> To take urgent action to protect the interests of the Council and the inhabitants of the Borough.	Chief Executive in consultation with the Leader of the Council & opposition group leaders so far as is practicable

2.	<p><b>Major Incident/Emergencies</b></p> <p>To incur expenditure and commit resources within or adjoining borough until a meeting of the Council can be called to respond to a major incident/business continuity emergency when the Council's Emergency Plan or Business Continuity Plan is invoked.</p> <p>To designate Directors/Managers to carry out emergency functions.</p>	Chief Executive in consultation with Corporate Information Security Manager or relevant Chief Officer as far as is practicable
3.	<p><b>Corporate Complaints</b></p> <p>The administration of the Corporate Complaints Procedure.</p>	Chief Executive Director of Transformation & Corporate Performance
4.	<p><b>Local Government Ombudsman</b></p> <p>To respond to the Local Government Ombudsman in respect of complaints of maladministration made against the Council.</p> <p>To authorise payments or other benefits under Section 92 Local Government Act 2000.</p>	Chief Executive in consultation with the appropriate Director and the Monitoring Officer and the Solicitor to the Council.
5.	<p><b>Head of Paid Service</b></p> <p>To carry out the statutory duties as Head of the Council's Paid Service in addition with the following specific powers:</p> <p>(a) Appointment of staff and determination of individual salary points within the approved grading structure (provided that such decisions are not reserved to Appointments and Staffing Committee).</p> <p>(b) Long service awards and the award of increments within salary grades.</p> <p>Authority to execute letters and contracts of appointment</p> <p>(c) The exercise of disciplinary powers over staff (including power immediately to suspend), and to dismiss.</p> <p>Authority to execute letters of dismissal and settlement agreements to terminate employment.</p> <p>Authority to vary contracts of employment (subject to Council Policies and Committee decisions) and to execute such letter and contracts of variation</p> <p>Authority to pay overtime and planned overtime above the overtime limit.</p>	<p>Chief Executive Director of Transformation &amp; Corporate Performance</p>

<p>(d) The signing of Certificates of opinion to accompany applications for exemption for posts from political restrictions.</p>	<p>Chief Executive Director of Transformation &amp; Corporate Performance, Directors, Solicitor to the Council</p>
<p>(e) Honoraria to be paid in accordance with NJC conditions, or any local agreement with the following exceptions:</p>	<p>Chief Executive <b>Director of Transformation &amp; Corporate Performance</b></p>
<p>Duties can be shared between more than one Director but payment would therefore be restricted to one to two increments.</p>	<p>Chief Executive <b>Director of Transformation &amp; Corporate Performance</b></p>
<p>(f) To prepare and sign (or send or otherwise authenticate) any notice, order or other document authorised by the Council.</p>	<p>Chief Executive</p>
<p>(g) To represent the Authority at any conference meeting or enquiry to which the Authority is invited unless the Council has indicated otherwise and to exercise any voting rights conferred by corporate membership of any body.</p>	<p>Chief Executive</p>
<p>(h) To settle proceedings regarding employment matters in consultation with the Solicitor to the Council &amp; Monitoring Officer</p>	<p>Chief Executive <b>Director of Transformation &amp; Corporate Performance</b></p>
<p>(i) To agree accelerated increments.</p>	<p>Chief Executive <b>Director of Transformation &amp; Corporate Performance</b></p>
<p>(j) To enter into and execute such agreements on behalf of the Authority as required including but not limited to Partnership and other local area agreements.</p>	<p>Chief Executive</p>
<p>(k) To chair Director or other multi-disciplinary Groups.</p>	<p>Chief Executive</p>
<p>(l) To appoint multi-disciplinary teams or engage consultants to undertake projects falling outside the remit of any specific Director.</p>	<p>Chief Executive in consultation with appropriate Directors</p>
<p>(m) To assume the delegated powers of Directors in specific cases when requested so to do by such Director.</p>	<p>Chief Executive in consultation with appropriate Directors</p>
<p>(n) To make appropriate arrangements for the resolution of disputes between Directors.</p>	
<p>(o) On behalf of the Council where necessary and, having consulted the Leader of the Council, to suspend Directors pending the institution of disciplinary procedures.</p>	
<p>(p) To undertake the duties of Proper Officer in default of a specific appointment by the Council.</p>	
<p>(q) Ex-Gratia Settlement</p>	

	<p>Settlement of claims in respect of loss or damage to an employee's personal effects</p>	<p>Chief Executive in consultation with appropriate Directors</p> <p>Chief Executive in consultation with Executive Director Corporate Services/Solicitor to the Council</p>
<p>6.</p>	<p><b>Returning Officer</b></p> <p>(a) To carry out the duties of Acting Returning Officer and Returning Officer for Parliamentary, Local, County and European Elections and Referendums.</p> <p>(b) To designate Polling Places where necessary in exceptional circumstances for Parliamentary, European and Local Elections.</p> <p>(c) To amend from time to time the scale of fees, costs, charges and expenses to be allowed for Borough elections. (Note: the level of remuneration for the Returning Officer personally to be determined by Cabinet).</p> <p>(d)</p>	<p>Executive Director Corporate Services</p> <p>Executive Director Corporate Services</p> <p>Executive Director Corporate Services</p>
<p>7.</p>	<p><b>Electoral Registration Officer</b></p> <p>To act as the Council's Electoral Registration Officer</p>	<p>Executive Director Corporate Services</p>
<p>8.</p>	<p><b>Common Seal</b></p> <p>To attest the Common Seal of the Borough Council</p> <p>To execute and/or attest any document as required on behalf</p>	<p>Chief Executive/Solicitor to the Council</p>

	of the Council.	Chief Executive/Solicitor to the Council
9.	<p><b>Mayor</b></p> <p>To provide banking facilities for the Mayor, and to pay the Mayor's annual allowance as may be determined from time to time by the Council.</p>	Chief Executive
10.	<p><b>Monitoring Officer</b></p> <p>To act as the Council's Monitoring Officer and carry out the statutory duties set out in the Local Government &amp; Housing Act 1989 the Local Government Act 2000 and the Localism Act 2011.</p>	Solicitor to the Council

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11.	<p><b>Local Land Charges</b></p> <p>To reply to requisitions for a search of the Local Land Charges Register and Enquiries of Local Authorities.</p>	Solicitor to the Council
12.	<p><b>Town and Village Greens</b></p> <p>To consider applications for, and where appropriate, register Town and Village Greens under the Commons Registration Act 1965 and the Commons Act 2006.</p>	Solicitor to the Council
13.	<p><b>Representation in Court</b></p> <p>To authorise the appearance of persons other than Solicitors pursuant to Section 223 of the Local Government Act 1972.</p>	Solicitor to the Council in consultation with the Corporate Director Growth, Assets and Environment
14.	<p><b>Legal Proceedings (Civil)</b></p> <p>(a) To institute, defend, appeal from, settle or abandon legal proceedings whether administrative or civil in any matter in which the Council or its officers may institute or defend proceedings in any court or arbitration or administrative tribunal.</p> <p>(b) To institute proceedings in the Magistrates or Crown Court where there has been a breach of any statutory notice issues/served by the Council or where the Authority has a general power or duty to enforce the law through the criminal courts.</p>	<p>Solicitor to the Council in consultation with the appropriate Director</p> <p>Solicitor to the Council in consultation with the appropriate Director</p>
15.	<p><b>Legal Agreements/Public Notices</b></p> <p>To be responsible for:</p> <p>(a) the execution of legal agreements pursuant to the Council's Procedural and Contract Rules.</p> <p>(b) the issue of Public Notices</p>	<p>Solicitor to the Council</p> <p>Solicitor to the Council</p>
16.	<p>To make a charge on a property when an individual enters Part III residential accommodation.</p>	Solicitor to the Council
17.	<p>To enter into Deed of Release and/or Variation in landlord tenant matters.</p>	Solicitor to the Council in consultation with Corporate Director Growth, Assets and Environment
18.	<p>To take peaceable re-entry of leasehold property in the event of occupation of property not in agreement with agreed terms.</p>	Solicitor to the Council

19.	To enter into nomination agreements on housing matters.	Solicitor to the Council
20.	To enter into Highway Bond Agreements under Sections 219 to 220 Highways Act 1980.	Solicitor to the Council
21.	<b>Implementation of Decisions</b>  To take all such steps as are in his/her opinion necessary, including the affixing of the Common Seal of the Council and the bringing of legal proceedings and the making of orders to give effect to any decision or action taken properly by the Council, or any duly authorised body or officer acting on its behalf, or to protect the interests of the Council or any person or property to whom or for which the Council has responsibility.	Solicitor to the Council in consultation with the appropriate Director
22.	<b>Compulsory Purchase Orders</b>  To make, vary and/or amend Compulsory Purchase Orders.	Solicitor to the Council in consultation with the appropriate Director
23.	<b>Property Management</b>  Service of notices under Section 25 of the Landlord & Tenant Act 1954 to enable rents and any other new terms to be negotiated.	Solicitor to the Council in consultation with the Corporate Director Growth, Assets and Environment
24.	Arrangement of defective title indemnity cover in respect of land or property being disposed of by the Council up to a premium limit of £6,500 each such costs to be met from sale proceeds.	Solicitor to the Council
25.	<b>Council Halls/Meeting Rooms</b>  To determine any applications for the use of Council halls or meeting rooms by extremist organisations other than use required under the Representation of the People Acts.	Solicitor to the Council in consultation with the Leader of the Council
26.	<b>Hire of Civic Accommodation</b>  To waive the charges for the hire of Civic meeting rooms to outside organisations where such organisations are of a charitable or non-profit making nature or where there are exceptional circumstances	Solicitor to the Council

27.	<b>Regulation of Investigatory Powers Act 2000</b> To make any necessary amendments to the Covert Surveillance Policy and Procedural Guidance documentation.	Solicitor to the Council and Monitoring Officer
28.	<b>Data Protection Act 1998</b> To adjust in the light of inflation the figure below which no charge be made for the supply of copies of documents under the Act on a one-off basis.	Director of Finance in consultation with Director Technology & Corporate Programmes
29.	To determine arrangements for the inspection of background papers for meetings.	Solicitor to the Council
30.	<b>Members' Allowances Scheme</b> To consider on its merits and make payment in respect of any claim not received within 4 months of the date of performance of the duty.	Chief Executive Executive Director Corporate Services
32.	<b>Entertainment of Civic Guests/Hospitality</b> Authority to approve arrangements and expenditure in respect of the entertainment of civic guests within approved budget. To arrange all civic ceremonies and ancillary events in consultation with the Mayor.	Chief Executive/Solicitor to the Council Chief Executive
33.	<b>Courses &amp; Seminars</b> To approve the attendance of Members at courses and seminars.	Solicitor to the Council

## **(B) LAND AND PROPERTY**

1. Subject always to:

- (a) Budget provision;
- (b) Having due regard to the professional advice pertinent to the particular matter.

The Corporate Director Growth, Assets and Environment in consultation with the Solicitor to the Council be authorised in respect of the land and property for which he is responsible subject to:

	<b>FUNCTION</b>	<b>AUTHORISED OFFICER</b>
(i)	To authorise the granting, renewal, termination, assignment or sub-letting of leases, tenancies or other interests in land and property.	Corporate Director Growth, Assets and Environment
(ii)	To approve variations in rent arising from rent reviews of land and property leased to or by the Council.	Corporate Director Growth, Assets and Environment
(iii)	To authorise the acquisition of legal estates or interests in land and property up to the value of £50,000 plus appropriate and reasonable incidental fees and costs in line with the Acquisitions and Disposals Policy.	Corporate Director Growth, Assets and Environment
(iv)	To authorise the disposal of legal estates or interests in land and property not required by the Council up to the value of £50,000 set out in the Acquisitions and Disposals Policy plus appropriate and reasonable incidental fees and costs.	Corporate Director Growth, Assets and Environment
(v)	To approve the payment of interest on the purchase price of land and property in those cases where entry on to the land is required in advance of completion.	Corporate Director Growth, Assets and Environment
(vi)	To authorise the taking, granting, revocation or termination of covenants, easements, wayleaves, licences and other rights or user and to undertake the management of land and property.	Corporate Director Growth, Assets and Environment
(vii)	To arrange for payment of appropriate rates, charges and taxes.	Corporate Director Growth, Assets and Environment
(viii)	To approve claims for disturbance arising out of compulsory and voluntary acquisitions.	Corporate Director Growth, Assets and Environment

(ix)	To commence preliminary negotiations with respect to any land or property to be acquired so as to be able to ascertain questions of willingness to sell and general terms.	Corporate Director Growth, Assets and Environment
(x)	To approve modifications or additions to Council land and property funded by third parties.	Corporate Director Growth, Assets and Environment
(xi)	To authorise works of improvement or repair to Council land and property.	Corporate Director Growth, Assets and Environment
(xii)	To authorise building maintenance work.	Corporate Director Growth, Assets and Environment
(xiii)	To authorise the design and execution of building and incidental work.	Corporate Director Growth, Assets and Environment
(xiv)	To commission building contracts to be entered into by the Council.	Corporate Director Growth, Assets and Environment
(xv)	To commission feasibility studies and value for money appraisals on all capital investments.	Corporate Director Growth, Assets and Environment
(xvi)	To authorise persons to apply for liquor and associated licences for use on premises.	Corporate Director Growth, Assets and Environment
(xvii)	To proceed with compulsory acquisition of rights over land under the Local Government (Miscellaneous Provisions) Act 1976 and other relevant legislation.	Corporate Director Growth, Assets and Environment

## (C) RESOURCES

	<b>FUNCTION</b>	<b>AUTHORISED OFFICER</b>
	<b>Banking Arrangements and Cheques</b>	
1.	All necessary arrangements with the Council's bankers and Girobank concerning the Council's banking requirements and to administer the same on a day to day basis including the provision of any necessary indemnity to the Council's bankers, and the authorisation of the signing of cheques and negotiable instruments.	Executive Director Corporate Services
2.	Arrangements for overdraft facilities as necessary within the limit authorised by the Council.	Executive Director Corporate Services
3.	The creation, investment, realisation and utilisation of sinking funds, reserves, capital funds and receipts and other special funds.	Executive Director Corporate Services
4.	To administer and act as Registrar in respect of existing Council bonds, including discretion to make premature payment.	Executive Director Corporate Services
5.	The raising and management of all loans (except stock) for the purpose and amount for which the Council is authorised to borrow money in accordance with Section 172 and Schedule 13 of the Local Government Act 1972.	Executive Director Corporate Services
6.	To exercise (as far as may be lawful) the powers of the Council to borrow and invest.	Executive Director Corporate Services
	<b>Finance</b>	
7.	Determination of accounting procedures and the form and extent of financial records.	Executive Director Corporate Services
8.	Production and distribution of financial management information.	Director of Finance
9.	Financial negotiations with external bodies in Consultation with the Chief Executive and Solicitor to the Council & Monitoring officer. Determination of the manner in which the cost of capital schemes is to be defrayed and the application of capital receipts.	Executive Director Corporate Services

10.	Approval of accounts for payment, having been satisfied that payment is lawful and that property certification procedures have been followed.	CMT Members
11.	Co-ordination, control and supervision of all monies due to the Council.	Executive Director Corporate Services
12.	Issue of all cheques appropriately signed for: <ul style="list-style-type: none"> <li>• cheques below £10,000 bearing facsimile signature</li> <li>• cheques in excess of £10,000 bearing the autograph signature of authorised officers.</li> </ul>	Executive Director Corporate Services
13.	Undertaking all borrowing of monies, financial and operational leasing of vehicles, equipment and other assets and the making of all arrangements concerning the investment or utilising of capital monies and other funds.	Executive Director Corporate Services
14.	Registrar of Council Bonds and Stock Issues.	
15.	Approval of all petty cash floats and imprests to officers.	Executive Director Corporate Services
16.	Agreeing form in which stores and stock records are kept, and agreement to adjustments to accounts if less than £5,000 in any one year.	Executive Director Corporate Services Executive Director Corporate Services
17.	Declarations and Certificates relating to Securities.	
18.	The Executive Director Corporate Services shall be the delegated officer for signing/authorising any statutory, legal, grant documents requiring the signature of a finance officer.	Executive Director Corporate Services Executive Director Corporate Services
19.	The payment and reimbursement of monies in respect of Benefit Scheme and Grant Subsidy income.	
20.	The Executive Director Corporate Services to report quarterly to Council on the Councils Financial Position.	Executive Director Corporate Services Executive Director Corporate Services
21.	To determine the method of financing of capital projects within the overall financing reserves strategy of the Council.	Executive Director Corporate Services
22	To arrange credit cards and limits for staff use on behalf of the Council	Executive Director Corporate Services

23.	<p><b>National Non Domestic Rates</b></p> <p>The powers, duties and functions as required/granted under the Local Government Finance Act 1988 as amended by the Localism Act 2011 Part 4.</p>	Executive Director Corporate Services
24.	<p><b>National Non Domestic Rates</b></p> <p>The issue of demands for void rates in respect of empty properties within such class or classes of hereditaments which the Council shall have determined to be subject to change under Non-Domestic Rating (Unoccupied Property) Regulations 1989 as amended.</p>	Executive Director Corporate Services
25.	Any action necessary in respect of the recovery of rates including void rates.	Executive Director Corporate Services
26.	Action on Valuation Officer's proposals for revision of rating assessments.	Executive Director Corporate Services
27.	Lodging of proposals by the Council for revision of existing rating assessments.	Executive Director Corporate Services
28.	To deal with the remission of Non-Domestic Rates under statute.	Head of Revenues/S151/Executive Director Corporate Services
29.	To determine, where necessary, whether or not objection should be made to any proposal for the amendment of the Valuation Lists, and whether or not compromises should be agreed.	Executive Director Corporate Services
30.	To process claims for discretionary rate relief applications as approved by the Portfolio Holder.	Head of Revenues
31.	Making allowances under Section 47 and Section 48 of the Local Government Finance Act 1988.	Executive Director Corporate Services
32.	<p><b>Mortgages &amp; Advances</b></p> <p>To determine the rate of interest to be applied to advances on mortgage for house purchase, etc., The Housing (Financial Provisions) Act 1958 and the Section 110 of the Housing Act 1980.</p>	Executive Director Corporate Services and Director of Finance

33.	To deal with applications for advances on mortgages for house purchase, etc., under the Housing Act 1980 where no special considerations arise.	Director of Finance
	<b>Sundry Income &amp; Miscellaneous Rents</b>	
34.	<p>To collect income of the Council, including:</p> <ul style="list-style-type: none"> <li>the recovery of unpaid income of the Council by the issue of summonses or otherwise, including proceedings in tribunals and inferior courts</li> <li>the issue and recovery of penalties (or their waiver and writing off) under the Third Schedule to the Local Government Finance Act 1988 and the Third Schedule to the Local Government Finance Act 1992.</li> <li>The writing off of Court costs in respect of rates and council tax.</li> <li>The payment of sums properly payable from the Collection Fund.</li> <li>Requests to the Valuation Officer to revise valuation lists by e.g. the inclusion of newly completed properties, and appeals against valuations of Council property.</li> <li>The determination of on-costs and rates of interest in respect of any sums due where such on-cost or interest is properly chargeable.</li> <li>To set fees in consultation with the Chief Executive, for the provision of personal information protected by the Data Protection legislation and for the provision of information subject to the Freedom of Information legislation.</li> </ul>	Executive Director Corporate Services in conjunction with the appropriate Director.
	<b>Insurances</b>	
35.	Management of the Council's insurances including the renewal of policies within long term agreements.	Director of Finance
36.	<p>Approval of payments from the insurance fund in respect of claims meeting the criteria and terms of self-insured risks.</p> <p>To deal with all insurance against loss to or liability of the Council including the areas of cover, the extent of cover, the negotiation and acceptance of conditions of cover, and settlement of claims against the insurer or by a claimant (so far as permitted by the insurer).</p>	Executive Director Corporate Services

	<b>Car Loans &amp; Allowances</b>	
37.	The day to day grant and administration of car loans, and financial allowances to staff, including the schemes for travelling, subsistence, relocation expenses, telephone and car allowances, including variations to local terms to reflect variation in national agreed schemes or in line with inflation. The authorisation /sign off of car loan agreements	Director of Transformation and Corporate Performance  Executive Director Corporate Services
38.	To regularly review the interest rate charged on car loans and adjust the rate to provide that the true annual interest rate charged on loans should be calculated in line with the Bank of England base rate prevailing at the time the loan is approved subject to a minimum level of 3% (in line with scheme conditions for term rates).	Director of Finance
39.	Determination of eligibility for the amount of loan within approved policy.	Director of Transformation and Corporate Performance
40.	Determination of eligibility for car purchase loans within approved policy.	Head of Organisational Development in consultation with appropriate Director
41.	Management of the Council's Car Allowance Scheme in accordance with approved guidelines.	Director of Transformation and Corporate Performance in consultation with appropriate Director and Head of Organisational Development
	<b>Remuneration &amp; Organisational Review</b>	
42.	(a) The payment of salaries, allowances and authorised supplementary payments, and the authorised deduction of appropriate sums and payment thereof to any body to whom such payment is due, and including the implementation of national awards in respect of salaries, etc. the payment of superannuation gratuities (following Cabinet/Council resolution).	Director of Transformation and Corporate Performance and Head of Organisational Development
	(b) Advance payments of salaries, wages and allowances (excluding Member allowances) to be made in accordance with the Financial Regulations.	Director of Transformation and Corporate Performance and Head of Organisational Development
43.	<b>Representation of Council in Court</b>  To authorise appropriate staff to represent the Council in Court in respect of Sundry Income, Council Tax and Non-Domestic Rates debt.	Executive Director Corporate Services/Head of Revenues/Solicitor to the Council & Monitoring Officer.

44.	<p><b>Health &amp; Safety</b></p> <p>a) In respect of the Council's own premises and land, authority to instruct contractor(s) to cease work where it may constitute a risk to the health and safety of the public and/or employees or where there is a breach of a contractual requirement or statutory duty.</p> <p>b) In respect of the Council's employees to instruct them to cease work where it may constitute a risk to their or others health and safety or where there is a breach of a statutory duty.</p>	<p>Corporate Director Growth, Assets and Environment in consultation with Chief Executive and the appropriate Director</p> <p>Director of Transformation &amp; Corporate Performance</p>
45.	<p><b>Write-offs</b></p> <p>In respect of all write-off's below £10,000.</p>	<p>Executive Director Corporate Services</p>
	<p><b>Housing Benefit, &amp; Council Tax Benefit and Council Tax Reduction</b></p>	
46.	<p>To take all necessary action in the general administration, implementation and enforcement of the Housing Benefit Regulations 2006, the Council Tax Benefit Regulations 2006 and the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 and Staffordshire County Council's Charging for Residential Accommodation Guide including the submission of returns, funding arrangements, and other such documents.</p>	<p>Head of Benefits</p>
47.	<p>To apply administration penalties, sanctions and administer Cautions under current legislation in relation to Social Security and Council Tax Reduction fraud.</p>	<p>Head of Benefits</p>
48.	<p><b>Council Tax</b></p> <p>Lodging of proposals by the Council for revision of existing bandings.</p>	<p>Executive Director Corporate Services</p>
49.	<p>(a) To discharge any of the functions imposed upon and capable of delegation to an Officer by the Borough Council, as a billing authority, by virtue of the Local Government Finance Act 1992 (as amended) in connection with the administration, billing collection and recovery of the Council Tax including:</p> <ul style="list-style-type: none"> <li>• To give due notice of the agreed Council Tax in the manner provided by Section 38(2) of the 1992 Act.</li> <li>• To calculate the Council Tax Base for the whole Council area [Item T in the formula in Section 31B(3) of the 1992 Act as amended]</li> </ul>	<p>Executive Director Corporate Services</p> <p>Executive Director Corporate Services</p>

	<ul style="list-style-type: none"> <li>To apply when necessary for a summons against any Council Tax payer or non-domestic ratepayer on whom an account for the said tax or rate and arrears has been duly served and who has failed to pay the amounts due to take all subsequent necessary action to recover them promptly.</li> </ul>	Executive Director Corporate Services
	<ul style="list-style-type: none"> <li>To collect (and disperse from the relevant accounts) the Council Tax and National Non-Domestic Rate.</li> </ul>	Executive Director Corporate Services
	(b) To impose or revoke penalties under the provisions of Schedule 3 of the Local Government Finance Act 1992 (as amended).	Executive Director Corporate Services
	(c) Arrangements for Officers to agree with any Council Tax payer an alternative payment to the standard scheme where it is considered that it is in the best interests of the Authority.	Executive Director Corporate Service
	(d) To determine applications for awards of Local Council Tax discount, under Section 13A of the Local Government Finance Act 1992, in cases of hardship.	Executive Director Corporate Service
	(e) To consider any referenda received from persons regarding increases in Council Tax as provided in the Local Government Finance Act 1992 as amended	Executive Director Corporate Service

#### (D) HOUSING AND HEALTH

	FUNCTION	AUTHORISED OFFICER
	<b>Consultation</b>	
1.	To consult and promote participation of tenants in service development.	Corporate Director Communities, Partnerships & Housing
	<b>Government Returns</b>	
2.	Complete relevant returns annually in line with the agreed capital programme and strategy.	Corporate Director Communities, Partnerships & Housing
	<b>Tenants' Improvements</b>	
3.	Approval or refusal of applications from tenants to carry out external or internal improvements to Council accommodation subject to the Housing Act 1985 and subject to compliance with building regulations and planning	Corporate Director Communities, Partnerships & Housing/Corporate Director Growth, Assets and Environment

	requirements.	
4.	<p><b>Improvements to Sold Council Dwellings</b></p> <p>Approval or refusal of applications from owners of sold Council dwellings:-</p> <p>(a) To carry out internal improvements or external improvements not involving significant additions to the existing building.</p> <p>(b) To carry out significant external improvements.</p>	<p>Corporate Director Growth, Assets and Environment</p> <p>Corporate Director Communities, Partnerships &amp; Housing/Corporate Director Growth, Assets and Environment</p> <p>Corporate Director Communities, Partnerships &amp; Housing/Corporate Director Growth, Assets and Environment</p>
5.	<p><b>Rents &amp; Management Matters</b></p> <p>(a) Fixing of rents for properties on Council housing estates used for special purposes.</p> <p>(b) Payment of sums as approved to tenants in respect of their transfer from under-occupied housing of any type to smaller properties.</p> <p>(c) To deal with tenant consultation in accordance with the Council's policy and current legislation.</p> <p>(d) Payment of reasonable removal and reconnection of appliance expenses and a disturbance allowance (not exceeding the maximum approved from time to time), in appropriate cases to tenants who are requested to move by the Council, and where there is a management advantage to the Council in their moving.</p> <p>(e) Service of Notice of Variation of Rent.</p> <p>(f) Amendments to tenancy terms in accordance with the Council's policy.</p>	<p>Executive Director Corporate Services and Corporate Director Communities, Partnerships &amp; Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing Head of Landlord Services</p> <p>Corporate Director Communities, Partnerships &amp; Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing Corporate Director Communities, Partnerships &amp; Housing in consultation with Solicitor to the Council</p>
	(g) Fixing of standard charges for rechargeable repairs.	Corporate Director Communities, Partnerships & Housing/Head of Landlord Services

	<p>(h) Approval of applications for “three room scheme” of internal redecoration.</p> <p>(i) Authorisation of refunds of undue expenditure, rent refunds and similar items (not the fault of the tenants) in appropriate circumstances; waiver of rents and charges in respect of temporary disruption of occupation or services; authority to waive or reduce the standard charge for bed and breakfast accommodation in cases of hardship.</p>	<p>Corporate Director Communities, Partnerships &amp; Housing Head of Landlord Services</p> <p>Corporate Director Communities, Partnerships &amp; Housing Head of Landlord Services</p>
	<p>(j) Authority to act on behalf of the Council in respect of the provisions of the Housing Act 1985 (amended), including powers to serve notice, powers of entry and inspection, survey and examination under sections 197, 395, 319 (1), 337 (1), 340(1) and elsewhere within the Act.</p> <p>(k) Ordering of works of alteration within budget provision to Council properties to meet the needs of disabled persons.</p> <p>(l) Issue of distress warrants for rent arrears.</p>	<p>Corporate Director Communities, Partnerships &amp; Housing Head of Landlord Services</p> <p>Corporate Director Communities, Partnerships &amp; Housing Head of Landlord Services</p> <p>Corporate Director Communities, Partnerships &amp; Housing Head of Landlord Services</p>
<p>6.</p>	<p><b>Homelessness</b></p> <p>(a) To consider and deal with cases of permanent re-housing arising from the implementation of Part 7 of the 1996 Housing Act. as amended.</p> <p>(b) Determination of appeals against decisions in homelessness cases in accordance with approved policy guidelines.</p> <p>(c) Authorisation to give rent guarantees as part of the duty to provide advice and assistance and the prevention of homelessness.</p> <p>(d) To deal with the leasing of private sector properties in accordance with the Council’s approved scheme.</p>	<p>Corporate Director Communities, Partnerships &amp; Housing Head of Strategic Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing Head of Strategic Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing Head of Strategic Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing Head of Strategic Housing</p>

7.	<p><b>Allocation Scheme</b></p> <p>(a) To deal with all matters in connection with (i) the allocation of housing accommodation in accordance with current legislation and the schemes of allocation adopted by the Council and (ii) applications for transfer and exchanges of accommodation.</p> <p>(b) To deal with all applications from tenants of the Council for alternative accommodation on non-housing needs grounds.</p>	<p>Corporate Director Communities, Partnerships &amp; Housing/Head of Strategic Housing/Head of Landlord Services</p> <p>Corporate Director Communities, Partnerships &amp; Housing/Head of Strategic Housing/Head of Landlord Services</p>
	<p>(c) Re-housing of the tenants and their families in cases where Closing, Demolition and Clearance Orders are made.</p> <p>(d) Acceptance of service authorities' certificates of cessation of entitlement to occupy a service quarter in lieu of Court Order.</p> <p>(e) To amend or vary the designation as elderly persons dwellings, bed-sit bungalows and one bedroom flats which are not part of a sheltered complex.</p> <p>(f) Appeals on those matters referred to in (a) and (b) above.</p> <p>(g) To transfer tenants on management grounds.</p>	<p>Head of Landlord Services/Head of Strategic Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing/Head of Strategic Housing/Head of Landlord Services</p> <p>Corporate Director Communities, Partnerships &amp; Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing</p> <p>Corporate Director Communities, Partnerships &amp; Housing</p>
8.	<p><b>Provision of Council Housing in Special Cases</b></p> <p>(a) Within established policy deal with applications for priority housing on medical grounds, non-housing need grounds and emergency housing accommodation from persons who are homeless or threatened with eviction from their present accommodation.</p> <p>(b) Appeals on those matters referred to in 11 (a) above.</p>	<p>Corporate Director Communities, Partnerships &amp; Housing/Head of Strategic Housing/Head of Landlord Services</p> <p>Corporate Director Communities, Partnerships &amp; Housing</p>

	<b>Management of Council Housing</b>	
9.	To deal with:	
	(a) Applications for succession of tenancy within statutory right where the property is not under-occupied.	Corporate Director Communities, Partnerships & Housing
	(b) Applications for second succession or succession leading to under-occupation.	Corporate Director Communities, Partnerships & Housing
	(c) Applications for assignment of a tenancy.	Corporate Director Communities, Partnerships & Housing
	(d) Applications to sublet or part with possession of part of a property.	Corporate Director Communities, Partnerships & Housing
	(e) Application under the “right to approve”.	Corporate Director Communities, Partnerships & Housing
<p>N.B. Appeals against the Officer decisions referred to in 11 and 12(i), (iii), (iv) and (v) shall be considered initially by the Corporate Director Communities, Partnerships &amp; Housing. There may be a further appeal to the Appeals Sub-Committee on referral by Officers or at the request of 3 Members.</p>		
	<b>Termination, Possession &amp; Legal Proceedings</b>	
10.	(a) To sign and serve Notices of Seeking Possession for tenancy conditions.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services
	(b) To serve Notice to quit for unauthorised occupation or abandonment of tenancy and recover possession.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services
	(c) To authorise possession proceedings.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services
	(d) To authorise eviction proceedings.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services
	(e) Recovery of Court costs and associated fees from Possession Proceedings, and other legal action for breach of Tenancy Conditions.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services
	(f) Waiver of or partial claim for Court costs where reasonable.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services

	<b>Squatting</b>	
11.	To authorise recovery under the Criminal Law Act 1977.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services

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	<b>Sales of Housing</b>	
12.	Signature of TP1 and Right to Buy (RTB) forms in connection with Housing Act 1985.	Solicitor to the Council
13.	<p>In respect of sales under the Housing Act 1985, the Housing &amp; Building Control Act 1984 and any voluntary sales scheme to:</p> <p>(a) Seek determination from the Secretary of State – appropriate cases, to serve Admission of the Right to Buy, authorise cases in pursuance of Sections 4(2) and 15(2) of the Housing Act 1985 and acceptance of statutory declarations;</p> <p>(b) Approve and exercise discretions permitted in the Acts covering mortgages;</p> <p>(c) Determine the parameters in respect of mortgage offers to be made in cases where a tenant has served a Notice requesting a shared equity lease;</p> <p>(d) Grant of extension of time limits as permitted;</p> <p>(e) (i) Determine service charges in respect of leasehold sales and refunds in accordance with current legislation;</p> <p>(ii) To authorise refunds of undue expenditure on service charges and similar items (not the fault of leaseholders) in appropriate circumstances;</p> <p>(iii) To waive charges in respect of temporary disruption of occupation or services.</p> <p>(f) Carry out structural surveys as required.</p> <p>(g) Determine applications for the purchase of amenity areas and off-site garages by Right to Buy purchasers;</p>	<p>Solicitor to the Council</p> <p>Solicitor to the Council</p> <p>Solicitor to the Council</p> <p>Corporate Director Growth, Assets &amp; Environment</p> <p>Corporate Director Growth, Assets and Environment</p> <p>Corporate Director Growth, Assets and Environment</p>

	(h)	To decide on applications for the Right to Buy from tenants of designated elderly persons' dwellings, in accordance with the legislation currently in force, ensuring that as far as possible the properties concerned are retained in the Council's housing stock;	Solicitor to the Council
	(i)	Appeal against discretionary determinations.	Solicitor to the Council
	<b>Tenants' Right to Repair</b>		
14.	(a)	Authority to operate statutory schemes under Right to Repair legislation.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services
	(b)	Authority to pay compensation for failure of the Council to carry out repairs in accordance with the Tenancy Agreement and current Landlord and Tenant legislation.	Corporate Director Communities, Partnerships & Housing Head of Landlord Services
	<b>Harassment</b>		
15.		Investigation of complaints or alleged offences including the instigation of legal proceedings and prosecutions, under Landlord & Tenant Act 1962 and under the Protection from Eviction Act 1977 and under the Protection of Harassment Act 1997..	Corporate Director Communities, Partnerships & Housing/Head of Strategic Housing/Head of Landlord Services
16.		To determine applications for transfer from tenants suffering from harassment.	Corporate Director Communities, Partnerships & Housing/Head of Strategic Housing/Head of Landlord Services
	<b>Private Tenants – Restoration of Services</b>		
		Local Government (Miscellaneous Provisions) Act 1976/1982	
17.		Section 33 (Assistance to private tenants in restoration or continuation of supply of water, gas or electricity).	Corporate Director Communities, Partnerships & Housing/Head of Strategic Housing
	<b>Private Sector Housing</b>		
18.	(a)	To exercise all of the Council's powers and duties under the housing/public health statutes set out in Annex 1 and any Regulations and Orders made thereunder:	Corporate Director Communities, Partnerships & Housing Head of Strategic Housing

	(b) To authorise suitably qualified Officers to exercise the various powers of entry for the purposes of inspection, survey etc. as provided for by the above-mentioned statutes.	Corporate Director Communities, Partnerships & Housing Head of Strategic Housing
	<b>Authorised Signatories for Affordable Housing Funded Schemes</b>	
19.	(a) Authority to sign Local Authority Social Housing Grant applications, subject to available Capital Funding.	Corporate Director Communities, Partnerships & Housing Head of Strategic Housing
	(b) Authority to sign Housing Association Grants claims.  (c) Authority to sign scheme work certifications.	Corporate Director Communities, Partnerships & Housing Head of Strategic Housing Corporate Director Communities, Partnerships & Housing Head of Strategic Housing
	<b>Infill Housing Sites on Council Housing Estates</b>	
20.	Authority to approve sites before proceeding further.	Corporate Director Communities, Partnerships & Housing and Corporate Director Growth, Assets and Environment
21.	Authority to dispose of surplus sites to Registered Social Landlords for provision of new affordable housing.	Corporate Director Communities, Partnerships & Housing and Corporate Director Growth, Assets and Environment
	<b>Demolition of Unfit Properties/Garage Sites</b>	
22.	Following completion of Compulsory Purchase Order to arrange for demolition of unfit housing or garage site in the interests of public safety and health and to seek to recover any expenditure as appropriate.	Corporate Director Communities, Partnerships & Housing and Corporate Director Growth, Assets and Environment in consultation with Solicitor to the Council
	Public Health - Public Health Act 1936	Corporate Director Communities, Partnerships & Housing and Corporate Director Growth, Assets and Environment
23.	Incurring of expenditure in premises requiring emergency cleansing on a discretionary basis.	Corporate Director Communities, Partnerships & Housing
24.	To set charges for individual alarm units that cover the actual cost of purchase by the Council.	Corporate Director Communities, Partnerships & Housing
25.	To waive the connection charge for individual alarm units provided by third parties and to vary this charge in response to market conditions for other subscribers.	Corporate Director Communities, Partnerships & Housing

**(E) COMMUNITIES, PLANNING AND PARTNERSHIPS**

	<b>Building Control</b>	
1.	Notices and action under Sections 16 and 18 of the Building Act 1984.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager through Partnership Agreement with Lichfield District Council and South Staffordshire Council
2.	Directions under Sections 8, 10, 15, 19, 20, 21, 24, 25, 30, 32, 33, 35, 36, 47, 72, 77, 78, 79, 80, 81, 95, 96 and 107 of the Building Act 1984.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager through Partnership Agreement with Lichfield District Council
3.	Notices and action under the Building Regulations 2000 and subsequent amendments thereto.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager through Partnership Agreement with Lichfield District Council
4.	To determine the scheme of charges to recover the costs in connection with the performance of the functions relating to building regulations as provided by the Building (Local authority Charges) Regulations 2010 and subsequent amendments thereto.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager through Partnership Agreement with Lichfield District Council in consultation with Director of Finance
	<b>Clean Air – Height of Chimney</b>	
5.	Notices and action under Section 10 of the Clean Air Act 1956 (Height of Chimneys – for development control purposes).	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	<b>Scaffolding &amp; Hoarding</b>	
6.	Issue of licences and appropriate actions under Section 169, 171 and 172 of the Highways Act 1980.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager through Partnership Agreement with Lichfield District Council

7.	<p><b>Party Wall Act 1996</b></p> <p>Appointment of “third” surveyor under Section 10 of the Party Wall Act 1996.</p>	<p>Corporate Director Growth, Assets &amp; Environment , Head of Managed Growth, Regeneration &amp; Development and Development Control Manager through Partnership Agreement with Lichfield District Council</p>
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	<b>Protection of Buildings during Demolition</b>	
8.	Action under Section 29 of the Local Government (Miscellaneous Provisions) Act 1982.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager through Partnership Agreement with Lichfield District Council
	<b>Uninspected Work</b>	
9.	Laying open uninspected work under Regulation 15 of the Building Regulations 2000.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager through Partnership Agreement with Lichfield District Council
	<b>Development Control Functions</b>	
10.	The Development Control Functions set out in the Appendix 2 hereto.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	<b>Emergency Tree Works</b>	
11.	Action under Sections 23 and 24 of the Local Government (Miscellaneous Provisions) Act 1976 in cases of emergency (including the institution of legal proceedings and prosecutions).	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
12.	The making and confirmation of orders under Sections 198 and 201 of the Town & Country Planning Act 1990 for the preservation of trees in the Borough (where no objections have been received) and issue of consents to the felling, topping, lopping, etc. of individual trees.	Head of Managed Growth, Regeneration & Development and Development/Development Control Manager
	<b>Cable Television</b>	
13.	Response to consultations between The Cable Corporation and the Local Planning Authority regarding the proposed installation of cable television apparatus except for proposals relating to installations within conservation areas or affecting listed buildings or where it is considered an objection should be raised.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager

	<b>Advertising Boards</b>	
14.	Determination of applications for advertisement consent made in accordance with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and in consultation with the Borough Secretary and Solicitor the powers in these Regulations relating to the discontinuance of deemed consent.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	<b>Demolition</b>	
15.	To determine whether the approval of the Council will be required to the method of the proposed demolition and any proposed restoration of the site under the relevant regulations.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
16.	To determine whether to approve the submission of subsequent details of demolition/restoration under the relevant regulations.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	<b>Town &amp; Country Planning Act 1990 (as amended)</b>	
17.	(a) To issue & serve planning contravention notices under Section 171C of the Act and to consider any representations subsequently received.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	(b) To authorise the issue and service of an Enforcement Notice, Stop Notice and Temporary Stop Notice under the Town & Country Planning Act 1990 where urgent action is required to protect the amenities of local residents and the surrounding area.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	(c) To authorise the issue and service of an enforcement notice where operational development (i.e. building, engineering, mining or other operations) or an unauthorised change of use has occurred.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	(d) To authorise the issue and service of a notice requiring the proper maintenance of land under Section	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration &

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	<p>(e) To authorise the raising and issuing of notices under the provisions of S.330 and S. 172 of the Town and Country Planning Act 1990 and/or S.16 of the Local Government (Miscellaneous) (Provisions) Act 1976 and the Local Government and Planning (Amendment) Act 1981 and Planning Contravention Notices under S.171c and 171d of the Town &amp; Country Planning Act 1990.</p> <p>(f) Not to take enforcement action in those cases where it would be in expedient.</p>	<p>Corporate Director Growth, Assets &amp; Environment, Head of Managed Growth, Regeneration &amp; Development and Development Control Manager</p> <p>Corporate Director Growth, Assets &amp; Environment, Head of Managed Growth, Regeneration &amp; Development and Development Control Manager</p>
	<b>Planning &amp; Compensation Act 1991</b>	
18.	To decide to decline to determine applications if he/she is satisfied that they fall within all provisions of Section 17 of the Act.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	<b>Listed Buildings</b>	
19.	To take urgent action in respect of Listed Buildings and Conservation Areas under the provisions of the Planning (Listed Buildings & Conservation Areas) Act 1990.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	<b>Planning Briefs</b>	
20.	Approval of planning briefs in accordance with planning policy.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
	<b>Street Naming and Numbering</b>	
21.	Towns Improvement Clauses Act 1847, Public Health Acts Amendment Act 1907 and Public Health Act 1925  Numbering and re-numbering of premises in streets.	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager

22.	<p><b>Allocation of new street names</b></p> <p>Planning Act 2008 Community Infrastructure Levy Part II – General administration to include undertaking enforcement and amending and publishing the Regulation 123 List.</p>	Corporate Director Growth, Assets & Environment, Head of Managed Growth, Regeneration & Development and Development Control Manager
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**(F) ASSETS AND ENVIRONMENT**

	FUNCTION	AUTHORISED OFFICER
1.	<p><b>Highways &amp; Transportation Services - Regulatory Functions</b></p> <p>The Highway &amp; Transportation functions set out in Appendix 3.</p>	Corporate Director Growth, Assets and Environment
2.	To enforce the provisions of the Highways Act 1980 that relate to enviro-crime, nuisance parking and nuisance where applicable to the Borough Council.	Corporate Director Growth, Assets and Environment
3.	Authority to remove and/or obliterate all unauthorised signs and free standing advertisement boards on or projecting over highway or Council land; charge for their return and following warning to the owners, destroy any signs not collected within 21 days and instigate legal proceedings against persistent offenders as necessary. [Sections 224 and 225 Town and Country Planning Act 1990]	Corporate Director Growth, Assets and Environment
4.	Position of litter bins.	Corporate Director Growth, Assets & Environment
5.	Selection of sites for and planting of street trees within approved estimates.	Corporate Director Growth, Assets & Environment
6.	<p><b>Permits</b></p> <p>Issue of permits for vehicles to enter the High Street in accordance with the terms of the Traffic Order(s).</p>	Corporate Director Growth, Assets & Environment
7.	To exercise the Council's powers under the Road Traffic Regulations (Special Events) Act 1994 to restrict or prohibit vehicular and pedestrian movements as necessary to facilitate the holding of a relevant event where	The relevant Director in consultation with the Solicitor to the Council.

	the Solicitor to the Council considers an order under the Town Police Clauses Act 1847 is inappropriate.	
	<b>Hackney Carriages &amp; Private Hire Vehicles</b>	
8.	(a) Substitution of vehicles under existing Hackney Carriages and Private Hire Licences.  (b) Transfer of ownership of Hackney Carriages and Private Hire Vehicles.	Corporate Director Growth, Assets & Environment
	(c) The grant or renewal of Hackney Carriage Drivers and Private Hire Vehicles, Operators and Driver's Licences (except when drivers have convictions) in accordance with guidelines laid down.	
	<b>Allotments</b>	
9.	Decisions on requests from allotment associations for permission to erect additional storage accommodation at their own expense for member's use, subject to compliance with planning legislation.	Corporate Director Growth, Assets and Environment
10.	Routine management of allotment plots in accordance with Smallholdings and Allotments Act 1908 and Allotments Act 1922.	Corporate Director Growth, Assets and Environment
	<b>Cemetery &amp; Crematorium</b>	
11.	Management of the Cemetery and Crematorium in accordance with Cemetery and Crematorium Rules and appropriate statutory provisions.	Corporate Director Growth, Assets & Environment
	<b>Commercial Transport</b>	
12.	Appointed Licence holder for any commercial transport for the Council	Corporate Director Growth, Assets & Environment

**(G) MISCELLANEOUS**

1.	<b>Emergency Planning</b> All matters relating to the preparation, production, maintenance and implementation of the Council's Emergency Peacetime and Civil Defence Plans.	Director Technology & Corporate Programmes
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	<b>Public Transport</b>	
2.	To exercise the power of the Council under Section 7 of the Transport Act 1985 to request the Traffic Commission to make, vary or revoke Traffic Regulation conditions affecting local services or to hold an inquiry prior to determination of such conditions.	Corporate Director Growth, Assets & Environment
3.	To enter into public transport service subsidy agreements under the Transport Act 1985 where they are exempted from the tendering requirements in that Act.	Corporate Director Growth, Assets & Environment
4.	To lodge holding objections regarding proposals by operators for withdrawals of or alterations to rail services, or the fares and charges thereof, where it is anticipated that extra Council expenditure would result, and to pursue objections before the Transport Users Consultative Committee.	Corporate Director Growth, Assets & Environment
5.	To serve a 42 day Notice of Deregulation	
	<b>Stopping Up</b>	
6.	To exercise the powers of the Highway Authority to stop up or divert the highway or private access to the highway under the Highways Act 1980 and the Town and Country Planning Act 1990 (if applicable) and to undertake all necessary legal procedures in connection therewith.	Corporate Director Growth, Assets & Environment
	<b>Traffic Regulation Orders</b>	
7.	To consider objections to proposed Traffic Regulation Orders and formal notices to other traffic management matters including traffic calming measures and Public Rights of Way and to authorise the making of the necessary orders with or without modification or to refer to the Cabinet as appropriate.	Corporate Director Growth, Assets & Environment
	<b>Formal Cautions</b>	
8.	To issue formal cautions with respect to Environmental Health, Community Safety, Licensing and Registration functions (to meet current Home Office requirements) on behalf of the Council. To delegate authority to suitably qualified officers to issue cautions.	Corporate Director Growth, Assets & Environment or as appropriate and/or Corporate Director Communities, Partnerships & Housing, Solicitor to the Council

	<b>Public Health Acts (Amendment) Act 1907</b>	
9.	Authority to act on behalf of the Council in respect of the provisions of the Public Health Acts (Amendment) Act 1907.	Appropriate Director
10.	Wildlife and Countryside Act 1981	Appropriate Director
11.	Guard Dogs Act 1975 (as amended)	Appropriate Director
12.	Authority to act on behalf of the Council in respect of the provisions of Section 2 of the Local Government Act 2000 (the Wellbeing Power).	Appropriate Director
	<b>Information and Communication Technology</b>	
13.	To enter into contracts for the provision of information technology systems	Appropriate Director in consultation with the Director Technology & Corporate Programmes

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## ANNEX 1

### HOUSING & PUBLIC HEALTH

#### a) PRIVATE SECTOR HOUSING FUNCTIONS

The power and duties of the Council contained in the following Acts of Parliament are delegated to the Corporate Director Communities, Partnerships & Housing to the extent set out in the right-hand column:-

ACT	EXTENT OF DELEGATION (Parts or Sections)
Housing Act 1985 (as amended)	Part VIII Area Improvement (except declaration of Neighbourhood Renewal Area) Part IX Slum Clearance (except declaration of Clearance Area).
Housing Grants, Construction & Regeneration Act 1996	Mandatory Grants to help with disabled facilities.
The Regulatory Reform (Housing Assistance) Order 2002	Policy for grants etc. for renewal of Private Sector Housing and Provision of discretionary disabled facilities grants.  DFG's and HRA grants are carried out by property services who are under the Deputy Corporate Director Growth, Assets and Environment. Private Sector Housing undertake empty property grants so will need these delegations but they must also be put in appendix 3.
Public Health Act 1936	Sections 45, 50, 83, 84, 268 and 269
Prevention of Damage by Pests Act 1949	Sections 4, 5, 6 & 7
Caravan Site & Control of Development Act 1960	Conditional licensing of caravan sites, subject to current planning permission, including approval to transfer licences and stationing of caravans.
Mobile Homes Act 2013	Sections 1-7 and 12-14
Public Health Act 1961 (as amended)	Sections 17 and 34.
Housing Act 2004	Part I – Enforcement of housing conditions Part II – Licensing of houses in Multiple Occupation Part III – Selective licensing of other residential accommodation Part IV – Additional control provisions in relation to residential accommodation (interim and final management orders in HMOs and empty dwellings), Overcrowding and supplementary

	<p>provisions.</p> <p>Part VI other provisions about housing – secure tenancies /rights to buy, mobile homes, overcrowding and other provisions.</p> <p>Part VII – supplementary and final provisions.</p>
Local Government (Miscellaneous Provisions) Act 1976	Section 16, 29 & 35
Local Government (Miscellaneous Provisions) Act 1982	Sections 27, 29, 30 31 & 32, 33.
Building Act 1984	Sections 59, 60, 64, 76, 79.
Environmental Protection Act 1990	Part III Statutory Notices
Anti Social Behaviour, Crime and Policing Act 2014	All sections and powers within the Act which are relevant to Local Authorities with effect from 1 October 2014
Protection from Eviction Act 1977	Parts I, II and III
Protection from Harassment Act 1997	Sections 1-7
Enterprise and Regulatory Reform Act 2013	Part 6 Miscellaneous Provisions

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## **ANNEX 2**

### **DEVELOPMENT MANAGEMENT FUNCTIONS**

The following functions are delegated to the Corporate Director Assets and Environment/Head of Managed Growth, Regeneration and /Development Manager subject to any conditions set out below:

1. Power to determine applications for certificates under Section 191 and 192 of the Planning & Compensation Act 1991.

2. Directions requiring further details, information, evidence or particulars in respect of an application for planning permission pursuant to Part 2 Article 4 of the Town & Country Planning (Development Management Procedure) (England) Order 2015.

3. Decisions under the Town & Country Planning (EIA) Regulations 2011 as to:-

(a) whether or not an environmental impact assessment is needed (screening opinion);

and

(b) the main effects of a development which an Environmental Statement should cover (scoping opinion)

4. Determination of all applications for planning permission, permission in principle (PIP's), listed buildings, conservation area and advertisement consents, and Certificates of Lawfulness of Proposed Use or Development (except for major developments) under the relevant Acts within the constraints set out below:-

(a) Approval of applications which comply with existing approved statutory statements of policy and substantially comply with non-statutory policy guidelines.

(b) Refusal of applications which do not comply with existing approved statutory and non statutory statements of policy.

defined as

(i) Development of 10 or more dwellings (0.5 hectare where no numbers are given)

(ii) Development of buildings of 1,000 square metres floorspace or development on sites of 1 hectare or more

5. Power to decline to determine applications for planning permission under section 70A (following a refusal at appeal where there has been no substantial change to the proposal) and 70B (for an application for a similar application which is still to be determined) of the Town and Country Planning Act 1990.

6. In consultation with the Solicitor to the Council, authority to enter into planning obligations under Section 106 of the Town & Country Planning Act 1990 in cases where in all other respects the application falls within this Scheme of Delegation.

7. To determine all applications for planning permission (except for major developments ++) requiring a payment to be made in accordance with an agreed charging schedule approved by Council.

8. To deal with the administration of all aspects of development control matters including:
  - (a) validation of all applications for planning permission, listed building, conservation area and advertisement consents.in accordance with the approved scheme
  - (b) consultation with appropriate bodies and persons in accordance with national legislation and council policy
  - (c) the wording of planning conditions, planning obligations, policy reasons for approval and reasons for refusal
  - (d) preparation and signature of decision notices in respect of planning applications, listed building, conservation and advertisement consents
  - (e) the approval of or refusal to accept minor variations to submitted plans, Planning permissions, listed building consents, conservation area consents and advertisement consents
  - (f) preparation and presentation of the Council's case in the event that a planning decision made by the Council, either by the Planning Committee or through the use of delegated powers is challenged by means of an appeal
8. Determination of applications deferred by the Planning Committee which are subsequently amended such that they comply with the provisions of 4(a) above, unless the Committee specifically reserves the determination to itself.
9. Determination of applications for discharge and variation of conditions, and non material amendments to planning applications under the Town & Country Planning (Development Management Procedure) (England) Order 2010.
10. Determination of all applications for prior notification relating to development pursuant to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
11. To make and confirm Tree Preservation Orders.
12. Determination of applications for the felling, lopping or other works to trees within a Conservation Area or any trees which are subject to a Tree Preservation Order.
13. Determination of applications under the Anti Social Behaviour Act 2003 on respect of high hedges.
14. Determination of application for Hedgerow Removal Notices and Hedgerow Retention Notices under the Hedgerow Act 1997.
15. To receive and investigate any alleged breach of planning control, including the carrying out of any administrative duties associated therewith
16. In consultation with the Solicitor to the Council to issue.
  - (a) stop notices and enforcement notices
  - (b) building preservation notices
  - (c) discontinuance notices in respect of advertisements
  - (d) requisition for information notices
  - (e) breach of condition notices

- (f) planning contravention notices
- (g) Section 215 notices in respect of untidy land and buildings
- (h) determine applications for Certificates of Lawful Use or Development

17. To withdraw or amend a Stop Notice, Enforcement Notice, Building Preservation Notice, Breach of Condition Notice, Planning Contravention Notice or Section 215 Notice when there has been a change in circumstances.

18. To respond, if necessary in consultation with the portfolio holder, to consultations on planning proposals from neighbouring authorities or the County Council.

19. To comment on

- (a) proposals for the stopping up, diversion or creation of public footpaths
- (b) changes to existing overhead power lines
- (c) proposals for electricity sub stations
- (d) proposals to remove public payphones
- (e) proposals being carried out within the public highway by the Highway

20. Naming (and renaming) and numbering (and renumbering) of streets and all necessary consultation with the residents and statutory bodies in respect of this duty.

21. To carry out relevant duties and functions imposed on the Council by the **Anti-social Behaviour, Crime and Policing Act 2014**

### **Conditions**

#### **Members**

The Head of Managed Growth, Regeneration and Development /Development Manager shall refer applications under Paragraph 4(a) and 4(b) above to the Planning Committee for determination where any Member has:

- (i) set out in writing to the Planning Case Officer the detailed planning issues/concerns which s/he has in respect of the Application and
- (ii) s/he has had an official and formal discussion on such planning issues/concerns with the Development Manager and the issues/concerns remain unresolved. The Member will be informed of the date of the meeting so that s/he can attend and speak in support of the referral.

#### **Objections**

The Head of Managed Growth, Regeneration and Development /Development Manager shall refer applications under Paragraph 4(a) and 4(b) above to the Planning Committee for determination in the event that they consider that the application raises issues of considerable public interest.

#### **Council Applications**

In the case of Applications made by the Council paragraphs 4(a), 8, 9, 10,11,12,16 14 and 17 shall apply unless a substantive written objection has been received on material planning grounds against the proposal and if so the Application shall be referred to the Planning Committee for determination

## Appeals

Planning Appeals shall be reported to the Planning Committee and dealt with by the Head of Managed Growth, Regeneration and Development/Development Manager and the Democratic Services in accordance with Council Policy.

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## ANNEX 3

### ENVIRONMENTAL HEALTH

#### COMMUNITY SAFETY, LICENSING AND REGISTRATION FUNCTIONS

The powers and duties of the Council contained in the following Acts of Parliament are delegated to the Corporate Director Growth, Assets & Environment and to the extent set out in the right hand column.

ACT	EXTENT OF DELEGATION (Parts or Sections)
<p>1. Local Government (Miscellaneous Provisions) Acts 1976 and 1982:-</p>	<p>Powers under the following sections of the Local Government (Miscellaneous Provisions) Acts 1976 and 1982)</p> <p>(a) Securing of unoccupied premises against unauthorised entry or likely to be a danger to public health, as per Sections 29 and 30 of the Local Government (Miscellaneous Provisions) Act 1982.</p> <p>(b) Section 20 (Notice requiring provision of sanitary appliances at places of public entertainment) Local Government (Miscellaneous Provisions) Act 1976.</p> <p>(c) Section 35 (Power by notice to require removal of obstructions from private sewers) Local Government (Miscellaneous Provisions) Act 1976.</p> <p>Service of notices requiring works to be carried out, carrying out of works in default and recovery of costs and expenses in connection therewith under Local Government (Miscellaneous Provisions) Act 1976 and 1982.</p>
<p>2. Registration and Licensing – Various Acts</p>	<p>Registration of persons and premises in respect of acupuncture, tattooing and electrolysis in accordance with sections 14 and 15 of the Local (Miscellaneous Provisions) Act 1982.</p> <p>Enforcement of Parts III and V of the Food Act 1984.</p> <p>Entry into premises where it is suspected that an offence is being committed in accordance with Section 17 of the Local Government (Miscellaneous) Provisions Act 1982.</p>

<p><a href="#">3. Sunbeds (Regulations) Act 2010</a></p>	<p>Powers under the following sections of the Sunbed (Regulations) Act 2010</p> <p>Section 2 – Duty to prevent sunbed use by children</p> <p>Section 7 - Enforcement by local authorities</p> <p>Section 8 – Obstruction etc. of authorised officers</p> <p>Section 9 - Offences by bodies corporate</p> <p>Schedule - Powers of entry etc.</p>
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<p>4. Licensing Act 2003</p>	<p>All powers under the Licensing Act 2003 which can be delegated to an officer relating to</p> <p>(a) The determination of an application for a premises licence</p> <p>(b) The determination of an application for a provisional statement</p> <p>(c) The determination of an application to vary a premises licence</p> <p>(d) The determination of an application to vary a premises licence so as to specify a new premises supervisor</p> <p>(e) The determination of an application to transfer a premises licence</p> <p>(f) The determination of an application for review of premises licence</p> <p>(g) The determination of whether a club is established and conducted in good faith</p> <p>(h) The determination of an application for club premises certificate</p> <p>(i) The determination of an application to vary club premises certificate</p> <p>(j) The determination of an application for review of club premises certificate</p> <p>(k) The determination of an application by temporary event notice for a permitted temporary activity</p> <p>(l) The determination of an application for grant or renewal of personal licence</p> <p>(m) The authorisation of an officer as an “authorised person” for the purposes off the Act</p> <p>(n) The authorisation of an officer as an “authorised officer” for the purposes of the Act</p>
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4. Gambling Act 2005	<p>All powers under the Gambling Act are to be delegated to an officer relating to:</p> <ul style="list-style-type: none"> <li>(a) The setting of fees</li> <li>(b) The determination of applications for a premises licence</li> <li>(c) The determination of an application to vary a premises licence</li> <li>(d) The determination of an application for a transfer of a premises licence</li> <li>(e) The determination of the Pre-Instatement of a premises licence</li> <li>(f) The determination of an application for a provisional statement</li> <li>(g) The determination of a Notification of Charge of a premises licence</li> <li>(h) The determination of an application for a club gaming/club machine permit</li> <li>(i) The determination of all other notifications and permits under the Act</li> <li>(j) The determination of an application for the registration of a Non Commercial Society Lottery</li> <li>(k) Cancellation of licensed premises gaming machine permits</li> <li>(l) Consideration of temporary and occasional use Notices</li> <li>(m) To exercise the role of Licensing Authority as the Responsible Authority under Part 8 of the Act, and when otherwise necessary</li> </ul>
5. Sex Establishment Licences - (Local Government (Miscellaneous Provisions) Act 1982)	The Whole Act
6. Street trading consent (except the fixing of fees for consents and the designation of consent or prohibited streets) (Local Government (Miscellaneous Provisions) Act 1982)	The Whole Act
7. Zoo Premises - (Zoo Licensing Act 1981)	The Whole Act
8. Riding Establishments - (Riding Establishments Acts 1964, 1970)	The Whole Act
9. Breeding of Dogs - (Breeding of Dogs Act 1973)	The Whole Act
10. House to House Collections - (House to House Collections Act 1939)	The Whole Act
11. Dangerous Wild Animals - (Dangerous Wild Animals Act 1976)	The Whole Act

12. Scrap Metal Dealers - (Scrap Metal Dealers Act 1964)	The Whole Act
13. Pets Shops Act 1951	The Whole Act
14. Motor Salvage Operators – (The Motor Salvage Operators Regulations 2002 and Vehicle (Crime) Act 2001	To accept and determine applications for registration as a Motor Salvage Operator
15. Acupuncture, tattooing, Ear-Piercing, and Electrolysis – (Local Government Miscellaneous Provisions) Act 1982 as amended by The Local Government Act 2003	To accept and determine applications for registrations as for Acupuncture, Tattooing, Ear-Piercing and Electrolysis
16. Public Health Act 1936	<p>Section 42 (Alteration to drainage systems of premises)</p> <p>Section 45 (Notice to repair water closets)</p> <p>Section 48 (Power to examine &amp; test drains believed to be defective.)</p> <p>Section 50 (Overflowing or leaking Cesspools)</p> <p>Section 78 (Scavenging of common courts and passages)</p> <p>Section 79 (power to remove noxious matter)</p> <p>Section 83 (As amended) (Cleansing of filthy and/or verminous premises)</p> <p>Section 84 (Cleansing or destruction of filthy or verminous articles)</p> <p>Section 141 (Powers to deal with wells, tanks, cisterns etc.)</p> <p>Sections 259, 260 (Powers to deal with nuisances from ponds, pools ditches and watercourses etc)</p> <p>Section 268  (Powers to deal with nuisances from tents, vans etc.)</p>

<p>17. Public Health Act 1961</p>	<p>Section 17 (Drainage) as amended by Section 27 of the Local Government (Miscellaneous Provisions) Act 1982.</p> <p>Section 34 (Accumulation of rubbish)</p> <p>Section 74 (Pigeons)</p>
<p>18. Public Health (Control Of Disease) Act 1984</p>	<p>Section 23 (Exclusion of children from places of entertainment)</p> <p>Section 24 (Control of infected articles)</p> <p>Section 25 (Library books)</p> <p>Section 26 (Infectious matter in dustbins)</p> <p>Section 28 (Prohibition of work on premises where notifiable diseases exist)</p> <p>Section 30 (Giving of notice to owners and occupiers of houses after the recent case of notifiable disease)</p> <p>Section 34 (Disinfection of public conveyance)</p> <p>Section 41 and 42 (Common lodging houses - notifiable disease)</p> <p>Section 46 (Burial and Cremation)</p> <p>Section 51 (Canal Boats)</p>
<p>19. Provisions of the Public Health (Infectious Disease) Regulations 1968, 1974 and 1976 and subsequent regulations made.</p>	<p>The Whole Acts</p>

20. Prevention of Damage by Pests Act 1949	Service of Notices, carrying out of works in default, recovery of reasonable expenses and exercise of powers relating to entry onto premises in accordance with Sections 4, 5, 6, 7 and 22.
21. Building Act 1984	<p>Section 59 (Drainage of buildings)</p> <p>Section 60 (Ventilation of soil pipes)</p> <p>Section 64 (Closets in buildings)</p> <p>Section 65 (Sanitary conveniences in workplaces)</p> <p>Section 70 (Food storage accommodation)</p> <p>Section 76 (Defective Premises)</p> <p>Section 79 Ruinous and dilapidated buildings and neglected sites.</p>
22. Refuse Disposal (Amenity ) Act 1978	The Whole Act
23. Performing Animals (Regulation) Act 1925	The Whole Act
24. Food Safety Act 1990	The Whole Act
25. Health and Safety Legislation	<p>Authority to act on behalf of the Council in respect of the provisions of the Health and Safety at Work etc Act 1974, the Offices, Shops and Railway Premises Act 1963 and relevant codes of practice, regulations and guidance made under these acts.</p> <p>Under the Health and Safety at Work etc Act 1974 Authority to issue instruments in writing to suitably qualified persons to act as 'Inspector' Sections 20(2), 21, 22, 25 and 39.</p> <p>Under Section 19 of the above act, authority to issue instruments in writing to suitably qualified persons to act as 'inspector' for the purposes of the Health and Safety at Work etc Act 1974 and thus the Petroleum (Regulations) Acts 1928 and 1936, Petroleum Consolidation Act 1928 and appropriate associated legislation.</p>

26. Public Health Act 1961 – Section 73	<p>Authority to serve notice under section 73 to require the occupier of a premise on which a fixed tank or other fixed container which has been used for the storage of petroleum spirit and is no longer used for that purpose ‘to take all such steps as may be reasonably necessary to prevent danger from that container’.</p> <p>Authority to appoint and/or authorise a suitably qualified officer for the purposes of Section 73 (2), (3), (4).</p>
27. Petroleum (Regulation) Acts 1928 and 1936	Authority to act on behalf of the Council in respect of the provisions of the Petroleum (Regulation) Acts 1928 and 1936.
28. Petroleum (Consolidation) Act 1928	Sections 1 & 2 - Authority to issue or refuse licences, with appropriate conditions for the keeping of petroleum spirit.
29. Petroleum (Transfer of Licences) Act 1936	Authority to transfer licences for the keeping of petroleum spirit, by endorsement of the licence or otherwise.
30. Sunday Trading Act 1994	The Whole Act
31. Safety of Sports Grounds Act 1975	The Whole Act
32. Hypnotism Act 1952	The Whole Act
33. Animal Welfare Legislation	<p>The powers and functions of the Council in connection with the receipt and determination of applications and consideration of reports by Veterinary Surgeons and Practitioners, relating to the issue of licences and to approve arrangements for the retention of Veterinary Surgeons or practitioners under:</p> <p>The Riding Establishments Act 1964 and 1970  The Pet Animals Act 1951  The Animal Boarding Establishments Act 1963  The Breeding of Dogs Act 1973  The Dangerous Wild Animals Act 1976  The Zoo Licensing Act 1981</p> <p>The negotiation and agreement in respect of fees under the Animal Welfare Acts (subject to fees proposed, not exceeding those recommended by the British Veterinary Association or prescribed by DEFRA).</p>

<p>34. Water Act 1989, Water Industry Act 1991</p> <p>35. Caravan Sites &amp; Control Of Development Act 1960</p> <p>36. Scrap Metal Dealers Act 1964</p> <p>37. Control of Asbestos Regulations 2006</p>	<p>Authority to act on behalf of the Council in relation to the controls and duties over public and private water supplies under the terms of the above acts.</p> <p>The Whole Act</p> <p>(i) The powers and duties of the Council under Section 3 regarding the issue of Exemption Orders (where no special considerations arise).</p> <p>(ii) Authorisation to enter land and ascertain if the premises are being used contrary to the Scrap Metal Dealers Act 1964.</p> <p>Authority to determine notifications received under Regulation 9 of the Control of Asbestos Regulations 2006 and to agree the commencement of work before the end of the 14-day notification period.</p>
<p>38. Environmental Protection Act 1990</p>	<p>The powers and duties of the Council under Parts I, II, IIa, III, IV, VIII, IX of the Environmental Protection Act 1990.</p> <p>Authority to serve relevant notices under the provisions of part IIa of the Act in respect of contaminated land and the declaration of land as contaminated.</p> <p>Authority to appoint suitably qualified persons to act as authorised Officers/Inspectors for the purposes of the provisions of parts I, II, IIa, III, IV, VIII, IX.</p> <p>Compliance with the Council's Duty of Care in respect of waste (Section 34).</p> <p>Compliance with the Council's Duty to keep land and highways clear of litter etc. (Section 89).</p> <p>Compliance with the Council's duties under section 45, 46 and 48 in respect of collection and disposal of household waste.</p>
<p>39. Food &amp; Environment Protection Act 1985 (Part III) and the Control of Pesticides Regulations 1986</p>	<p>To enforce relevant provisions of the above legislation.</p>

40. Environment Act 1995	To exercise the functions and duties of the Council in respect of air quality management and contaminated land management.  Authority to appoint and/or authorise suitably qualified persons in writing to exercise the powers under Section 108 – Powers of enforcing authorities and persons authorised by them and Section 109 – Power to deal with imminent danger of serious pollution etc.
41. Dangerous Dogs Act 1991	The Whole Act.
42. Noise & Statutory Nuisance Act 1993	To carry out relevant statutory functions for the purposes of this Act, in respect of vehicles, machinery and equipment noise on the highway.
43. Anti Social Behaviour, Crime and Policing Act 2014	All sections and powers within the Act which are relevant to Local Authorities with effect from 1 October 2014.
44. Control of Pollution Act 1974	Parts III and V of the Act
45. Clean Air Act 1993	The Whole Act
46. Noise Act 1996	The Whole Act
47. Transport Act 1968	Part V – to make representation on behalf of the Council to the licensing authorities in connection with the revocation, suspension or curtailment of operation licences in appropriate circumstances.
48. Animal Health  Dogs Act 1906 Protection of Animals Act 1911 Dogs (Amendment) Act 1928 Protection of Animals (Amendment) Act 1954 Protection of Animals (Anaesthetics) Act 1954 Abandonment of Animals Act 1960 Agriculture (Miscellaneous Provisions) Act 1968 Animal Health Act 1981 Animal Health and Welfare Act 1984 Protection of Animals (Penalties) Act 1987 Protection of Animals (Amendment) Act 1988 Protection Against Cruel Tethering Act 1988 Dangerous Dogs Act 1989 Welfare of Animals at Slaughter Act 1991 Animal Health Act 2002 Animal Welfare Act 2006	As applicable to Borough Council

<p>49. Company Law</p> <p>Companies Act 1985 &amp; 2006  Companies Consolidation (Consequential Provisions) Act 1985  Business Names Act 1985  Insolvency Act 1986  Company Directors Disqualification Act 1986</p>	<p>As applicable to Borough Council</p>
<p>50. Consumer Credit</p> <p>Administration of Justice Act 1970  Consumer Credit Act 1974 &amp; 2006  Law of Property (Miscellaneous Provisions) Act 1989</p>	
<p>51. Consumer Protection</p> <p>Consumer Protection Act 1987  Motor Vehicles (Safety Equipment for Children) Act 1991</p>	
<p>52. Control of Pollution</p> <p>Control of Pollution Act 1974  Environmental Protection Act 1990  Clean Air Act 1993</p>	
<p>53. Copyright</p> <p>Registered Designs Act 1949  Patents, Designs and Marks Act 1986  Copyright, Designs and Patents Act 1988  Broadcasting Act 1990  Trade Marks Act 1994  Olympic Symbol etc (Protection) Act 1995  Copyright, Designs, Patents and Trade Marks Act 2002  Patents Act 2004</p>	
<p>54. Explosives</p> <p>Explosives Act 1875  Explosives Act 1923  Fireworks Act 1951  Fireworks Act 1964  Explosives (Age of Purchase) Act 1976  Fireworks (Safety) Regulations 1987  Package Travel, Package Holiday and Package Tours Regulations 1992  Fireworks Act 2003  Fireworks Regulations 2004  Firework (Safety) (amendment) Regulations 2004</p>	

Manufacture and storage of Explosive Regulations 2005	
55. Food and Environmental Protection  Food and Environment Protection Act 1985 Pesticides (Fees and Enforcement) Act 1989 Scotch Whiskey Act 1988 Food Safety Act 1990 Food Labelling Regulations 1996 (as amended)	As applicable to Borough Council
56. Hallmarking Act 1973	
57. Health and Safety at Work etc Act 1974	
58. Insurance Brokers (Registration) Act 1977 Insurance Companies Act 1982	
59. Medicines Act 1968	
60. Other Enforcement Legislation  Children and Young Persons Act 1933 Timeshare Act 1992 Violent Crimes Reduction Act 1984 Telecommunications Act 1984 National Lottery Act 1993 & 2006 Offensive Weapons Act 1996 Children & Young Persons (Protection from Tobacco) Act 1991 Tobacco Advertising & Promotion Act 2002 Customs & Excise Management Act 1979 Sale of Goods Act 1979 (as amended) Development of Tourism Act 1969 Licensing Acts 1964 & 2003 Cancer Act 1939 Accommodation Agencies Act 1953 Trading Representations (Disabled Persons) Act 1958 Theft Act 1968 Trading Representations (Disabled Persons) Act 1972 Employment Agencies Act 1973	
61. Road Traffic  Vehicles (Excise) Act 1971 Road Traffic (Foreign Vehicles) Act 1972 Road Traffic (Consequential Provisions) Act 1988 Road Traffic Act 1988 Road Traffic Offenders Act 1988	As applicable to Borough Council

Road Traffic Act 1991	
62. Telecommunications Telecommunications Act 1984	
63. Trade Descriptions Trade Descriptions Act 1968 Property Misdescriptions Act 1991	
64. Unsolicited Goods and Services Unsolicited Goods and Services Act 1971 Unsolicited Goods and Services (Amendment) Act 1975	
65. Video Recordings Video Recording Act 1984 Video Recordings Act 1993	
66. Weights and Measures Weights and Measures etc. Act 1976 Merchant Shipping Act 1979 Weights and Measures Act 1985	
67. Nationality, Immigration and Asylum Act 2002	Performance and Management of Citizenship Ceremonies
68. Refuse Disposal (Amenity) Act 1987 and the Vehicle Excise and Registration Act 1994	To authorise the removal of untaxed vehicles on an adopted highway under the devolved powers scheme of the Driver and Vehicle Licensing Agency.
69. Pollution Prevention Control Act 1999	To carry out the relevant functions of the Council with respect to a Part A(2) Installation or mobile plant for the purpose of achieving a high level of protection of the environment by reducing emissions into the air, water and land.  Authority to appoint suitable officers to exercise any such functions and conferring powers (such as those specified in Section 108 (4) of the Environment Act 1995) on persons so appointed.
70. Clean Neighbourhoods and Environment Act 2005	Authority to authorise suitable officers for the purpose of exercising a statutory function with respect to Environmental Health, Community Safety, Licensing and Registration.

	<p>The Fouling of Land by Dogs (Tamworth Borough Council) Order 2012</p> <p>The Dogs on Lead By Direction (Tamworth Borough Council) Order 2012</p> <p>The Dogs on Lead at All Times (Tamworth Borough Council) Order 2012</p> <p>The Dog Exclusion (Tamworth Borough Council) Order 2012</p>
71. Control of Pollution (Amendment) Act 1989	Authority to authorise suitable officers to demand that a person produce his, or his employer's authority for transporting waste and to search any vehicle that is being, or has been used for transporting waste and to carry out tests on anything found and to take samples away for testing.
72. Housing Grants, Construction & Regeneration Act 1996	Mandatory Grants to help with disabled facilities.
73. The Regulatory Reform (Housing Assistance) Order 2002	<p>(i) Policy for grants etc. for renewal of Private Sector Housing and Provision of discretionary disabled facilities grants.</p> <p>DFG's and HRA grants are carried out by property services who are under the Corporate Director Growth, Assets and Environment. Private Sector Housing undertake empty property grants so will need these delegations but they must also be put in appendix 3.</p>
74. Byelaws for Pleasure Grounds, Public Walks and Open Spaces 2004	Full Byelaws
75. Byelaws for Good Rule and Government 2004	Full Byelaws

## ANNEX 4

### MISCELLANEOUS

The following functions are delegated to the Officer(s) named in the Authorised Officer column subject to any conditions set out below.

	<b>FUNCTION</b>	<b>AUTHORISED OFFICER</b>
	Public space for Events	Corporate Director Growth, Assets Environment/Head of Community Leisure
1.	Town Hall Bookings of the Town Hall	Head of Customer Services
2.	To determine appeals following the refusal of a booking of the Town Hall.	Appropriate Director
3.	Opening Hours Fixing of opening and closing dates of public buildings within control of the Council including bank and public holiday periods.	Appropriate Director
4.	Museums and Archives To determine the policy on the materials and records to be held in any archives maintained by the Council, other than those maintained for statutory or similar purposes.	Corporate Director Growth, Assets Environment/Head of Community Leisure
5.	Lettings of Public Buildings and Parks Arrangements for letting of public buildings/parks within control of Council to local and voluntary organisations for occasional use, in accordance with approved scales of charges and Council's general policies.	Appropriate Director
6.	General management of and authority to authorise bookings for non core activities.	Appropriate Director
	Concessionary Charges for Public Buildings/Parks	Appropriate Director
7.	Determination of applications for concessionary charges for use of public buildings/parks within control of Council. Within established policy.	Appropriate Director

8.	<ul style="list-style-type: none"> <li>• Corporate Complaints</li> <li>• Council Halls and meeting rooms</li> <li>• Hire of Civic Accommodation</li> <li>• Compensation claims associated with complaints made via Tell Us Scheme</li> <li>• Telecommunications Act</li> <li>• Town hall, Carnegie Centre and Phil Dix Centre</li> <li>• Determine the appeals following the refusal of a booking of venue</li> <li>• Opening hours to the public</li> <li>• Access to buildings</li> <li>• Letting of public buildings</li> <li>• Charges applied to hire of public buildings etc</li> <li>• Provide services on behalf of Staffordshire County Council in relation to the administration of - Blue Badges, appointee ships, Concessionary travel, and other services</li> </ul>	Director of Transformation & Corporate Performance and Head of Customer Service
9.	<p>Child Protection</p> <p>To exercise the functions of the Council in relation to its duties as necessary to decide whether action should be taken to safeguard or promote the welfare of vulnerable adults.</p>	Solicitor to the Council

## ANNEX 5

### PROPER OFFICER APPOINTMENTS

Various Acts of Parliament require certain statutory functions to be performed by an Officer specified by the council. It is open to each Council to decide which of its Officers should be designated as the "Proper Officer" for the particular function in question.

Where functions are delegated to specific named officers, the same powers and duties shall be exercised by any subsequent post which incorporates the relevant powers and duties of the post detailed below.

#### 1. ALL DIRECTORS

Act	Function	Deputy
Local Government Act 1972 – Section 225(1)	Deposit of Documents	Appropriate Director.
Local Government (Access to Information) Act 1985, Section 100D(1)(a)	Compilation of lists of background papers in reports produced by them and production of the papers themselves.	Appropriate Director.

#### 2. CHIEF EXECUTIVE

(a) any reference in any enactment passed before or during the 1971/72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26th October, 1972, to the Clerk of a Council or the Town Clerk of a Borough which, by virtue of any provision of the said Act, is to be construed as a reference to the Proper Officer of the Council;

(b) any reference in any local statutory provision to the Clerk of a specified Council or the Town Clerk of a specified Borough which is to be construed as a reference to the Proper Officer of the Council;

(c) any amendment, re-enactment or statutory substitution of any of the matters detailed in these provisions insofar as an Officer of the Council remains under a duty to perform the same or similar tasks;

(d) the following provisions;

(e) where a "Proper Officer" function has not been specified by the Council to an Officer then in default of such appointment the Chief Executive shall be deemed to be the "Proper Officer".

#### In the Local Government Act 1972:

Section	Function	Authorised Officer
83	Witness and receipt of declarations of acceptance of office within 2 months of the day of election.	Chief Executive
84	Receipt of Resignation of Office.	Chief Executive

88(2)	Convening of meeting of Council to fill casual vacancy in the office of Chair.	Chief Executive
89(1)(b)	Receipt of Notice of casual vacancy from two Local Government Electors.	Chief Executive
100 B (2)	Exclusion of confidential reports from copies of reports made open to inspection by public.	Chief Executive
100 B (2)	Circulation of reports and agenda.	Chief Executive
100 B (7)	Supply of papers to the Press.	Chief Executive
100 C (2)	Production of record of confidential proceedings (Minutes)	Chief Executive
100 F	Members' Right to Papers	Chief Executive
248	Keeping of Roll of Honorary Freemen	Chief Executive
210(6) & (7)	Charity functions of holders of offices with existing authorities transferred to holders of equivalent office with new authorities or, if there is no such office, to the Proper Officer.	Chief Executive
Section 234 (1) and (2)	Authentication of documents	Chief Executive /Solicitor to the Council
Schedule 12, Paragraph 4(2)(b)	Signature of summonses to attend Council meetings.	Chief Executive

### The Health and Safety at Work Act 1974

Section	Function	Officer
The Whole Act	Council Operations	Chief Executive

### In the Representation of the People Act 1983 and 1985

Section	Function	Officer
The Whole Act	To act as an Electoral Registration Officer	Executive Director Corporate Services
35	Returning Officer, Acting Returning Officer and Deputy Acting Returning Officer for Parliamentary, European, County, Borough & Parish Elections and National Referenda..	Executive Director Corporate Services
81	Receipt & Deposit of Election Expenses	Senior Elections Officer
82	Declarations as to Expenses	Senior Elections Officer
Schedule 2 Rule 50 Local Elections (Principal Areas)(England & Wales) Rules 2006	Receipt of Notice of Persons Elected	Senior Elections Officer
Schedule 2 Rules 52 & 54 Local Election (Principal Areas) (England & Wales) Rules 2006	Receipt, retention and disposal of election documents.	Senior Elections Officer

### 3. SOLICITOR TO THE COUNCIL

#### In the Local Government Act 1972:

Section	Function	Officer
229(5)	Certification of photographic copies of documents in legal proceedings.	Solicitor to the Council
236(9)	Sending of copies of Bye-Laws as required	Solicitor to the Council
238	Certification of Bye-Laws.	Solicitor to the Council
Schedule 14 Para. 25(7)	Certification of Resolution for Legal Proceedings.	Solicitor to the Council

#### In the Local Land Charges Act 1975:

Section	Function	Officer
The Whole Act	To act on Local Land Charges Register	Solicitor to the Council

#### 4. EXECUTIVE DIRECTOR CORPORATE SERVICES

- (a) Any reference in any enactment passed before or during the 1971/72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26<sup>th</sup> October, 1972, to the Treasurer of a Council or the borough Treasurer of a Borough which, by virtue of any provision of the said Act, is to be construed as a reference to the Proper Officer of the Council;
- (b) Any reference in any local statutory provision to the Treasurer of a specified Council or the Borough Treasurer of a specified Borough which is to be construed as a reference to the Proper Officer of the Council;
- (c) Any amendment, re-enactment or statutory substitution of any of the matters detailed in these provisions insofar as an Officer of the Council remains under a duty to perform the same or similar tasks.
- (d) The following provisions, namely:-

##### In the Local Government Act 1972:

Section	Function	Officer
115 (2)	Receipt of money due from Officers	Executive Director Corporate Services
146(1)(a) & (b)	Declaration and Certificates with regard to securities.	Executive Director Corporate Services
151	Administration of the Council's financial affairs.	Executive Director Corporate Services (In the absence of Executive Director Corporate Services - Director of Finance

##### In the Local Government Finance Act 1988:

Section	Function	Officer
6	Officer responsible for financial administration of certain authorities.	Executive Director Corporate Services
114	Reports on financial administration.	Executive Director Corporate Services

5. CORPORATE DIRECTOR GROWTH, ASSETS AND ENVIRONMENT

(a) Any reference in any enactment passed before or during the 1971/72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26th October, 1972, to the Chief Public Health Inspector of a Council or the Chief Public Health Inspector of a Borough which by virtue of any provision of the said Act, is to be construed as a reference to the Proper Officer of the Council.

(b) Any reference in any local statutory provision to the Chief Public Health Inspector of a specified Council or the Chief Public Health Inspector of a specified Borough which is to be construed as a reference to the Proper Officer of the Council.

(c) Any amendment, re-enactment or statutory substitution of any of the matters detailed in these provisions insofar as an Officer of the council remains under a duty to perform the same or similar tasks.

The following provisions, namely:

In the Public Health Act 1936:

Section	Function	Officer
79	Power to require removal of noxious matter	Corporate Director Growth, Assets and Environment
84	Cleansing of disinfection of filthy or verminous articles.	Corporate Director Growth, Assets and Environment
85	Cleansing of verminous persons and their clothing.	Corporate Director Growth, Assets and Environment
343(1)	Definition – authorisation of officers of the local authority.	Corporate Director Growth, Assets and Environment

**In the Public Health Act 1961:**

Section	Function	Officer
S.17 (as amended by S.27 of the Local Government (Miscellaneous Provisions) Act 1982	Power to remedy stopped-up drains.	Corporate Director Growth, Assets & Environment
37	Prohibition of sale of verminous articles.	Corporate Director Growth, Assets & Environment

**In the Public Health (Control of Diseases) Act 1984:**

Section	Function	Officer
11	Cases of notifiable disease and food poisoning to be reported.	Head of Environmental Health
18	Information to be furnished by occupier in case of notifiable disease or food poisoning.	Head of Environmental Health
20	Stopping work to prevent spread of disease.	Head of Environmental Health
21	Exclusion from school	Head of Environmental Health
22	Exclusion of children from places of entertainment or assembly.	Head of Environmental Health
24	Infected articles	Head of Environmental Health
29	Letting of house or room	Head of Environmental Health
31	Disinfection of premises.	Head of Environmental Health
32	Removal of person from infected house	Head of Environmental Health
59	Authentication of documents	Head of Environmental Health

**In the Rent Act 1977:**

Section	Function	Officer
The Whole Act	Exercise of functions under Part IV	Corporate Director Communities, Partnerships & Housing

**In the Small Holdings & Allotments Act 1908:**

Section	Function	Officer
28	Making of rules for the regulation of allotments	Corporate Director Growth, Assets & Environment
30	Recovery of rent and possession of allotments	Corporate Director Growth, Assets & Environment
1	Determination of tenancies of allotments	Corporate Director Growth, Assets & Environment

**In the Housing Act 1957:**

Section	Function	Officer
Part V	Service of Notices to Quit where rent is more than four weeks in arrears	Head of Landlord Services

**In the Caravan Sites Act 1968:**

Section	Function	Officer
2	Service of Notices to Quit	Head of Landlord Services

## 6. OTHER STATUTORY APPOINTMENTS

### In the Local Government & Housing Act 1989:

Section	Function	Designation	Deputy
4	Head of Paid Service	Chief Executive	Executive Director Corporate Services
5	Monitoring Officer	Solicitor to the Council	

### In the Representation of the People Acts 1983 & 1985:

Section	Function	Designation	Deputy
35	Returning Officer	Executive Director Corporate Services	Chief Executive Solicitor to the Council (as appropriate)

#### a) In the Regulation of Investigatory Powers Act 2000

Section	Function	Designation	Administrator
28 & 29	Authorisation of covert surveillance and/or the use of covert human intelligence source including applications for judicial approval where required	Chief Executive/Executive Director Corporate Services/ Corporate Director Growth, Assets & Environment/	Solicitor to the Council

#### b) In the Localism Act 2011

Section	Function	Designation	Administrator
Part 5 Chapter 3	Assets of Community Value - processes as per the policy	<ul style="list-style-type: none"> <li>Delegation to Solicitor of the Council with appropriate Director(s)</li> <li>Appeals in relation to the above Chief Executive and Executive</li> </ul>	Chief Executive
Part 5 Chapter 2	Community Right to Challenge – processes as per the policy	<ul style="list-style-type: none"> <li>Delegation to Solicitor of the Council with appropriate Director(s)</li> <li>Appeals in relation to the above Chief Executive and Executive</li> </ul>	Chief Executive

**(i) Part 4 - Rules of Procedure**

**Rules of Procedure**

**Council Procedure Rules**

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## **4.1 ANNUAL MEETING OF THE COUNCIL**

### **4.1.1 Timing and business**

In a year when there is an ordinary election of councillors, the annual meeting will take place within 21 days of the retirement of the outgoing councillors. In any other year, the annual meeting will take place in March, April or May.

The annual meeting will elect:

1. the Mayor of Council;
2. the Deputy Mayor of Council;
3. the Leader;

### **4.2 Ordinary meetings**

There will be at least three ordinary meetings of the Council which will take place in accordance with a programme decided at the Council's annual meeting.

The first of them will take place within no longer than five working days of the Annual meeting.

The First Ordinary Meeting will:

- 4.2.1 receive any announcements from the Mayor, Leader, Members of the Executive or the head of paid service;
- 4.2.2 receive questions from, and provide answers to, the public and Members of the Council in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the Council;
- 4.2.3 receive a report on the appointment of the Executive and allocation of responsibilities;
- 4.2.4 receive a report on the review of the Constitution;
- 4.2.5 receive a report on the review of the Scheme of Delegation;
- 4.2.6 receive a report from the Leader of the Council on the urgent executive decisions taken under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2013;
- 4.2.7 decide which committees to establish for the municipal year;
- 4.2.8 decide the size and terms of reference for those committees;
- 4.2.9 decide the allocation of the position of Chairs for those committees;
- 4.2.10 decide the allocation of seats to political groups in accordance with the political balance rules;
- 4.2.11 receive nominations of councillors to serve on each committee; and
- 4.2.12 receive the calendar of meetings for the forthcoming municipal year

Ordinary meetings will:

- 4.2.13 receive nominations to confer the title of honorary Alderman or Alderwoman on past members who have completed at least three consecutive terms as a councillor of the Borough of Tamworth.
- 4.2.14 elect a person to preside if the Mayor and Deputy Mayor are not present;
- 4.2.15 receive petitions presented by members of the Council and determine the action to be taken in response to each petition, as provided in the Petition Scheme.
- 4.2.16 receive questions from, and provide answers to, the public and Members of the Council in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the Council;
- 4.2.17 approve the minutes of the last meeting;
- 4.2.18 receive any declarations of interest from members;
- 4.2.19 receive any announcements from the chairman, leader, members of the executive or the head of paid service;
- 4.2.20 receive any communications which the Mayor, the Leader, or the Head of Paid Service consider should be laid before the Council; with the permission of the Mayor, members of the Council shall be given the opportunity to ask questions of the Leader and Portfolio Holders, following receipt of communications, if these specifically relate to portfolio areas;
- 4.2.21 The Leader will inform Council of any changes in the membership of the Executive and champions and both the Leader and the Leader of the Opposition in exceptional circumstances will inform Council of any changes in the membership of Committees;
- 4.2.22 deal with any business from the last Council meeting;
- 4.2.23 consider items of business referred by the Chief Executive or another officer;
- 4.2.24 receive reports from the executive and receive questions and answers on any of those reports;
- 4.2.25 consider matters referred by overview and scrutiny and any referrals from committees or sub committees;
- 4.2.26 receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- 4.2.27 consider motions; and
- 4.2.28 consider any other business specified in the summons to the meeting, including consideration of proposals from the executive in relation to the Council's budget and policy framework and reports of the overview and scrutiny committees for debate.

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### 4.3 EXTRAORDINARY MEETINGS

#### 4.3.1 Calling extraordinary meetings.

Those listed below may request the Chief Executive to call Council meetings in addition to ordinary meetings:

- (a) the Council by resolution;
- (b) the Mayor;
- (c) the monitoring officer; and
- (d) any five members of the Council if they have signed a requisition presented to the Mayor and s/he has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

### 4.4 APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES AND SUB-COMMITTEES

#### 4.4.1 Allocation

As well as allocating seats on Committees and Sub-Committees, the Council may if it so decides allocate seats in the same manner for substitute Members.

#### 4.4.2 Number

For each Committee or Sub-Committee, the Council may if it decides appoint one substitute in respect of each political group per Committee or Sub-Committee with the exception of the Appointments & Staffing Committee, Audit & Governance Committee, Cabinet, Planning Committee and Licensing Committees under the Licensing Act 2003.

#### 4.4.3 Powers and duties

Substitute Members when acting will have all the powers and duties of any ordinary Member of the Committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting. If the ordinary member named in the notice given in rule 4.4.4 below is the Chairman of the relevant Committee, then the Vice-Chairman shall preside, or if absent, the first item of business shall be the appointment of a Chairman at the meeting.

#### 4.4.4 Substitution

Substitute Members may attend meetings in that capacity only:

- i. to take the place of the ordinary Member for whom they are the designated substitute and for that meeting only;
- ii. where the ordinary Member will be absent for the whole meeting;

- iii. after the respective Group Leader or Deputy Leader has notified the Chief Executive no later than 5.00 p.m. on the working day before the commencement of the meeting of the intended substitution. The following chart sets out the last day for submission of the substitution.

Day of Meeting	Deadline for notifications
Monday	5pm the previous Friday
Tuesday	5pm the previous Monday
Wednesday	5pm the previous Tuesday
Thursday	5pm the previous Wednesday
Friday	5pm the previous Thursday

This rule will be strictly applied to ensure fairness and equality for all notifications of substitution.

- iv. in the event that the permanent Member attends the meeting after a notification of substitution has been received, the permanent Member would be required to leave.

The Substitution scheme shall not apply to Appointments & Staffing Committee, Audit & Governance Committee, Cabinet, Cabinet Grants Sub-committee, Licensing Committee and Planning Committee.

#### 4.5 TIME AND PLACE OF MEETINGS

The time and place of meetings will be determined by the Chief Executive and notified in the summons.

#### 4.6 NOTICE OF AND SUMMONS TO MEETINGS

The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, the Chief Executive will send a summons signed by him or her to every member of the Council. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

#### 4.7 CHAIRMAN OF MEETING

The person presiding at the meeting may exercise any power or duty of the Mayor.

#### 4.8 QUORUM

The quorum of a meeting will be one quarter of the whole number of members. During any meeting if the Mayor counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Mayor. If s/he does not fix a date, the remaining business will be considered at the next ordinary meeting.

#### 4.9 DURATION OF MEETING

##### 4.9.1 Interruption of the meeting

If the business of the meeting has not been concluded by 8.30 p.m., a bell will be rung and the member speaking must immediately sit down. The Mayor must interrupt the meeting and call for the vote immediately on the item under discussion. The vote will then be taken in the usual way without any further discussion provided no motion under rule 4.13 is passed.

**4.9.2 Motions and recommendations not dealt with**

Subject to 4.9.1 above, if there are other motions or recommendations on the agenda that have not been dealt with by 8.30 p.m., they are deemed formally moved and seconded (together with any amendments). No speeches will be allowed on these items and the vote will be taken in the usual way.

**4.9.3 Recorded vote**

If a recorded vote is called for during this process it will be taken immediately.

**4.9.4 Motions which may be moved**

During the process set out in Rules 4.9.1 – 4.9.2 above, the only other motions which may be moved are that a matter be withdrawn or that a matter be delegated or referred to an appropriate body or individual for decision or report.

**4.9.5 Close of the meeting**

When all motions and recommendations have been dealt with, the Mayor will declare the meeting closed.

**4.10 QUESTIONS BY THE PUBLIC**

**4.10.1 General**

Members of the public may ask questions of members of the executive at ordinary meetings of the Council.

**4.10.2 Order of questions**

Questions will be asked in the order notice of them was received, except that the Mayor may group together similar questions and may give preference to questions from members of the public who have asked the least number of questions previously

**4.10.3 Notice of questions**

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than 5pm two clear working days before the day of the meeting. The following chart sets out the last day for submission of the question. Each question must give the name and address of the questioner and must name the member of the Council to whom it is to be put.

Day of Meeting	Deadline for Notifications
Monday	5pm the previous Wednesday
Tuesday	5pm the previous Thursday
Wednesday	5pm the previous Friday
Thursday	5pm the previous Monday
Friday	5pm the previous Tuesday

This rule will be strictly applied to ensure fairness and equality for all questioners.

#### 4.10.4 **Number of questions**

At any one meeting no person may submit more than two questions and no more than one such question may be asked on behalf of one organisation.

#### 4.10.5 **Scope of questions**

The Chief Executive may reject a question if it:

- is not about a matter for which the local authority has a responsibility or which affects the borough;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information.

The questioner will be advised of the reasons for rejection.

#### 4.10.6 **Process in relation to questions**

The Chief Executive will immediately send a copy of the accepted question to the member to whom it is to be put.

Copies of all questions will be circulated to all members and will be made available to the public attending the meeting.

#### 4.10.7 **Asking the question at the meeting**

The Mayor will invite the questioner to put the question to the Executive member named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the Mayor to put the question on their behalf. The Mayor may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

#### 4.10.8 **Written answers**

Any question which cannot be dealt with during question time, either because of lack of time or because of the non-attendance of the member to

whom it was to be put or for any other reason, will be dealt with by a written answer.

These answers will:

- Be published on the Council website as soon as practicable after the meeting, but in any event before the next ordinary meeting, and
- be attached to the minutes of that meeting.

#### **4.10.9 Supplementary Questions**

A question asked under Rule 4.10.1 allows the questioner to ask one supplementary question without notice of the member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply. Rule 4.10.5 applies to the supplementary question.

#### **4.10.10 Reference of question to the Executive**

Unless the Mayor decides otherwise, 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 the appropriate committee or sub-committee. Once seconded, such a motion will be voted on without discussion.

#### **4.10.11 Time limit on questions from members of the public**

The time which the meeting spends upon dealing with questions from members of the public shall be limited to twenty minutes save that the time permitted for dealing with questions may be extended with the approval of the meeting signified without discussion.

#### **4.10.12 Record of Questions**

As soon as practicable after the meeting, such answers, whether given orally at the meeting or in writing after the meeting, shall be published on the Council website and any written answers provided after the meeting shall be attached to the minutes of that meeting.

### **4.11 QUESTIONS BY MEMBERS**

#### **4.11.1 On reports of the Executive**

A member of the Council may ask the Leader 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.

#### **4.11.2 Questions on notice at Ordinary Meetings of the Council**

Subject to Rule 4.11.3, a member of the Council may ask:

- (a) any member in receipt of a Special Responsibility Allowance, except the Mayor and Deputy Mayor.

- (b) a question on any matter in relation to which the Council has powers or duties or which affects Tamworth

No members may ask more than two questions at any meeting of the Council

Questions by members will not be permitted at the Annual Meeting, the State of Tamworth Debate meeting or Extraordinary Meetings

#### **4.11.3 Notice of questions**

A member may only ask a question under Rule 4.11.2 if

- (a) notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than 5.00 p.m. two clear working days before the day of the meeting. The following chart sets out the last day for submission of the question. Each question must give the name of the member of the Council to whom it is to be put ; or
- (b) the question relates to urgent matters, they have the consent of the member of the Executive or other member in receipt of a Special Responsibility Allowance to whom the question is to be put and the content of the question is given to the Chief Executive by 10.00 a.m. on the day of the meeting.

Day of Meeting	Deadline for Notifications
Monday	5pm the previous Wednesday
Tuesday	5pm the previous Thursday
Wednesday	5pm the previous Friday
Thursday	5pm the previous Monday
Friday	5pm the previous Tuesday

This rule will be strictly applied to ensure fairness and equality for all questioners.

#### **4.11.4 Scope of questions**

The Chief Executive may reject a question if it:

- is not about a matter for which the local authority has a responsibility or which affects the borough;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information.
- 

#### **4.11.5 Response**

An answer may take the form of:

- a) a direct oral answer;
- b) a reference to a publication where the desired information is in a publication of the Council or other published work, ; or
- c) , a written answer circulated later to the member where the reply cannot conveniently be given orally and in the circumstances described in rule 4.11.6

#### 4.11.6 **Written answers**

Any question which cannot be dealt with during question time, either because of lack of time or because of the non-attendance of the member to whom it was to be put or for any other reason, will be dealt with by a written answer.

These answers will:

- Be published on the Council website as soon as practicable after the meeting, but in any event before the next ordinary meeting, and
- be attached to the minutes of that meeting.

#### 4.11.7 **Supplementary question**

A member asking a question under Rule 4.11.2 may ask one supplementary question without notice of the member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply. Rule 4.11.4 applies to the supplementary question.

#### 4.11.8 **Record of Questions**

As soon as practicable after the meeting, such answers, whether given orally at the meeting or in writing after the meeting, shall be published on the Council website and any written answers provided after the meeting shall be attached to the minutes of that meeting.

### 4.12 **MOTIONS ON NOTICE**

#### 4.12.1 **Notice**

Except for motions which can be moved without notice under Rule 4.13, written notice of every motion, signed by at least five members, must be delivered to the Chief Executive not later than seven clear working days before the date of the meeting. These will be entered in a book open to public inspection.

#### 4.12.2 **Motion set out in agenda**

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

#### **4.12.3 Scope**

Motions must be about matters for which the Council has a responsibility or which affect Tamworth. Motions must not be defamatory, unlawful, frivolous or offensive; and must not require the likely disclosure of confidential or exempt information. If it appears to the Chief Executive that the motion falls into these categories s/he will refer the matter to the Mayor who will rule on whether or not the motions can be considered.

#### **4.13 MOTIONS WITHOUT NOTICE**

The following motions may be moved without notice:

- (a) to appoint a chairman of the meeting at which the motion is moved, where the Mayor or Deputy Mayor are absent;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to refer an item to an appropriate body or individual;
- (e) to appoint a committee or member to deal with any matter arising from an item on the summons for the meeting;
- (f) to receive reports or adoption of recommendations of committees or officers and any resolutions following from them;
- (g) to withdraw a motion;
- (h) to amend a motion;
- (i) to proceed to the next business;
- (j) that the question be now put;
- (k) to adjourn a debate;
- (l) to adjourn a meeting;
- (m) that the meeting continue beyond 8.30 p.m. in duration provided rule 4.9.1 has not been passed;
- (n) to suspend a particular council procedure rule;
- (o) to exclude the public and press in accordance with the Access to Information Rules;
- (p) to not hear further a member named under Rule 4.21.3 or to exclude them from the meeting under Rule 4.21.4; and
- (q) to give the consent of the Council where its consent is required by this Constitution.

## 4.14 RULES OF DEBATE

### 4.14.1 **No speeches until motion seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

### 4.14.2 **Right to require motion in writing**

Unless notice of the motion has already been given, the Mayor may require it to be written down and handed to him/her before it is discussed.

### 4.14.3 **Secunder's speech**

When seconding a motion or amendment, a member may reserve their speech until later in the debate.

### 4.14.4 **Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed ten minutes without the consent of the Mayor.

### 4.14.5 **When a member may speak again**

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- (a) to speak once on an amendment moved by another member;
- (b) to move a further amendment if the motion has been amended since s/he last spoke;
- (c) if his/her first speech was on an amendment moved by another member, to speak on the main issue (whether or not the amendment on which s/he spoke was carried);
- (d) in exercise of a right of reply;
- (e) on a point of order; and
- (f) by way of personal explanation.

### 4.14.6 **Amendments to motions**

An amendment to a motion must be relevant to the motion and will either be:

- (a) to refer the matter to an appropriate body or individual for consideration or reconsideration;
- (b) to leave out words;
- (c) to leave out words and insert or add others; or
- (d) to insert or add words;

as long as the effect of (ii) to (iv) is not to negate the motion.

Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

If an amendment is not carried, other amendments to the original motion may be moved.

If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

After an amendment has been carried, the Mayor will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

#### 4.14.7 **Alteration of motion**

- (a) A member may alter a motion of which s/he has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- (b) A member may alter a motion which s/he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

#### 4.14.8 **Withdrawal of motion**

A member may withdraw a motion which s/he has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

#### 4.14.9 **Right of reply**

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- (b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- (c) The mover of the amendment has no right of reply to the debate on his or her amendment.

#### 4.14.10 **Motions which may be moved during debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) to exclude the public and press in accordance with the Access to Information Rules; and
- (h) to not hear further a member named under Rule 4.21.3 or to exclude them from the meeting under Rule 4.21.4.

#### 4.14.11 **Closure motions**

- (a) A member may move, without comment, the following motions at the end of a speech of another member:
  - to proceed to the next business;
  - that the question be now put;
  - to adjourn a debate; or
  - to adjourn a meeting.
- (b) If a motion to proceed to next business is seconded and the Mayor thinks the item has been sufficiently discussed, s/he will give the mover of the original motion a right of reply and then put the procedural motion to the vote.
- (c) If a motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, s/he will put the procedural motion to the vote. If it is passed s/he will give the mover of the original motion a right of reply before putting his/her motion to the vote.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, s/he will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### 4.14.12 **Point of order**

A member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The member must indicate the rule or law and the way in which s/he considers it has been broken. The ruling of the Mayor on the matter will be final.

#### 4.14.13 **Personal explanation**

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

#### 4.14.14 **Single Issue Debate Meetings**

With regard to Single Issue Debate meetings, there will be no more than two of these meetings a year. No member will be allowed to speak for longer than 5 minutes with each group speaking in turn. Once each Member of the minority group has spoken, the order for speech to be determined by each Member indicating to the Mayor.

### 4.15 **STATE OF TAMWORTH DEBATE**

#### 4.15.1 **Calling of debate**

The Leader will call a state of Tamworth debate annually in March in a form to be agreed with the Mayor.

#### 4.15.2 **Form of debate**

The Leader will decide the form of the debate with the aim of enabling the widest possible public involvement and publicity. This may include holding conferences, debating forums, "Question Time", workshops and other events prior to or during the state of Tamworth debate.

#### 4.15.3 **Chairing of debate**

The debate will be chaired by the Mayor.

#### 4.15.4 **Results of debate**

The results of the debate will be:

- (a) disseminated as widely as possible within the community and to agencies and organisations in the area; and
- (b) considered by the Leader in proposing the budget and policy framework to the Council for the coming year.
- (c) used to inform the Overview and Scrutiny committees of suggested areas for their work programme.

### 4.16 **PREVIOUS DECISIONS AND MOTIONS**

#### 4.16.1 **Motion to rescind a previous decision**

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least two members.

#### 4.16.2 **Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least two members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

### 4.17 **VOTING**

#### 4.17.1 **Majority**

Unless the legislation provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

#### 4.17.2 **Mayor's casting vote**

If there are equal numbers of votes for and against, the Mayor will have a second or casting vote. There will be no restriction on how the Mayor chooses to exercise a casting vote.

#### 4.17.3 **Show of hands**

Immediately following a vote taken in public, at a meeting of full Council, which is not unanimous by virtue of votes for and against the motion (not simply by abstention) the names of those members who have voted will be taken down in writing and recorded in the minutes of the meeting.

#### 4.17.4 **Recorded vote**

If five members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

#### 4.17.5 **Right to require individual vote to be recorded**

Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

#### 4.17.6 **Voting on appointments**

If there are more than two people nominated for any position, including Chairman when relevant, to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. In a situation where there is an equality of votes for two people the decision on the appointment will be made by the flip of a coin.

## 4.18 MINUTES

### 4.18.1 Signing the minutes

The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

### 4.18.2 No requirement to sign minutes of previous meeting at extraordinary meeting

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

### 4.18.3 Form of minutes

Minutes will contain all motions and amendments in the exact form and order the Mayor put them.

## 4.19 RECORD OF ATTENDANCE

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

## 4.20 EXCLUSION OF PUBLIC

Members of the public and press may only be excluded either in accordance with the Schedule 2 Access to Information Procedure Rules in Part 4 of this Constitution or Rule 4.22 (Disturbance by Public).

## 4.21 MEMBERS' CONDUCT

### 4.21.1 Standing to speak

When a member speaks at full Council they must stand – unless disabled from doing so-and address the meeting through the Mayor. If more than one member stands, the Mayor will ask one to speak and the others must sit. Other members must remain seated whilst a member is speaking unless they wish to make a point of order or a point of personal explanation.

### 4.21.2 Mayor standing

When the Mayor stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

### 4.21.3 Member not to be heard further

If a member persistently disregards the ruling of the Mayor by behaving, in the opinion of the Mayor, improperly or offensively or deliberately obstructs business, the Mayor may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

#### 4.21.4 **Member to leave the meeting**

If the member continues to behave improperly after such a motion is carried, the Mayor may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

#### 4.21.5 **General disturbance**

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as s/he thinks necessary.

#### 4.21.6 **Disclosable pecuniary interests**

A member with a disclosable pecuniary interest as defined by section 30 of the Localism Act 2011 who is prohibited from participating in any discussion of any matter at a meeting or prohibited from participating in any vote, or further vote taken on the matter at the meeting will be excluded from that part of any meeting at which that matter is under consideration unless the member has been granted a dispensation.

A member so excluded shall withdraw from the meeting and shall not remain in the room in which the meeting is taking place or remain in any part of the room reserved for members of the public.

### 4.22 **DISTURBANCE BY PUBLIC**

#### 4.22.1 **Removal of member of the public**

If a member of the public interrupts proceedings, the Mayor will warn the person concerned. If they continue to interrupt, the Mayor will order their removal from the meeting room.

#### 4.22.2 **Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared.

### 4.23 **SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES**

#### 4.23.1 **Suspension**

All of these Council Rules of Procedure except Rule 4.17.6 and 4.18.2 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Council are present. Suspension can only be for the duration of the meeting.

#### 4.23.2 **Amendment**

Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

#### 4.24 **APPLICATION TO REGULATORY COMMITTEES AND SUB-COMMITTEES**

All of the Council Rules of Procedure apply to meetings of full Council and Regulatory Committees. The rules which apply to meetings of the Executive are identified within Schedule 4 - Executive Procedure Rules. The rules which apply to meetings of non regulatory Committees and Sub-Committees are identified within Schedule 1 Non Regulatory Committee Procedure Rules.

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## SCHEDULE 1 – NON REGULATORY COMMITTEE PROCEDURE RULES

### 1 APPLICATION

These Rules shall apply to non regulatory meetings of Committees and Sub – Committees not being full Council, Regulatory Committee Meetings or meetings of the Executive.

### 2 APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES AND SUB-COMMITTEES

#### 2.1 Allocation

As well as allocating seats on Committees and Sub-Committees, the Council may if it so decides to allocate seats in the same manner for substitute Members.

#### 2.2 Number

For each non regulatory Committee or Sub-Committee, the Council may if it decides appoint one substitute in respect of each political group per Committee or Sub-Committee.

#### 2.3 Powers and duties

Substitute members when acting will have all the powers and duties of any ordinary Member of the Committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting. If the ordinary member named in the notice given in rule 2.4 below is the Chairman of the relevant Committee, then the Vice-Chairman shall preside, or if absent, the first item of business shall be the appointment of a Chairman at the meeting.

#### 2.4 Substitution

Substitute Members may attend meetings in that capacity only:

- 2.4.1 to take the place of the ordinary Member for whom they are the designated substitute and for that meeting only;
- 2.4.2 where the ordinary Member will be absent for the whole meeting;
- 2.4.3 after the respective Group Leader or Deputy Leader has notified the Chief Executive no later than 5.00 p.m. on the working day before the commencement of the meeting of the intended substitution. The following chart sets out the last day for submission of the substitution.

Day of Meeting	Deadline for Notifications
Monday	5pm the previous Friday
Tuesday	5pm the previous Monday
Wednesday	5pm the previous Tuesday
Thursday	5pm the previous Wednesday
Friday	5pm the previous Thursday

This rule will be strictly applied to ensure fairness and equality for all notifications of substitution.

- 2.4.4 in the event that the permanent Member attends the meeting after a notification of substitution has been received, the permanent Member would be required to leave.

The Substitution scheme shall apply to Infrastructure, Safety and Growth Scrutiny Committee, Healthier and Wellbeing Scrutiny Committee, Corporate Scrutiny Committee, Statutory Officers Conduct Committee, Chief Officer Conduct Committee and Nominations Committee.

### **3 TIME AND PLACE OF MEETINGS**

The time and place of non regulatory meetings can be determined by the Committee Chairman and notified in the summons. Regulatory Committees will be determined by the Chief Executive.

### **4 NOTICE OF AND SUMMONS TO MEETINGS**

The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days (three days in the case of a Licensing Sub Committee) before a meeting, the Chief Executive will send a summons signed by him or her to every member of the Committee or Sub-Committee. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

### **5 CHAIRMAN OF MEETING**

The person presiding at the meeting may exercise any power or duty of the Chairman. If the Chairman is not present the Vice-Chairman shall act as Chairman. If both the Chairman and Vice-Chairman are absent the Committee shall appoint a Chairman for that meeting as per rule 9.1.1.

### **6 QUORUM**

The quorum of a meeting will be one quarter of the whole number of the Committee or Sub Committee members. During any meeting if the Chairman counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If s/he does not fix a date, the remaining business will be considered at the next ordinary meeting.

### **7 DURATION OF MEETING**

#### **7.1 Interruption of the meeting**

If the business of the meeting has not been concluded by 8.30 p.m., except for Regulatory Committee meetings, a bell will be rung and the member speaking must immediately sit down. The Chairman must interrupt the meeting and call for any motion under rule 9. If no motions are moved under rule 9 then the Chairman calls for a vote immediately on the item under discussion. The vote will then be taken in the usual way without any further discussion.

#### **7.2 Motions and recommendations not dealt with**

Subject to 7.1 above, if there are other motions or recommendations on the agenda that have not been dealt with by 8.30 p.m., they are deemed formally moved and

seconded (together with any amendments). No speeches will be allowed on these items and the vote will be taken in the usual way.

### **7.3 Recorded vote**

If a recorded vote is called for during this process it will be taken immediately.

### **7.4 Motions which may be moved**

During the process set out in Rules 7.1–7.3 above, the only other motions which may be moved are that a matter be withdrawn or that a matter be delegated or referred to an appropriate body or individual for decision or report.

### **7.5 Close of the meeting**

When all motions and recommendations have been dealt with, the Chairman will declare the meeting closed.

## **8 MOTIONS ON NOTICE**

### **8.1 Notice**

Except for motions which can be moved without notice under Rule 9, written notice of every motion, signed by at least five members, must be delivered to the Chief Executive not later than seven clear working days before the date of the meeting. These will be entered in a book open to public inspection.

### **8.2 Motion set out in agenda**

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

### **8.3 Scope**

Motions must be about matters for which the Committee or Sub Committee has a responsibility or which affect Tamworth. Motions must not be defamatory, unlawful, frivolous or offensive; and must not require the likely disclosure of confidential or exempt information. If it appears to the Chief Executive that the motion falls into these categories s/he will refer the matter to the Chairman who will rule on whether or not the motions can be considered.

### **8.4 Motion to remove the Chairman**

A motion to remove the Chairman can only be moved by giving written notice. A written notice of a motion to remove the Chairman must be signed by at least five members and must be delivered to the Chief Executive not later than seven clear working days before the date of the meeting. These will be entered in a book open to public inspection. Rules 8.2 and 8.3 shall apply to a motion moved under rule 8.4.

## **9 MOTIONS WITHOUT NOTICE**

The following motions may be moved without notice:

- 9.1.1 to appoint a chairman of the meeting at which the motion is moved where the existing Chairman or Deputy Chairman are absent;
- 9.1.2 in relation to the accuracy of the minutes;
- 9.1.3 to change the order of business in the agenda;
- 9.1.4 to refer something to an appropriate body or individual;
- 9.1.5 to appoint a committee or member to carry out a task as designated by the Committee arising from an item on the summons for the meeting;
- 9.1.6 to receive reports or adoption of recommendations of Members, Sub-Committees, officers and Outside Bodies and any resolutions following from them;
- 9.1.7 to withdraw a motion;
- 9.1.8 to amend a motion;
- 9.1.9 to proceed to the next business;
- 9.1.10 that the question be now put;
- 9.1.11 to adjourn a debate;
- 9.1.12 to adjourn a meeting;
- 9.1.13 that the meeting continue beyond 8.30 p.m. in duration provided rule 7.1 has not been passed;
- 9.1.14 to suspend a particular Committee rule of procedure;
- 9.1.15 to exclude the public and press in accordance with the Access to Information Rules;
- 9.1.16 to not hear further a member named under Rule 17.3 or to exclude them from the meeting under Rule 17.4 and

## **10 RULES OF DEBATE**

### **10.1 No speeches until motion seconded**

Questions and speeches may be made on the subject matter before and after a mover has moved a proposal and it has been seconded.

### **10.2 Right to require motion in writing**

Unless notice of the motion has already been given, the Chairman may require it to be written down and handed to him/her before it is discussed.

### **10.3 Secunder's speech**

When seconding a motion or amendment, a member does not require to reserve their speech until later in the debate.

#### 10.4 **Content and length of speeches**

Speeches must be directed to the question or item under discussion or to a personal explanation or point of order. There is no time limit on speeches (subject to rule 17).

#### 10.5 **When a member may speak again**

A member may speak as many times as he/she considers appropriate, subject to rule 17.

#### 10.6 **Amendments to motions**

An amendment to a motion must be relevant to the motion and will either be:

- 10.6.1 to refer the matter to an appropriate body or individual for consideration or reconsideration;
- 10.6.2 to leave out words;
- 10.6.3 to leave out words and insert or add others; or
- 10.6.4 to insert or add words.

as long as the effect of (10.6.2) to (10.6.4) is not to negate the motion.

Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

If an amendment is not carried, other amendments to the original motion may be moved.

If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

After an amendment has been carried, the Chairman will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

#### 10.7 **Alteration of motion**

A member may alter a motion of which s/he has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

A member may alter a motion which s/he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

Only alterations which could be made as an amendment may be made.

#### 10.8 **Withdrawal of motion**

A member may withdraw a motion which s/he has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

### **10.9 Right of reply**

The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.

The mover of the amendment has no right of reply to the debate on his or her amendment.

### **10.10 Motions which may be moved during debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- 10.10.1 to withdraw a motion;
- 10.10.2 to amend a motion;
- 10.10.3 to proceed to the next business;
- 10.10.4 that the question be now put;
- 10.10.5 to adjourn a debate;
- 10.10.6 to adjourn a meeting;
- 10.10.7 to exclude the public and press in accordance with the Access to Information Rules; and
- 10.10.8 to not hear further a member named under Rule 17.2 or to exclude them from the meeting under Rule 17.3.

### **10.11 Closure motions**

A member may move, without comment, the following motions at the end of a speech of another member:

- 10.11.1 to proceed to the next business;
- 10.11.2 that the question be now put;
- 10.11.3 to adjourn a debate; or
- 10.11.4 to adjourn a meeting.

If a motion to proceed to next business is seconded and the Chairman thinks the item has been sufficiently discussed, s/he will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

If a motion that the question be now put is seconded and the Chairman thinks the item has been sufficiently discussed, s/he will put the procedural motion to the vote. If it is passed s/he will give the mover of the original motion a right of reply before putting his/her motion to the vote.

If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chairman thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, s/he will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### **10.12 Point of order**

A member may raise a point of order at any time. The Chairman will hear them immediately. A point of order may only relate to an alleged breach of these Committee Rules of Procedure or the law. The member must indicate the rule or law and the way in which s/he considers it has been broken. The ruling of the Chairman on the matter will be final.

#### **10.13 Personal explanation**

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. The ruling of the Chairman on the admissibility of a personal explanation will be final.

### **11 PREVIOUS DECISIONS AND MOTIONS**

#### **11.1 Motion to rescind a previous decision**

A motion or amendment to rescind a decision made at a meeting of Committee or Sub - Committee within the past six months cannot be moved unless the notice of motion is signed by at least two members.

#### **11.2 Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least two members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

### **12 VOTING**

#### **12.1 Majority**

Unless the legislation provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

#### **12.2 Chairman's casting vote**

If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

### **12.3 Show of hands**

Unless a recorded vote is demanded under Rule 12.4, the Chairman will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

### **12.4 Recorded vote**

If five members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

### **12.5 Right to require individual vote to be recorded**

Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

### **12.6 Voting on appointments**

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. In a situation where there is an equality of votes for two people the decision on the appointment will be made by the flip of a coin.

## **13 MINUTES**

### **13.1 Signing the minutes**

The Chairman will sign the minutes of the proceedings at the next suitable meeting. The Chairman will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

### **13.2 Form of minutes**

Minutes will contain all motions and amendments in the exact form and order the Chairman put them.

## **14 DISTURBANCE BY PUBLIC**

### **14.1 Removal of member of the public**

If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room.

### **14.2 Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

## **15 RECORD OF ATTENDANCE**

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

## **16 EXCLUSION OF PUBLIC**

Members of the public and press may only be excluded either in accordance with the Schedule 2 Access to Information Rules in Part 4 of this Constitution or Rule 14.1 (Disturbance by Public).

## **17 MEMBERS' CONDUCT**

### **17.1 Chairman standing**

When the Chairman stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

### **17.2 Member not to be heard further**

If a member persistently disregards the ruling of the Chairman by behaving, in the opinion of the Chairman, improperly or offensively or deliberately obstructs business, the Chairman may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

### **17.3 Member to leave the meeting**

If the member continues to behave improperly after such a motion is carried, the Chairman may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

### **17.4 General disturbance**

If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as s/he thinks necessary.

### **17.5 Disclosable pecuniary interests**

A member with a disclosable pecuniary interest as defined by section 30 of the Localism Act 2011 who is prohibited from participating in any discussion of any matter at a meeting or prohibited from participating in any vote, or further vote taken on the matter at the meeting will be excluded from that part of any meeting at which that matter is under consideration unless the member has been granted a dispensation.

A member so excluded shall withdraw from the meeting and shall not remain in the room in which the meeting is taking place or remain in any part of the room reserved for members of the public.

## **18 SUSPENSION AND AMENDMENT OF COMMITTEE PROCEDURE RULES**

### **18.1 Suspension**

All of these Committee Rules of Procedure except Rules 12.6 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Committee are present. Suspension can only be for the duration of the meeting.

### **18.2 Amendment**

Any motion to add to, vary or revoke these Committee Rules of Procedure will when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Committee.

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## **SCHEDULE 2 - ACCESS TO INFORMATION PROCEDURE RULES**

These rules implement the requirements of Sections 100 A – K at Schedule 12A of the Local Government Act 1972; Section 9G and 1GA of the Local Government Act 2000, The Local Authorities (Executive Arrangements) (Meeting and Access to Information) (England) Regulations 2012 and The Openness of Local Government Bodies Regulation 2014.

### **1 SCOPE**

These rules apply to all meetings of the Council, overview and scrutiny committees and Regulatory Committees (together called meetings). Rules 12 – 16 apply to meetings of the Executive.

### **2 ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

### **3 RIGHTS TO ATTEND MEETINGS**

Members of the public may attend all meetings subject 3.1 to the exceptions in these rules, Rule 4.20, Rule 4.23 of the Council's Procedure Rules and Rules 14 and 16 of Schedule 1 – non Regulatory Committee Procedure Rules.

### **4 NOTICES OF MEETING**

The council will give at least five clear days notice of any meeting by posting details of the meeting at its main offices and publishing it on the Council's website.

### **5 ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

- 5.1 The Council will make copies of the agenda and reports open to the public available for inspection at its main offices at least five clear days before the meeting and the Council's website.
- 5.2 If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the Chief Executive shall make each such report available to the public as soon as the report is completed and sent to councillors) will be open to inspection when the item is added to the agenda.
- 5.3 Where the meeting is convened at shorter notice a copy of the agenda and associated reports will be available for inspection when the meeting is convened.
- 5.4 If the Chief Executive thinks it fit there may be excluded from any report provided the whole or any part of the report which relates only to matters during which in the Chief Executives opinion the meeting is likely to be a private meeting.

### **6 SUPPLY OF COPIES**

The Council will supply copies of:

- 6.1 Except during any part of a meeting during which the public are excluded, the Council will make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and of the reports for the meeting.

- 6.2 Subject to any 'Confidential Information' and/or 'Exempt Information' following a request by a member of the public or on behalf of a newspaper and on payment being made of postage, copying or other necessary charge for transmission, the Council will supply to that person or newspaper
- 6.2.1 a copy of the agenda for a public meeting and a copy of each of the reports for consideration at the meetings;
- 6.2.2 Each further statements or particulars, as are necessary to indicate the nature of the items contained in the agenda and
- 6.2.3 if the Chief Executive thinks fit in the case of any item a copy of any other documents supplied to Councillors in connection with the item.

## **7 ACCESS TO MINUTES ETC AFTER THE MEETING**

As soon as reasonably practicable after any meeting of the Cabinet, or its Committees & Joint Committees at which an Executive Decision or delegated decision by an Officer Monitoring Officer or person writing on their behalf and make available copies or the following for six years after a meeting.

:

- 7.1 the minutes of the meeting or records of decisions taken, together with reasons, any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- 7.2 a record of any conflict of interest relating to the matter decided which is declared by any member or a note of any dispensation granted by the Chief Executive
- 7.3 a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- 7.4 the agenda for the meeting; and
- 7.5 reports relating to items when the meeting was open to the public.

## **8 BACKGROUND PAPERS**

### **8.1 List of background papers**

The Chief Executive will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- 8.1.1 disclose any facts or matters on which the report or an important part of the report is based; and
- 8.1.2 which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

### **8.2 Public inspection of background papers**

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## 9 EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

### 9.1 Confidential information – requirement to exclude public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

### 9.2 Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

### 9.3 Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

### 9.4 Meaning of exempt information

Exempt information means information falling within the following 10 categories (subject to any condition):

## PART 1 DESCRIPTIONS OF EXEMPT INFORMATION: ENGLAND

1	Information relating to any individual.
2	Information which is likely to reveal the identity of an individual.
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6	Information which reveals that the authority proposes

	<p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p>
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

**PART 2  
QUALIFICATIONS: ENGLAND**

8	<p>Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under</p> <p>(a) the Companies Acts (as defined in section 2 of the Companies Act 2006);</p> <p>(b) the Friendly Societies Act 1974</p> <p>(c) the Friendly Societies Act 1992;</p> <p>(d) the Industrial and Provident Societies Acts 1965 to 1978;</p> <p>(e) the Building Societies Act 1986; or</p> <p>(f) the Charities Act 1993.</p>
9	Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.
10	<p>Information which</p> <p>(a) falls within any of paragraphs 1 to 7 above; and</p> <p>(b) is not prevented from being exempt by virtue of paragraph 8 or 9 above, is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>

## **10 EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

## **11 DEFINITIONS**

### **11.1 Executive Decisions**

Is any decision made or to be made in connection with the discharge of a function which is the responsibility of the Executive of the Council but does not include purely administrative decisions.

### **11.2 Key Decisions**

(vii) Key decision means any decision to spend or forego income or raise additional income which is significant having regard to the Council’s budget for the service or function to which the decision relates. For the purposes of this paragraph the Council interprets as “significant” any decision to spend or forego income or raise additional income exceeding £100,000 in one financial year. For any amounts between £50,000 and £100,000 compliance must be in accordance with Financial Guidance

or

any decision that has a significant affect on two or more wards. For the purposes of this paragraph the Council interprets as “significant” any proposal which will make a substantial physical alteration to the appearance of the area of two or more wards, or any proposal which will substantially alter the level of a Council service given to people who live or work in the area.

### **11.3 Delegated Decision by an Officer**

Is a decision which would otherwise have been taken by the Council, or a Committee, sub Committee or joint Committee of the Council, but it has been delegated to a officer at the Council either

11.3.1 under a specific express authorisation; or

11.3.2 under a general authorisation to take such decisions and the effect or the decision is to;

11.3.3 grant a permission or licence;

11.3.4 affect the rights of an individual; or

11.3.5 award a contract or views expenditure which fulfils the definition a key decision

## **12 EXECUTIVE MEETINGS**

### **12.1 Notice of Private Meetings of the Executive**

When the public are to be excluded from a meeting, or part of a meeting of the Cabinet or its committees a notice of intention to hold a meeting in private will be published on the Council’s website at least 28 clear days before the date of the private meeting. The notice will also be made available at the Council offices. The notice will state the

reasons why the meeting is to be held in private and how to make representations about holding the meeting in public.

At least five days before the meeting a further notice will be published of the intention to hold a private meeting. This notice will include a statement of the reasons why the meeting is to be held in private, details of any representations made about holding the meeting in public, and the response to those representations.

## **12.2 Urgent Private Meetings of the Executive**

If the urgency of a decision makes compliance with rule 11.1 impracticable, the decision maker or decision making body will seek agreement from the Monitoring Officer and Chairman of the relevant Overview and Scrutiny Committee that the meeting is urgent and cannot reasonably be deferred. In the absence of the Chairman of the Overview and Scrutiny Committee, the Mayor and Monitoring Officer shall be asked for their agreement and, in their absence, his/her appointed Deputy. . If agreement is granted, a notice will be published on the Council's website and made available at the Council offices setting out why the meeting is urgent and cannot reasonably be deferred.

## **13 PROCEDURE BEFORE TAKING KEY DECISIONS**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a Key Decision may not be taken unless:

- 13.1 a Notice (called here a Key Decision Notice) has been published in connection with the matter in question;
- 13.2 at least 28 clear days before the date when the decision is to be taken; and
- 13.3 where the decision is to be taken at a meeting of the Executive or its committees, notice of the meeting has been given in accordance with Rule 47 (notice of and summons to meetings).

## **14 THE FORWARD PLAN**

### **14.1 Period of forward plan**

Forward plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

### **14.2 Content of forward plan**

The forward plan will contain matters which the Leader has reason to believe will be subject of a key decision to be taken by the Executive, a committee of the Executive, individual members of the Executive, officers, area committees or under joint arrangements in the course of the discharge of an Executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained.

A Key Decision Notice will contain details of:

- 14.2.1 the matter in respect of which a decision is to be made;

- 14.2.2 where the decision taker is an individual, his/her name and, title, if any and where the decision taker is a body, its name and details of membership;
- 14.2.3 the date on which, or the period within which, the decision will be taken;
- (a) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
  - (b) the means by which any such consultation is proposed to be undertaken;
  - (c) the steps any person might take who wishes to make representations to the Executive or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
  - (d) a list of the documents submitted to the decision taker for consideration in relation to the matter.
  - (e) The forward plan will be published at least 7 days before the start of the period covered.
- 14.2.4 Exempt information need not be included in a forward plan and confidential information cannot be included.

## **15 GENERAL EXCEPTION – URGENT BUSINESS**

- 15.1 Subject to Rule 16, where a matter which is a Key Decision requires an urgent decision and the required 28 days notice has not been given, the decision may still be taken if:
- 15.1.1 the Chairman of the Overview and Scrutiny Committee, or, if there is no such person, each member of the Overview and Scrutiny Committee, has been informed by notice in writing of the matter about which the decision is to be made;
  - 15.1.2 a Key Decision Notice has been published and made available for inspection by the public; and
  - 15.1.3 five clear days have elapsed following the day on which the Key Decision Notice was published and made available.

## **16 SPECIAL URGENCY**

If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision is urgent and cannot reasonably be deferred. If the Chairman of the Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor will suffice, or, in the absence of the Mayor, the agreement of the Deputy Mayor.

## **17 REPORT TO COUNCIL**

### **17.1 When an overview and scrutiny committee can require a report**

If an overview and scrutiny committee thinks that a key decision has been taken which was not:

- 17.1.1 included in the forward plan; or
- 17.1.2 the subject of the general exception procedure; or
- 17.1.3 the subject of an agreement with a relevant overview and scrutiny committee chairman, or the chair of the **body making the decision** under Rule 16;

the committee may require the executive to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the committee, but is also delegated to the Chief Executive, who shall require such a report on behalf of the committee when so requested by (the chairman or any five members). Alternatively the requirement may be raised by resolution passed at a meeting of the relevant overview and scrutiny committee.

### **17.2 Executive's report to Council**

The executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

### **17.3 Executive reports on special urgency decisions**

In any event the Leader will submit where required a report to the next meeting or the Council on the executive decisions taken in the circumstances set out in Rule 16 (special urgency). The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

- 17.4 The Leader of the Council is required to submit at least one report under paragraph 17.3 annually.

## **18 RECORD OF DECISIONS**

After any meeting of the executive or any of its committees, whether held in public or private, the Chief Executive or monitoring officer or person acting on their behalf will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

## **19 EXECUTIVE MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

The executive will decide whether meetings relating to matters which are not key decisions will be held in public or private in accordance with the requirements of the legislation.

## **20 NOTICE OF PRIVATE MEETING OF THE EXECUTIVE**

Members of the executive or its committees will be entitled to receive three clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

## **21 ATTENDANCE AT PRIVATE MEETINGS OF THE EXECUTIVE**

- 21.1 All members of the executive will be served notice of all private meetings of committees of the executive, whether or not they are members of that committee.
- 21.2 All members of the executive are entitled to attend a private meeting of an executive committee although they may not speak unless the members of the committee/sub-committee agree.
- 21.3 Notice of private meetings of the executive and its committees will be served on the chairmen of all overview and scrutiny committees and sub-committees, at the same time as notice is served on members of the executive. Where an overview and scrutiny committee does not have a chairman, the notice will be served on all the members of that committee.
- 21.4 Where a matter under consideration at a private meeting of the executive, or a committee of it, is within the remit of an overview and scrutiny committee/sub-committee, the chairman of that committee or in his/her absence the vice chairman may attend that private meeting with the consent of the person presiding, though not speak unless those present agree.
- 21.5 The head of the paid service, the monitoring officer and the chief financial officer, and their nominees are entitled to attend any meeting of the executive and its committees.

In all of the above examples, the provisions of Rule 18 (recording and publicising decisions) will apply.

## **22 DECISIONS BY INDIVIDUAL MEMBERS OF THE EXECUTIVE**

### **22.1 Reports intended to be taken into account**

Where an individual member of the executive receives a report which s/he intends to take into account in making any key decision, then s/he will not make the decision until at least three clear days after receipt of that report.

### **22.2 Provision of copies of reports to overview and scrutiny committees**

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chairman of every relevant overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.

### **22.3 Record of individual decision**

As soon as reasonably practicable after any Executive decision has been taken by an individual Member or after a Key Decision has been taken by an officer he or she will instruct the Chief Executive/Monitoring Officer or person acting on their behalf to

prepare a record of the decision, a statement of the reasons for it, any alternative options considered and rejected, a record of any conflict of interest declared by any Executive Member and in respect of any declared conflict of interest, a note of dispensation granted by the Councils Chief Executive.

#### **22.4 Nature of rights**

These rights of a member are additional to any other right s/he may have.

#### **22.5 Rights of Members to attend meetings when exempt information is being considered**

All Members are entitled to attend a meeting of the Council or its committees or sub committees, where they are not an ordinary member, when exempt information is being considered. Exceptions to this entitlement will be made at the discretion of the respective Chairman and/or the Chief Executive or the Solicitor to the Council and Monitoring Officer depending on the nature of the exempt information, for example staffing issues, licensing appeals and standards and ethics issues.

### **23 ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

#### **23.1 Material relating to business to be transacted at a public meeting of the Executive**

All members of the Council will be entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business to be transacted at a public meeting, and any such document must be available for inspection for at least five clear days before the meeting.

#### **23.2 Other Material relating to business transacted**

All members of the Council will be entitled to inspect any document which is in the possession or under the control of Executive and contains material relating to any business transacted at a private meeting of Executive, or any decision made by an individual Executive member or an officer, within 24 hours after the meeting concludes or after the decision has been made.

#### **23.3 Exceptions**

However, a document is not required to be available for inspection under Rule 23.1 or 23.2 if it contains exempt information as set out in Schedule 12A of the Local Government Act 1972, unless the information falls within paragraph 3 (except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of contract negotiations), or paragraph 6 of Schedule 12A. A document is not required to be available for inspection if advice provided by a political adviser or assistant would be disclosed.

#### **23.4 Nature of Rights**

These rights of a member are additional to any other right they may have in statute or at common law.

## 24 OVERVIEW AND SCRUTINY'S ACCESS TO DOCUMENTS

24.1 Within 10 working days of so requesting, an Overview and Scrutiny Committee or any member of the Overview and Scrutiny Committees (including task groups) will be entitled to copies of any document which is in the possession or control of the Executive or its committees and which contains material relating to:

24.1.1 any business that has been transacted at a meeting of a decision-making body of the Council;

24.1.2 any decision that has been made by an individual Executive Member in accordance with executive arrangements; or

24.1.3 any decision that has been made by an officer of the Council in accordance with executive arrangements except for documents, or parts of documents, which contain:

(a) advice provided by a political adviser; or

(b) exempt or confidential information, unless that information is relevant to:

(i) any action or decision that the Member is reviewing or scrutinising; or

(ii) any review contained in the work programme of the Overview and Scrutiny Committee.

Overview and Scrutiny will not be entitled to any document which is in draft form.

Where the Executive determines that a member of an Overview and Scrutiny committee is not entitled to a copy of a document or part of a document for a reason set out in (a) or (b) above, it will provide the Overview and Scrutiny Committee with a written statement setting out its reasons for that decision.

## **SCHEDULE 3 - BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

### **1 The framework for executive decisions**

The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the executive to implement it.

### **2 Process for developing the framework**

The process by which the budget and policy framework shall be developed is:

- 2.1 Not less than four months before a plan/strategy/budget forming a constituent element of the budget and policy framework needs to be adopted, the executive will publish initial proposals for the plan/strategy/budget, having first canvassed the views of local stakeholders as appropriate and in a manner suitable to the matter under consideration. Details of the executive's consultation process shall be included in relation to each of these matters in the forward plan and made available on the Council's web page. Any representations made to the executive shall be taken into account in formulating the initial proposals, and shall be reflected in any report dealing with them. If the matter is one where an overview and scrutiny committee has carried out a review of policy, then the outcome of that review will be reported to the executive and considered in the preparation of initial proposals.
- 2.2 The executive's initial proposals shall be referred to the relevant overview and scrutiny committee for further advice and consideration. The proposals will be referred by sending a copy to the Chief Executive who will forward them to the chairman of the relevant overview and scrutiny committee. If there is no such chairman, a copy must be sent to every member of that committee. The overview and scrutiny committee shall canvass the views of local stakeholders if it considers it appropriate in accordance with the matter under consideration, and having particular regard not to duplicate any consultation carried out by the executive. The overview and scrutiny committee shall report to the executive on the outcome of its deliberations. The overview and scrutiny committee shall have six weeks to respond to the initial proposals of the executive unless the executive considers that there are special factors that make this timescale inappropriate. If it does, it will inform the overview and scrutiny committee of the time for response when the proposals are referred to it.
- 2.3 Having considered the report of the overview and scrutiny committee, the executive, if it considers it appropriate, may amend its proposals before submitting them to the council meeting for consideration. It will also report to Council on how it has taken into account any recommendations from the overview and scrutiny committee.
- 2.4 The Council will consider the proposals of the executive and may adopt them, amend them, refer them back to the executive for further consideration, or substitute its own proposals in their place. In considering the matter, the Council shall have before it the executive's proposals and any report from any relevant overview and scrutiny committee.
- 2.5 The Council's decision will be publicised in accordance with Article 4 and a copy shall be given to the Leader. The notice of decision shall be dated and shall state either that the decision shall be effective immediately if the Council accepts the executive's proposals without amendment or if the executive's proposals are not accepted without amendment, that the Council's decision will become effective on the expiry of five

working days after the publication of the notice of decision, unless the Leader objects to it in that period.

- 2.6 If the Leader objects to the decision of the Council, s/he shall give written notice to the Chief Executive to that effect prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. Where such notification is received, the Chief Executive shall convene a further meeting of the Council to reconsider its decision and the decision shall not be effective pending that meeting.
- 2.7 The Council meeting must take place within ten working days of the receipt of the Leader's written objection. At that Council meeting, the decision of the Council shall be reconsidered in the light of the objection, which shall be available in writing for the Council.
- 2.8 The Council shall at that meeting make its final decision on the matter on the basis of a simple majority. The decision shall be made public in accordance with Article 4, and shall be implemented immediately.
- 2.9 In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the executive, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments). Any other changes to the budget and policy framework are reserved to the Council.

### **3 Decisions outside the budget or policy framework**

Subject to the provisions of paragraph 5 (virement) the executive, committees of the executive, individual members of the executive and any officers, or joint arrangements discharging executive functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full council, then that decision may only be taken by the Council, subject to 4 below.

If the executive, committees of the executive, individual members of the executive and any officers, or joint arrangements discharging executive functions want to make such a decision, they shall take advice from the monitoring officer and the chief financial officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.

### **4 Urgent decisions outside the budget or policy framework**

The Executive, a committee of the Executive, an individual member of the Executive or officers, or joint arrangements discharging executive functions may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:

- 4.1 if it is not practical to convene a quorate meeting of the full Council; and
- 4.2 if the chairman of a relevant overview and scrutiny committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of full Council and the chairman of the relevant overview and scrutiny committees' consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the chairman of a relevant overview and scrutiny committee the consent of the Mayor, and in the absence of both the Deputy Mayor, will be sufficient.

Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

## **5 Virement**

Steps taken by the executive, a committee of the executive an individual member of the executive or officers, or joint arrangements discharging executive functions to implement Council policy shall not exceed those budgets allocated to each budget head as determined by the Council. The cumulative value of virements between individual budget heads shall not exceed £100,000. Beyond that limit, approval for any virement between budget heads shall require the approval of the Cabinet. Income may be received above the budget level in a number of circumstances – budget adjustments for excess income are limited to £100,000 for each separate occasion. Beyond that limit, approval for any adjustment shall require the approval of the Cabinet.

## **6 In-year changes to policy framework**

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the executive, a committee of the executive an individual member of the executive or officers, or joint arrangements discharging executive functions must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- 6.1 necessary to ensure compliance with the law, ministerial direction or government guidance;
- 6.2 in relation to the policy framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.

## **7 Call-in of decisions outside the budget or policy framework**

Where an overview and scrutiny committee is of the opinion that an executive decision is, or if made would be, contrary to the policy framework, or contrary to the Council's budget, then it shall seek advice from the monitoring officer and chief financial officer.

In respect of functions which are the responsibility of the executive, the monitoring officer's report and chief financial officer's report shall be **presented** to the executive with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the executive must meet to decide what action to take in respect of the monitoring officer's report and to prepare a report to Council in the event that the monitoring officer or the chief finance officer conclude that the decision was a departure, and to the overview and scrutiny committee if the monitoring officer or the chief finance officer conclude that the decision was not a departure.

If the decision has yet to be made, or has been made but not yet implemented, and the advice from the monitoring officer and the chief financial officer is that the decision is or would be

contrary to the policy framework or contrary to or not wholly in accordance with the budget, the overview and scrutiny committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall **make arrangements for a meeting** within ten days of the request by the overview and scrutiny committee. At the meeting it will receive a report of the decision or proposals and the advice of the monitoring officer and the chief financial officer. The Council may either:

7.1 endorse a decision or proposal of the executive decision taken as falling within the existing budget and policy framework.

Or

7.2 amend the council's budget or policy framework to encompass the decision or proposal of the body or individual responsible for that executive function and agree to the decision with immediate effect.

Or

7.3 where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to the budget, and does not amend the existing framework to accommodate it, require the executive to reconsider the matter.

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## **SCHEDULE 4 - EXECUTIVE PROCEDURE RULES**

### **1 Persons making executive decisions**

The arrangements for the discharge of executive functions may be set out in the executive arrangements adopted by the Council. If they are not set out there, then the Leader may decide how they are to be exercised. In either case, the arrangements or the Leader may provide for executive functions to be discharged by:

- 1.1 the executive as a whole;
- 1.2 a committee of the executive;
- 1.3 an individual member of the executive;
- 1.4 an officer;
- 1.5 an area committee;
- 1.6 joint arrangements; or
- 1.7 another local authority.

### **2 Delegation by the Leader**

At the annual meeting of the Council, the Leader will present to the Council a written record of delegations made by him/her for inclusion in the Council's scheme of delegation at Part 3 to this Constitution. The document presented by the Leader will contain the following information about executive functions in relation to the coming municipal year:

- 2.1 the names, addresses and wards of the people appointed to the executive by the Leader;
- 2.2 the name of the Executive member who will serve as Deputy Leader;
- 2.3 the nature of the position to be held by each Executive Member;
- 2.4 the extent of any authority delegated to executive members individually, including details of the limitation on their authority;
- 2.5 the terms of reference and constitution of such executive committees as the Leader appoints and the names of executive members appointed to them;
- 2.6 the nature and extent of any delegation of executive functions to any other authority or any joint arrangements and the names of those executive members appointed to any joint committee for the coming year; and
- 2.7 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made;
- 2.8 In an election year the document referral to paragraph 1.2 may be presented by the member to the high Council meeting following the Annual Meeting, which may be a special meeting convened for that purpose.

### **3 Sub-delegation of Executive Functions**

Where the Executive, a Committee of the Executive or an individual member of the executive is responsible for an Executive Function, they may delegate further to joint arrangements or an officer.

Unless the Council directs otherwise, if the Leader delegates functions to the Executive, then the Executive may delegate further to a Committee of the Executive or to an Officer.

Unless the Leader directs otherwise, a committee of the executive to whom functions have been delegated by the Leader may delegate further to an officer.

Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

### **4 The Council's scheme of delegation and executive functions**

Subject to (b) below the Council's scheme of delegation will be subject to adoption by the Council and may only be amended by the Council. It will contain the details required in Article 7 and set out in Part 3 of this Constitution.

If the Leader is able to decide whether to delegate executive functions, s/he may amend the scheme of delegation relating to executive functions at any time during the year. To do so, the Leader must give written notice to the Chief Executive and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, committee or the executive as a whole. The Chief Executive will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.

Where the Leader seeks to withdraw delegation from a committee, notice will be deemed to be served on that committee when s/he has served it on its chairman.

### **5 Conflicts of Interest**

Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

If every member of the executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

If the exercise of an executive function has been delegated to a committee of the executive, an individual member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

### **6 Executive meetings**

The executive will meet every three weeks commencing at 6.00 p.m. at Marmion House or at such other times and place as it shall from time to time agree.

## **7 Quorum**

The quorum for a meeting of the Executive, or a committee of it, shall be one quarter of the total number of Members of the Executive (including the Leader), or three for the purposes of which the Leader will be included, whichever is the larger.

## **8 Decisions to be taken by the executive**

Executive decisions which have been delegated to the executive as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.

Where Executive decisions are delegated to a committee of the executive, the rules applying to executive decisions taken by them shall be the same as those applying to those taken by the Executive as a whole.

The executive are to reply to recommendations accepted from Full Council or the Scrutiny Committees within a 3 month period

## **9 Person presiding**

If the Leader is present s/he will preside. In his/her absence, then a person appointed to do so by those present shall preside.

## **10 Business**

At each meeting of the executive the following business will be conducted:

- 10.1 consideration of the minutes of the last meeting;
- 10.2 declarations of interest, if any;
- 10.3 questions from members of the public;
- 10.4 matters referred to the executive (whether by an overview and scrutiny committee or by the Council) for reconsideration by the executive in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- 10.5 consideration of reports from overview and scrutiny committees; and
- 10.6 matters set out in the agenda for the meeting, and which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution.

## **11 Consultation**

All reports to the executive from any member of the executive or an officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and relevant overview and scrutiny committees, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

## **12 Placing items on the executive agenda**

The Leader may put on the agenda of any executive meeting any matter which s/he wishes, whether or not authority has been delegated to the executive, a committee of it or any member or officer in respect of that matter. The Chief Executive will comply with the Leader's requests in this respect.

Any member of the executive may require the Chief Executive to make sure that an item is placed on the agenda of the next available meeting of the executive for consideration. If s/he receives such a request the Chief Executive will comply.

The Chief Executive will make sure that an item is placed on the agenda of the next available meeting of the executive where a relevant overview and scrutiny committee or the full Council have resolved that an item be considered by the executive. However, there may only be up to two such items on any one agenda.

There will be a standing item on the agenda of each meeting of the executive for matters referred by overview and scrutiny committees. However there may only be up to two such items per executive meeting.

Any member of the Council may ask the Leader to put an item on the agenda of an executive meeting for consideration, and if the Leader agrees the item will be considered at the next available meeting of the executive. The notice of the meeting will give the name of the Councillor who asked for the item to be considered. This individual will be invited to attend and may be invited to speak at the meeting, whether or not it is a public meeting. However, there may only be up to two such items per executive meeting.

The monitoring officer and/or the chief financial officer may include an item for consideration on the agenda of an executive meeting and may require the Chief Executive to call such a meeting in pursuance of their statutory duties. In other circumstances, where any two of the head of paid service, monitoring officer and chief financial officer are of the opinion that a meeting of the executive needs to be called to consider a matter that requires a decision, they may jointly include an item on the agenda of an executive meeting. If there is no meeting of the executive soon enough to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered.

## **13 Questions by the public**

### **13.1 General**

Members of the public may ask questions of members of the Executive at every ordinary meeting of the Executive.

### **13.2 Order of questions**

Questions will be asked in the order notice of them was received, except that the Leader may group together similar questions and may give preference to questions from members of the public who have asked the least number of questions previously.

### 13.3 Notice of questions

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than 5.00 p.m. two clear working days before the day of the meeting. . The following chart sets out the last day for submission of the question. Each question must give the name and address of the questioner.

Day of Meeting	Deadline for Notifications
Monday	5pm the previous Wednesday
Tuesday	5pm the previous Thursday
Wednesday	5pm the previous Friday
Thursday	5pm the previous Monday
Friday	5pm the previous Tuesday

This rule will be strictly applied to ensure fairness and equality for all questioners.

### 13.4 Number of questions

At any one meeting no person may submit more than one question and only one question may be asked on behalf of one organisation.

### 13.5 Scope of questions

The Chief Executive may reject a question if it:

- (a) is not about a matter for which the local authority has a responsibility or which affects the borough;
- (b) is defamatory, frivolous or offensive;
- (c) is substantially the same as a question which has been put at a meeting of the Executive in the past six months; or
- (d) requires the disclosure of confidential or exempt information.

### 13.6 Process in relation to questions

The Chief Executive will immediately send a copy of the accepted question to the member to whom it is to be put.

Copies of all questions will be circulated to all members and will be made available to the public attending the meeting.

### 13.7 Asking the question at the meeting

The Leader will invite the questioner to put the question to the Executive.

### **13.8 Supplementary Question**

A question asked under Rule 13.4 allows the questioner to ask one supplementary question without notice of the member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply. Rule 4.10.5 applies to the supplementary question. Rule 13.5 apply to the supplementary question.

### **13.9 Written answers**

Any question which cannot be dealt with during question time, either because of lack of time or because of the non-attendance of the member to whom it was to be put or for any other reason, will be dealt with by a written answer.

These answers will:

- Be published on the Council website as soon as practicable after the meeting, but in any event before the next ordinary meeting, and
- be attached to the minutes of that meeting.

### **13.10 Record of Questions**

As soon as practicable after the meeting, such answers, whether given orally at the meeting or in writing after the meeting, shall be published on the Council website and any written answers provided after the meeting shall be attached to the minutes of that meeting.

## SCHEDULE 5 - OVERVIEW AND SCRUTINY PROCEDURE RULES

1 The Council will operate overview and scrutiny committees as set out in Article 6 and will appoint to them as it considers appropriate from time to time. Such committees may appoint sub-committees. Overview and Scrutiny committees may also be appointed for a fixed period, on the expiry of which they shall cease to exist.

2 The terms of reference of the overview and scrutiny committees and sub-committees will be as set out in Article 6.

3 All councillors except members of the executive may be members of an overview and scrutiny committee or sub-committee. However, no member may be involved in scrutinising a decision which s/he has been directly involved.

4 Each overview and scrutiny committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees.

### 5 Meetings of the overview and scrutiny committees

There shall be at least four ordinary meetings of each overview and scrutiny committee in each **municipal** year. In addition, extraordinary meetings may be called from time to time as and when appropriate. An overview and scrutiny committee or sub-committee meeting may be called by the chairman of the relevant overview and scrutiny committee or sub-committee, by any three members of the committee or by the Chief Executive if s/he considers it necessary or appropriate.

### 6 Quorum

The quorum for an overview and scrutiny committee or sub-committee shall be as set out for committees in the **Non Regulatory Committee** Procedure Rules in Part 4 of this Constitution.

### 7 Chairmen of Scrutiny Committees

Chairmen of overview and scrutiny committees/sub-committees will be drawn from among the councillors sitting on the committee/sub-committee and appointed at the first ordinary meeting of the Council.

### 8 Work programme

a) The overview and scrutiny committees/sub-committees will be responsible for setting their own work programme and in doing so they shall take into account wishes of members on that committee who are not members of the largest political group on the Council.

Proposals for inclusion on the work programmes will require to be submitted in the form of a Work Programme Proposal Form through the Chair at a properly constituted meeting of the Committee and contain specific details of the subject proposed for scrutiny review along with the reasons for the proposal, the purpose of the proposal, the objectives of the proposal and officer support required. The Work Programme Proposal Form will be attached to the agenda for each overview and scrutiny committee.

c) The Committee will consider the proposal at paragraph b) above at the next properly constituted meeting of the Scrutiny Committee and decide whether the proposal is suitable for inclusion on the work programme.

- d) The Committee will decide on the terms of reference of the scrutiny review that is to be undertaken arising from any proposal accepted for inclusion on the work programme.

## **9 Agenda items**

Any member of an overview and scrutiny committee or sub-committee shall be entitled to give notice to the Chief Executive that s/he wishes an item relevant to the functions of the committee to be included on the agenda for the next available meeting of the committee. On receipt of such a request the Chief Executive will ensure that it is included on the next available agenda.

The overview and scrutiny committees and sub-committees shall also respond, **within two calendar months**, to requests from the Council, and if it considers it appropriate the Executive, to review particular areas of Council activity. Where they do so, the overview and scrutiny committee or sub-committees shall report their findings and any recommendations back to the executive and/or Council. The Council and/or the executive shall consider the report of the overview and scrutiny committee or sub-committee within one calendar month of receiving it.

## **10 Policy review and development**

The role of the overview and scrutiny committees and sub-committees in relation to the development of the Council's budget and policy framework is set out in detail in Schedule 3 the Budget and Policy Framework Procedure Rules.

In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, overview and scrutiny committees and sub-committees may make proposals to the Executive for developments in so far as they relate to matters within their terms of reference.

Overview and scrutiny committees and sub-committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration.

## **11 Reports from overview and scrutiny committee**

Once it has formed recommendations on proposals for development, overview and scrutiny committees and sub-committees will prepare a formal report and submit it to the Executive for consideration (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).

If an overview and scrutiny committee or sub-committee cannot agree on a single final report to the Council or executive as appropriate, then a minority report may be prepared and submitted for consideration by the Council or Executive with the majority report.

The Council or Executive shall consider the report of the overview and scrutiny committee or sub-committee at the next meeting of the Council or of the Executive or within one month of it being submitted, whichever is the soonest..

## **12 Meetings of Executive**

The agenda for executive meetings shall include a standing item entitled 'Issues arising from overview and scrutiny'. The reports of overview and scrutiny committees and sub-committees referred to the executive shall be included at this point in the agenda (unless they have been considered in the context of the executive's deliberations on a substantive item on the agenda) within one calendar month of the overview and scrutiny committee or sub-committee completing its report/recommendations.

Overview and scrutiny committees and sub-committees will in any event have access to the forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from an overview and scrutiny committee or sub-committee following a consideration of possible policy/service developments, the committee or sub-committee will be able to respond in the course of the executive's consultation process in relation to any key decision.

## **13 Rights of overview and scrutiny committee and sub-committee members to documents**

In addition to their rights as councillors, members of overview and scrutiny committees and sub-committees have the additional right to documents, and to notice of meetings as set out in Schedule 2 Access to Information Procedure Rules in Part 4 of this Constitution.

Nothing in this paragraph prevents more detailed liaison between the executive and overview and scrutiny committee and sub-committees as appropriate depending on the particular matter under consideration.

## **14 Members and officers giving account**

Any overview and scrutiny committee or sub-committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Executive, the head of paid service and/or any senior officer to attend before it to explain in relation to matters within their remit:

1. any particular decision or series of decisions;
2. the extent to which the actions taken implement Council policy; and/or
3. their performance.

and it is the duty of those persons to attend if so required.

Where any member or officer is required to attend an overview and scrutiny committee or sub-committee under this provision, the chairman of that committee or sub-committee will provide 30 days written notice by email to the said member or officer. All such notices are to be copied to the Chief Executive at the time it is sent to the member or officer. The notice will state the nature of the item on which s/he is required to attend to give account and whether any papers or reports are required to be produced for the committee or sub-committee.

Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the overview and scrutiny committee or sub-committee shall in

consultation with the member or officer arrange an alternative date for attendance to take place within a maximum of 15? working days from the date of the original request.

## **15 Power to co-opt members**

Overview and Scrutiny committees may co-opt members to its meetings to provide advice and information on specific points as required. No such co-opted members will be able to vote on any matter.

## **16 Attendance by others**

An overview and scrutiny committee or sub-committee may invite people other than those people referred to in paragraphs 14 and 15 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and shall invite such people to attend.

## **17 Call-in**

17.1 Call-in should only be used in exceptional circumstances. In particular Call-in should only be used where members of the appropriate Overview & Scrutiny committee or sub-committee have evidence which suggest that the Executive did not take the decision in accordance with the principles set out in Article 14 (Decision Making).

17.2 When a decision is made by the Executive, an individual member of the Executive or a committee of the Executive, or a key decision is made by an officer with delegated authority from the Executive, or under joint arrangements, the decision shall be published, by electronic means, and shall be available on the website and at the main offices of the Council normally within five working days of being made. All Members will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.

17.3 That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of seven working days after the publication of the decision, unless an overview and scrutiny committee or sub-committee calls it in.

17.4 During that period, should the Chief Executive receive in writing or by email by the Chair or any two members of an Overview & Scrutiny committee or sub-committee, s/he shall Call in a decision for Scrutiny by the relevant Overview and Scrutiny committee and shall then notify the decision-taker of the Call-in. Each request must provide  
(1) specific details for the reason for Call-in and  
(2) the areas requested to be examined.

The Chief Executive in consultation with the Solicitor to the Council & Monitoring Officer shall have the right to reject such requests if they are frivolous, unsubstantial or repetitious.

17.5 The Chief Executive shall within ten (10) working days of the request for Call-in make arrangements for a meeting of the Overview & Scrutiny committee or sub-committee on such date as the Chief Executive may determine (where possible in consultation with the Chair of the relevant Overview & Scrutiny Committee or sub-committee). The relevant Portfolio Holder from the Executive shall be invited to attend the Overview & Scrutiny committee or sub-committee to assist the consideration of the Call-in item.

17.6 The Overview & Scrutiny Committee or sub-committee convened to consider the Call-in can take one of three steps:

1. Take no further action. The Call-in item shall take effect on the date of the said Overview & Scrutiny committee or sub-committee meeting.
2. Refer the Call-in item back to the decision making body or person for full reconsideration. The Overview & Scrutiny committee or subcommittee that takes this step must set out in writing the nature of the concerns that it wishes the decision making body or person to be considered.
3. Refer the Call-in item to Council.

17.7 Should the meeting specially convened for the purpose of consideration of a Call-in item not take place then in that event the decision subject to Call-in shall take effect on the date of the said Overview & Scrutiny committee or sub-committee meeting.

17.8 Call-in items at steps 2 and 3 above shall be subject to the Chief Executive arranging a further meeting of the decision making body or Council within ten (10) working days of the Call-in meeting.

17.9 Where the Call-in item is referred back to the original decision making body it shall at the meeting consider the nature of the concerns referred to it from the specially convened Overview & Scrutiny committee. The decision making body shall decide whether to either:

- (i) Amend the earlier decision, or
- (ii) Uphold the earlier decision

It shall then adopt the final decision with immediate effect.

17.10 Should the Call-in matter arranged under paragraph 17.9 not take place then in that event the Call-in item shall take effect on the date of the meeting arranged for the decision making body.

17.11 Where the Call-in item was a decision made by an individual member of the Executive or by an officer with delegated authority from the Executive s/he shall consider the matter with (10) ten working days of the Overview & Scrutiny meeting.

In such referred to an event the decision maker shall consider the nature of the concerns him/her from the specially convened Overview & Scrutiny committee. .

17.12 The individual member or officer shall decide whether to

- (a) Amend the earlier decision or
- (b) Uphold the earlier decision

S/he shall then adopt the final decision with immediate effect.

17.13 Where the Call-in item is referred to Council. It shall at the meeting consider the nature of the concerns referred to it from the specially convened Overview & Scrutiny committee.

17.14 Should the Council decide to uphold the earlier decision this shall result in the matter referred to for Call-in taking effect on the date of the Council meeting.

17.15 Should the Call-in matter not be considered by Council or the meeting arranged under paragraph 17.13 then in that event the Call-in item shall take effect on the date of the meeting arranged for Council.

17.16 Council has no locus to make decisions of an Executive nature unless it is contrary to the policy framework or contrary to or not wholly consistent with the budget. Where Council proposes to amend the original decision it must refer the matter back to the original decision making body or person, together with the Council's views in writing on the decision.

17.17 In such circumstances the Chief Executive will make arrangements within ten (10) working days of the Council meeting for a further meeting of the decision making body. That meeting shall follow the procedure outlined in paragraph 17.9 and should the meeting not take place 17.10.

## **18 Exceptions to Call-In and Urgency**

The call-in procedure set out above shall not apply where the decision being taken by the executive is urgent. A decision will be urgent if any delay likely to be caused by the call in process would for example – seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Monitoring Officer in consultation with the Mayor must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Monitoring Officer and/or Mayor the appropriate his/her Deputy's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

## **19 The party whip**

When considering any matter in respect of which a member of an overview and scrutiny committee or sub-committee is subject to a party whip in respect of that particular item the member must declare the existence of the whip, and the nature of it before the commencement of the committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

## **20 Procedure at overview and scrutiny committee and sub-committee meetings**

Overview and scrutiny committees and sub-committees shall consider the following business:

20.1 minutes of the last meeting;

20.2 declarations of interest (including whipping declarations);

20.3 forward plan

- 20.4 consideration of any matter referred to the committee or sub-committee for a decision in relation to call in of a decision;
- 20.5 responses of the executive to reports of the overview and scrutiny committee or sub-committee; and
- 20.6 the business otherwise set out on the agenda for the meeting.

## **21 Investigations by overview and scrutiny committees**

Where the overview and scrutiny committee or sub-committee conducts investigations (e.g. with a view to policy development), the committee or sub-committee may also ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:

- 21.1 that the investigation be conducted fairly and all members of the committee or sub-committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- 21.2 .8 that those assisting the committee or sub-committee by giving evidence be treated with respect and courtesy; and
- 21.3 .9 that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

Following any investigation or review, the committee or sub-committee shall prepare a report, for submission to the executive and/or Council as appropriate and shall make its report and findings public.

## **22 Matters within the remit of more than one overview and scrutiny committee**

Where a matter for consideration by an overview and scrutiny committee also falls within the remit of one or more other overview and scrutiny committee(s), the decision as to which overview and scrutiny committee will consider it will be resolved by agreement between the chairman of the overview and scrutiny committee.

## **SCHEDULE 6 - FINANCIAL PROCEDURE RULES**

1. All employees and all Members must at all times when engaged on Council activities act in the interests of the Council as a whole.
2. All employees and all Members must comply at all times with these regulations wherever they apply.
3. All employees and all Members must act reasonably and within the spirit of the financial regulation framework.
4. All relevant financial interests must be declared to the Monitoring Officer.
5. All activities must be in accordance with:
  - 5.1 legislation;
  - 5.2 approved service plans or corporate plans;
  - 5.3 approved service net revenue budgets or capital programmes;
  - 5.4 relevant Council policies and adopted codes of practice.

Any material departures (actual or potential) must be reported formally to Members as soon as practicable.
6. Where practicable all activities should be in accordance with accepted best practice.
7. Best value and value for money must be sought in all activities, including the procurement of goods and services
8. Budgets at an appropriate level of detail must be prepared by the start of each financial year for all activities and units of the Council.
9. Material changes to financial policy or the distribution of resources must be referred to Cabinet for approval.
10. Service managers have primary responsibility for the control and management of all resources of all kinds made available to them.
11. All managers must ensure and regularly check that there is a full set of controls in every system under their management, including an adequate segregation of duties and an assessment of risk in all activities and decisions.
12. All employees must consider the need to seek appropriate views, advice and guidance before embarking on a course of action and particularly on a new course of action. This includes seeking advice from managers in other services, for example consulting the IS Manager on the procurement of information technology or the Accountancy Manager on the arrangement of leases.
13. All managers must ensure that all assets and personnel must be adequately secured or protected and appropriate insurance arranged where necessary.
14. Adequate records must be maintained of all transactions in all systems (a complete audit trail) and unrestricted access must be allowed to all assets and records for:
  - a) the Chief Executive
  - b) the Chief Finance Officer

- c) the Internal Audit Manager
- d) the Monitoring Officer
- e) external auditors and other statutory inspectors
- f) officers designated by any of the above.

Employees must supply information to those officers on request.

- 15.** Managers must routinely monitor all activities under their control and report on any significant variations from expected standards.
- 16.** Managers must report at regular intervals on performance on planned activities and on financial performance against approved budgets.
- 17.** All employees and all Members must report any suspected:
  - a) failure in any system;
  - b) failure to comply with financial regulations;
  - c) suspected criminal act, including fraud or corruption.

The report should normally be made to the line manager. Full guidance is provided in the Council's confidential reporting policy.

Any manager who suspects such an occurrence must take any immediate action necessary to rectify any failure in a control system and report the position to a relevant senior manager, who may include the Chief Executive, Chief Finance Officer, Monitoring Officer or Internal Audit Manager.

- 18.** The Chief Finance Officer shall, with the agreement of the Chief Executive and Monitoring Officer, issue detailed guidance on procedures to be followed in compliance with these regulations.
- 19.** All employees must comply with any applicable instructions or responsibilities specified in the guidance. In other respects all employees must act reasonably, having regard to the guidance and within the spirit of the guidance.

## SCHEDULE 7 - CONTRACTS PROCEDURE RULES

1 All employees must comply with these standing orders, the Public Contracts Regulations 2015 and with financial regulations when procuring goods and services.

5.2.1 All Directors have primary responsibility for ensuring compliance within their service areas.

5.2.2 Best value and value for money must be sought in all procurement activities. Competition must be sought in accordance with issued guidance.

5.2.3 Where the value of the goods and services is likely to be £50,000 or more the following requirements apply:

5.2.3.1 tenders must be sought from three suitably qualified suppliers

5.2.3.2 the supply must be governed by a written contract.

The only exception to these requirements shall be where the Cabinet has given authority in order to achieve best value.

5.2.4 Reasonable steps must be taken to manage risk throughout the procurement process and employees must have regard to the guidance that is issued for this purpose.

5.2.5 All potential suppliers of goods and services must be treated equitably.

5.2.6 In all procurement activities, arrangements must be clear regarding:

5.2.6.1 the goods or services to be supplied and the supply mechanisms;

5.2.6.2 the amount to be paid and the payment mechanisms;

5.2.6.3 the rights and responsibilities of all parties.

5.2.7 Employees must consider the need to seek appropriate views, advice and guidance before making a decision or embarking on a course of action related to procurement.

5.2.8 The Chief Finance Officer shall, with the agreement of the Chief Executive and Monitoring Officer, issue detailed guidance on procedures to be followed in compliance with these standing orders. Such guidance shall include procedures for securing competition, for regulating the manner in which tenders are invited and for managing risk.

5.2.9 Employees must comply with any applicable instructions or responsibilities specified in the guidance. In other respects employees must act reasonably, having regard to the guidance and within the spirit of the guidance.

## **SCHEDULE 8 - OFFICER EMPLOYMENT PROCEDURE RULES**

### **1 Recruitment and appointment**

#### Declarations

- 1.1 The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor, or officer of the Council; or of the partner of such persons.
- 1.2 No candidate so related to a councillor or an officer will be appointed without the authority of the Chief Executive or an officer nominated by him/her.

#### Seeking support for appointment

- 1.3 The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- 1.4 No councillor will seek support for any person for any appointment with the Council.

### **2 Recruitment of head of paid service and chief officers**

Where the Council proposes to appoint a head of paid service or a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- 2.1 draw up a statement specifying:
  - 2.1.1 the duties of the officer concerned; and
  - 2.1.2 any qualifications or qualities to be sought in the person to be appointed;
- 2.2 make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- 2.3 make arrangements for a copy of the statement mentioned in paragraph (a) (i) to be sent to any person on request.

### **3 Appointment of head of paid service**

The full council will approve the appointment of the head of paid service following the recommendation of such an appointment by an Appointments and Staffing committee of the Council consisting of five members appointed at the annual meeting. That committee must include at least one member of the executive.

The full Council may only approve the appointment of the head of paid service where no well-founded objection has been made by any member of the executive.

### **4 Appointment of chief officers**

The Appointments & Staffing Committee will recommend the appointment of the Statutory Officers – Head of Paid Service, Monitoring Officer and S151 Officer to Council for confirmation.

An offer of employment as a chief officer shall only be made where no well-founded objection from any member of the executive has been received.

## 5 Other appointments

**Officers below chief officer.** Appointment of officers below chief officer (other than assistants to political groups) is the responsibility of the head of paid service or his/her nominee, and may not be made by councillors.

**Assistants to political groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

## 6 Disciplinary action

**6.1 Suspension.** The Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (a Relevant Officer) may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and will last no longer than two months.

**6.2 CHIEF OFFICERS CONDUCT COMMITTEE.** No other disciplinary action may be taken in respect of any Relevant Officer except in accordance with a recommendation in a report made by the Chief Officers Conduct Committee

**6.3** Where it appears to the Council that an allegation of misconduct by a Relevant Officer requires to be investigated, the Chief Officers Conduct Committee will arrange for an investigation into the allegation to be carried out on its behalf

**6.4.** In the course of the investigation the Chief Officers Conduct Committee may direct:

6.4.1 that the Council terminate any suspension of the relevant officer and that they are reinstated;

6.4.2 that any such suspension must continue beyond the two month period in 6.1;

6.4.3 that the terms on which any such suspension has taken place must be varied in accordance with the direction; or

6.4.4 that no steps (whether by the Council or any Committee, Subcommittee or officer acting on behalf of the Council) towards disciplinary action or further disciplinary action against the relevant officer are to be taken before a report is made under 6.8 below.

**6.5** The Chief Officers Conduct Committee or a person acting on their behalf may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council or which the Council has the power to authorise them to inspect.

**6.6** The Chief Officers Conduct Committee or a person acting on their behalf may require any member of the Council's staff to answer questions concerning the conduct of the relevant officer.

**6.7** The Chief Officers Conduct Committee must make a report to the Council:

6.7.1 stating the committee's opinion as to whether (and if so, the extent to which) the evidence the committee has obtained supports any allegation of misconduct against the relevant officer; and

6.7.2 recommending any disciplinary action which appears to the committee to be appropriate for the Council to take against the relevant officer.

unless they have previously directed that the suspension be terminated and the officer reinstated.

**6.8** The Chief Officers Conduct Committee must, no later than the time at which they make a report under 6.7 above to the Council, send a copy of the report to the relevant officer.

**6.9** Before the taking of a vote at a meeting to consider whether or not to approve a proposal to dismiss a relevant officer the Council must take into account, in particular;

a) any advice, views or recommendations of the Chief Officers Conduct Committee

b) the conclusions of any investigation into the proposed dismissal; and

c) any representations from the relevant officer

**6.10** Members of the Council will not be involved in disciplinary action against any officer below deputy chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the Council's disciplinary, capability and related procedures, as adopted from time to time which may allow a right of appeal to members in respect of disciplinary action.

## **PART 5 - CODES AND PROTOCOLS**

**Member Code of Conduct**

**Officer Code of Conduct**

**Protocol of Member/Officer relations**

**Pre Election Protocol**

**Protocol on Member Involvement in Commercial Transactions**

**Protocol on the use of Council Facilities, Printing and Postage**

**Gifts and Hospitality**

**Local Protocol for Officers and Members dealing with Planning Matters**

**Monitoring Officer Protocol**

**Guidance notes to complete the Register of Interests**

**DRAFT**

## SCHEDULE 9 - MEMBERS' CODE OF CONDUCT

### Tamworth Borough Council Members' Code of Conduct

As a member or co-opted member of Tamworth Borough Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

**SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.

As a member or co-opted member of Tamworth Borough Council, my conduct will in particular address the statutory principles of the code of conduct by:

- 1 Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- 2 Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- 3 Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the Borough of Tamworth or the good governance of the authority in a proper manner.
- 4 Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.

- 5 Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- 6 Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- 7 Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- 8 Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- 9 Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- 10 Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- 11 Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

### **Registration of Interests**

The Localism Act further provides for registration and disclosure of interests and this will be done as follows:

The Solicitor and Monitoring Officer will maintain a register of members' interests in accordance with section 29 of the Localism Act 2011. The register of interests is a public document which must be published on the Council's web site.

#### The requirement to register interests

Members and co-opted members shall on the adoption of this code of conduct register any disclosable pecuniary interests as specified by the Relevant Authorities (Disclosable Pecuniary Interest) Regulation 2012. A copy of the statutory provisions and the regulations is set out in the schedule to this code.

A member or co-opted member must before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the Council notify the Solicitor and Monitoring Officer of any disclosable pecuniary interest which a person has at the time when notification is given or in the case of re-election or re-appointment any interests which have not been the subject of notification. A form will be provided for the convenience of members and co-opted members.

All interests declared whether or not disclosable pecuniary interests shall be entered on the register.

## The interests to be registered

- 12** Disclosable pecuniary interests as set out in the regulations<sup>1</sup> being the interest of:-
- 12.1 the member or co-opted member.
  - 12.2 the spouse or partner of the member or co-opted member.
  - 12.3 a person with whom the member or co-opted member is living as husband and wife or as if they were civil partners,
  - 12.4 and the member or co-opted member is aware that the other person has an interest.
- 13** Disclosable pecuniary interests<sup>2</sup> are:-
- 13.1 Employment, office, trade profession or vocation.
  - 13.2 Sponsorship.
  - 13.3 Contracts with the Council.
  - 13.4 Any interest in land in the Borough.
  - 13.5 Any licence to occupy land in the Borough.
  - 13.6 Corporate tenancies where the Council is the landlord and the tenant is a body in which any of the persons in paragraphs (a), (b) and (c) above have a beneficial interest.
  - 13.7 Securities such as shares in a body having a place of business in the Borough and the nominal value exceeds £25,000 or 1% of the issued share capital of that body or the class of shares held.

## Obligations in respect of matters considered at meetings or by a single member exercising executive functions

If a member or co-opted member is present at a meeting of the Council, the Cabinet, or any committee, sub-committee, joint committee or joint sub-committee of the Council has a disclosable pecuniary interest of which they are aware and the interest is not entered in the register of interests, the member or co-opted member must disclose the interest to the meeting unless the interest is a sensitive interest (see below) in which case only the fact that there is an interest need be disclosed.

Notice of the interest must be given to the Solicitor and Monitoring Officer within 28 days of disclosing it, unless the interest has already been registered or notice has already been given.

**If you have a pecuniary disclosable interest in any business you cannot participate, or participate further, in any discussion of the matter at the meeting or participate in any vote, or further vote taken on the matter at the meeting.**

Standing order 21.6 provides that a member with a disclosable pecuniary interest must withdraw from the room in which the meeting is being held.

Where a single member exercising executive decisions has a disclosable pecuniary interest in any matter being dealt with by that member in discharging that function, notice of the interest must be given to the Solicitor and Monitoring Officer within 28 days of disclosing it, unless the interest has already been registered or notice has already been given and the member must not take any further steps in relation to the matter except for enabling the matter to be dealt with by another member.

## Voluntary registration and declaration of interests – guidance

<sup>1</sup> The Relevant Authorities (Disclosable Pecuniary Interest) Regulation 2012.

<sup>2</sup> See the regulations for the full definition.

If a member or co-opted member has other interests which do not constitute a disclosable pecuniary interest, it would be good practice and in accordance with principle of openness to consider whether in all the circumstances such interests should be notified to the Solicitor and Monitoring Officer for inclusion in the register of interests.

Members and co-opted members should also consider whether such interests might be viewed by other people as prejudicing the proper consideration of business in the public interest and whether such interests should be disclosed to the meeting. Members and co-opted members should also decide whether or not to take part in the discussion and any vote where an interest is disclosed. Particular consideration should be given to other interests in the case of planning and licensing decisions.

The Solicitor and Monitoring Officer will be available to provide general guidance to members and co-opted members.

### Sensitive interests

If a member or co-opted member considers that disclosure of an interest could result in that person or a connected person being subject to violence or intimidation an application should be made to the Solicitor and Monitoring Officer for details of that interest to be excluded from the register.

### Dispensations

If the number of members prohibited from participating in any business would be so great a proportion of the number of members transacting the business as to impede the transaction of the business, the Council, acting by the Audit and Governance Committee may grant a dispensation in appropriate terms for a period not exceeding four years.

### Criminal offences

Failure, without reasonable excuse to comply with the statutory provisions relating to disclosable pecuniary interests is a criminal offence which on summary conviction carries a maximum fine of £5,000 and may lead to disqualification for a maximum period of five years for being or becoming a member or co-opted member of a local authority.

Section 34 of the Localism Act (see the schedule) sets out the offences.

### Gifts and Hospitality

This Code and Schedule 15 of the Constitution (Gifts and Hospitality) require to be followed in conjunction with each other.

I .....

being a member or co-opted member of Tamworth Borough Council agree to be bound by the provisions of this code of conduct.

Dated.....

## SCHEDULE 10 - OFFICERS' CODE OF CONDUCT

### CODE OF CONDUCT FOR EMPLOYEES

#### 1. INTRODUCTION

- 1.1 The public is entitled to expect the highest standards of conduct from all local government employees.
- 1.2 This Code is based on a model produced, after consultation, by the local authority associations and the Local Government Management Board. It has been developed to take into account Tamworth Borough Council corporate policies. Consultations have also taken place locally with the Trade Unions. A copy is issued to every employee.
- 1.3 This Code takes into account "The Seven Principles of Public Life" which are included in the Nolan Committee's report on "Standards in Public Life". These are; selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

#### 2. STATUS OF THE CODE

- 2.1 The Council has chosen to adopt the Code of Conduct. The Code sets out minimum standards that employees should observe. It lays down guidelines for employees to help maintain and improve standards and protect employees from misunderstanding or criticism.

#### 3. SCOPE OF THE CODE

- 3.1 The Code applies to all employees, casuals, and volunteers of Tamworth Borough Council. Where appropriate our partners and contractors are also expected to be aware of our code and comply with the minimum standards.
- 3.2 Activities carried out by Council employees acting as members of companies or voluntary organisations are subject to the minimum standards within this Code.

#### 4. STANDARDS

- 4.1 As a Tamworth Borough Council employee you are expected to give the highest possible standard of service to the public. You have the following duties;
  - (i) A duty of service - to work in accordance with your contract of employment; e.g. - not to be absent or late without permission.
  - (ii) A duty to carry out reasonable instructions, procedures and regulations.
  - (iii) A duty to care - to be competent and capable and not to be negligent in work.
  - (iv) A duty of good faith - to be honest and not accept a fee or commission or gifts from those who do business with the Council or to divulge confidential information about the Council.

##### ***Personal Standards***

- 4.2 As a Tamworth Borough Council employee you are expected to;
  - (i) Be positive, helpful and co-operative in dealing with colleagues, Members and the public.
  - (ii) Provide impartial advice to councillors and colleagues.

(iii) Remember that as a Council employee your primary responsibility is to the community as expressed by the corporate policies of the Council. You should not allow departmental or sectional or other interests to take precedence over corporate policies. Within these policies you should respect the defined roles of departments, service centres and colleagues and avoid conflict and disharmony within the organisation.

(iv) Remember that you are accountable for your actions and decisions and be prepared to submit yourself to whatever scrutiny is appropriate to your office.

(v) Ensure that your personal appearance is consistent with public expectations, bearing in mind the work you do.

(vi) Bring to the attention of the appropriate level of management any deficiency in the provision of service.

(vii) Report to the appropriate manager any serious impropriety or breach of procedure. (see Whistleblowing Policy and the Counter Fraud & Corruption Strategy)

### **Competence Standards**

4.3 As an employee you are expected to perform your duties with:

- (i) due care,
- (ii) competence,
- (iii) diligence, and continue to maintain such standards.

4.4 If you hold a specific technical and professional qualification you should:

- (i) carry out your duties in accordance with the standards set by your professional body;
- (ii) conform with any guidelines on ethics produced by your professional body.

### **Council Policies, etc.**

4.5 The Council has a Constitution, Financial Rules and a number of corporate policies which you should familiarise yourself with. The Scheme of Delegation will set out the responsibility for certain decisions and care should be taken to ensure you have the correct authorisation to carry out tasks you are undertaking.

4.6 Your section or directorate will have specific rules, procedures and codes of practice which apply to the particular department workplace and type of work in which you are engaged. These rules are communicated by management in various ways, including oral instructions, procedure manuals, notices, information sheets the Council's website and intranet and e-mail.

4.7 You are expected to comply with these rules and policies in carrying out your duties.

## **5. DISCLOSURE OF INFORMATION**

5.1 The law requires certain types of information to be available to councillors, auditors, government departments, and the public. This 'access' legislation has two main Acts, the first being the Freedom of Information Act 2000 (FOI) that provides a right to request access from the general public for information the council holds. The second is the Data Protection Act 1998 (DPA) that provides a right of access by a person of which we may hold your personal information.

With regard to FOI regularly requested information should be available on the Council's Publication Scheme. Copies are available from your Manager or on the Council's website.

- 5.2 Employees are expected to be open, informative and truthful in dealing with colleagues, members and the public and to provide the information under any entitlement to FOI, DPA and in accordance with any Data Sharing Protocols. If you are not sure what should be made available, you should find out from your manager or the designated manager dealing with this access legislation.
- 5.3 There is a balance between the right of access and the right to withhold information, this is laid down in exemptions to the Acts, where by disclosure of such information would be unfair to any individual or cause harm to the council and its business partners both financially or reputation. Care must be taken by employees not to disclose information that could be seen to create these situations.
- 5.4 Any information obtained in the course of your employment should not be used for your personal gain or benefit, and you should not pass it on to anyone else who could use it for his or her benefit. Do not divulge any personal information about a fellow employee, member of the public or a Councillor without permission unless disclosure is required by law.
- 5.5 Under the Data Protection Act 1998 it may be an offence to obtain, hold or disclose personal data on others in a way which exceeds the normal completion of your duties.

The Council has rules concerning personal data and other confidential information set out overleaf and certain areas of the Council also have more specific rules or procedures concerning personal data. Breach of these may lead to action under the Council's Conduct and Capability Policy. If you are in doubt whether it is legal or appropriate to procure, keep or disclose information relating to any individual(s) you should refer to your manager for guidance.

Under the scheme of delegation only employees authorised to do so may talk to the press or otherwise make personal statements on behalf of your service, directorate or the Council.

- 5.6 Employees should not bring the council into disrepute by placing on record personal opinions about the council; recording footage not conducive with council business whilst on the premises or engaged in council business on social media sites. Employees are urged to be cautious when using social media sites and understand that anything posted on such sites are available to a wide audience and will reflect on the Council, even if they are your personal views. Care should be taken to ensure any comments should not undermine your position as a professional, trusted and responsible person. Employees should be aware that any disrespectful comments - including bullying and harassment will be dealt with under our Grievance Policy and may result in disciplinary action.

## **6. POLITICAL NEUTRALITY**

- 6.1 Employees serve the authority as a whole. You must ensure that the individual rights of all Councillors are respected.
- 6.2 You may be invited to advise political groups. Do so in a way that does not compromise your political neutrality. If you are in a politically restricted post you must ensure that you comply with the requirements of such posts.
- 6.3 All employees whether or not politically restricted must follow all lawful policies of the Council and must not let your own personal or political opinions interfere with your work.

## **7. RELATIONSHIPS WITH: -**

### ***Councillors***

- 7.1 You are responsible to the Council through your senior managers. Mutual respect between you and Councillors is essential for good local government. Avoid over familiarity with individual councillors, which could damage your relationship with and/or prove embarrassing to other employees and councillors. This can include socialising with councillors outside of work, accepting gifts or carrying out work on behalf of individual councillors (where this is not within their duties as a committee member or other office) within your working time. Where you have an existing relationship with a councillor, this should be declared to your line manager upon appointment.

## **The Local Community and Service Users**

- 7.2 Always remember the Council's responsibility is to the community and give a courteous, efficient and impartial service to all groups and individuals within the Council's policies. Try to be positive, constructive and inclusive. When necessary make extra efforts to communicate with people with disabilities in accordance with Council policies.

## **Contractors**

- 7.3. All relationships of a business or private nature with external contractors, or potential contractors, should be declared to your Director (see paragraph 10.1 below). If employees engage or supervise contractors or deal with suppliers on behalf of the Council then you must record any past or present business/private relationships with those organisations with the Solicitor/Monitoring Officer and keep your Director informed.
- 7.4 Orders and contracts must be awarded on merit, by fair competition against other tenders, in accordance with the Council's procedures and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

## **8. APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

- 8.1 If employees are involved in the appointment of staff you must follow the Council's Recruitment & Selection Policy. If you are related to an applicant, or have a close personal relationship with one outside work, you must declare it to the Human Resources.
- 8.2 You should not be involved in decisions about discipline, promotion or pay adjustments for someone with whom you have a close personal relationship.

## **9. OUTSIDE COMMITMENTS**

- 9.1 Employees should not take outside employment which conflicts with your Council's interests. You are required to obtain consent from your Director (see paragraph 10.1 below) before taking any outside employment (paid or unpaid) or business. A secondary employment form (Appendix 1) should be completed and submitted to your Director and then to Solicitor/Monitoring Officer via HR.
- 9.2 You should comply with any Council rules about the ownership of intellectual property and copyright in work done by you during your employment with the Council. If in doubt you must consult your Head of Service, the Solicitor/Monitoring Officer or the Director Technology & Corporate Programmes.

## **10. PERSONAL INTERESTS**

- 10.1 Employees must declare to your Director (\*see table below) any financial or non-financial interests that you consider could conflict with the Council's interests, or could cause your conduct to be questioned. Such interests must be registered with the Solicitor/Monitoring Officer.

### **Reporting hierarchy for financial and non-financial interests**

#### **Officer:**

Chief Executive  
Director  
Head of Service  
All other employees

#### **Reports to:**

Solicitor/Monitoring Officer  
Chief Executive  
Director  
Director

- 10.2 Employees must declare to your Director membership of any organisation not open to the public without formal membership and commitment of allegiance, and which has secrecy about rules,

membership or conduct. If you are a member of an organisation of this type you must register this with the Solicitor/Monitoring Officer.

- 10.3 When attending meetings of the Council or its Committees you should declare any financial interest in any item and withdraw from the meeting while the matter is under consideration unless authorised to remain in the meeting by the Members present.

## **11. EQUALITY ISSUES**

- 11.1 Employees must comply with and promote the Council's equality policies and other corporate policies. The public and employees have a right to be treated with fairness and equity.

## **12. SEPARATION OF ROLES DURING TENDERING**

- 12.1 If employees are involved in the tendering for Council contracts or dealing with contractors you should be clear about the separation of client and contractor roles within the authority. You must comply with the Council's Contract Procedure Rules and Financial Regulations. You must be aware of the need for accountability and openness but also respect the need for commercial confidentiality.
- 12.2 If employees are in a contractor or client unit you must deal with customers, suppliers, other contractors and sub-contractors fairly and impartially.
- 12.3 If employees see confidential information on tenders or costs for either internal or external contractors you must not disclose that information to any unauthorised person.
- 12.4 If employees intend to participate in a management or employee buyout you must inform the Chief Executive or your Director and record this with the Solicitor/Monitoring Officer, you must withdraw from the contract awarding processes immediately.
- 12.5 Employees must not treat current or former employees or your partners, close relatives or associates more or less favourably than other people when considering the award of contracts to businesses run by them or employing them.

## **13. BRIBERY**

- 13.1 It is a serious criminal offence to receive or give any gift, loan, fee, reward or advantage. If an allegation is made you may have to demonstrate that any such rewards have not been obtained that would be seen as a bribe. The definition of Bribery (as per the Bribery Act 2010) is detailed in the Counter Fraud & Corruption Policy Statement, Strategy & Guidance Notes.

## **14. USE OF FINANCIAL RESOURCES**

- 14.1 Employees must ensure that you use public funds entrusted to them in a responsible and lawful way. You should try to obtain value for money to the local community and avoid legal challenge to the authority. You must comply with the Council's Financial Regulations.

## **15. HOSPITALITY AND GIFTS**

### **15.1 *Introduction***

As public service employees, Council staff must act, and be seen to act, with the highest standards of integrity. In the course of your work you may encounter situations, which, if not handled properly, could call your integrity into question. Examples of such situations include being offered tokens of appreciation or opportunities to meet socially with contractors or suppliers to the Council. This Guidance aims to help them to deal with such situations.

The over-riding principle is that all employees, your family, your friends or any organisation of which you are a member or with which you are closely associated should not accept any gift, consideration or hospitality that would call into question:

- your honesty;
- your ability to deal impartially and equitably with all service users, potential or actual contractors or suppliers;
- your commitment and ability to pursue the best interests of the Council.

If you would feel uncomfortable giving an account of your actions to management or reading an account of your actions on the front page of the local newspaper – don't take the action.

To protect you and the Council there is a Register of Disclosures and Interests and a Register of Gifts and Hospitality held by the Solicitor/Monitoring Officer

This Guidance should help all employees understand what to register. If you need any guidance or advice on matters raised in this document, you can speak to your manager or to the Solicitor/Monitoring Officer.

## 15.2 **Gifts**

Employees must not seek gifts, additional payments or any other personal advantage (such as discounts or free services) from any service user, potential or actual contractor or supplier.

You must not accept payments or any other form of personal advantage from any service user, potential or actual contractor or supplier. The only exception to this is that some service users like to "tip" employees, particularly at Christmas. Small tokens of appreciation may be accepted in such circumstances but a record must be kept of tips received. The record should be given to the most senior employee at the work place who will then pass it to your 'off-site' manager.

You may accept gifts of token value such as pens, diaries, etc. from potential or actual contractors or suppliers. Such gifts may be kept for your personal or business use. You should, however, be aware of the adverse impression that may be created for competitors seeking to do business with the Council.

You may accept gifts with nominal value from visitors to the Council when the gifts are proffered as tokens of friendship between Tamworth Borough and the visitors' hometown or country.

If employees receive a gift of more than token or nominal value and it would cause offence or be impracticable to return it, you should register the gift (see below) and inform your manager. Such gifts will normally either be donated to a charity or may, if suitable, be kept for use on Council premises.

If you are offered a gift and you believe or suspect that the offer is made with the intention of influencing you to give favourable treatment to a service user, potential or actual contractor or supplier, you must inform your Director, or the Chief Executive.

## 15.3 **Hospitality**

You must not solicit hospitality (for example meals, tickets to sporting or cultural events) from any service user, potential or actual contractor or supplier.

You must not accept offers of hospitality unless you have the permission of your Director or the Chief Executive. Hospitality, which you have permission to accept, must be registered in the Register of Gifts and Hospitality. Permission will not normally be granted for hospitality that requires overnight accommodation at the host's expense.

You should not allow a potential or actual contractor or supplier to pay for them to visit your sites or premises to inspect your goods or services. If such visits are necessary, the Council will meet the

costs involved. When visiting potential or actual contractors or suppliers you may accept refreshments appropriate to a work situation.

You do not need prior permission to accept a meal which is offered in work-related circumstances and which would enable your work to be expedited, provided that the costs are reasonable in the circumstances.

You do not need prior permission to accept modest hospitality offered at conferences and courses provided that the hospitality is offered to a number of people in similar roles (i.e. is corporate) rather than personal.

If you are offered hospitality and you believe or suspect that the offer is made with the intention of influencing them to give favourable treatment to a service user, potential or actual contractor or supplier, you must inform your Director, or the Chief Executive.

#### 15.4 **Prizes**

If you enter competitions or prize draws associated with your work (i.e. a prize draw during a training course or for completing feedback/survey). These prizes should be declared but you will be eligible to claim them for personal use.

#### 15.5 **Registers of Disclosures and Interests and Gifts and Hospitality**

The Council's Register of Disclosures and Interests and Register of Gifts and Hospitality are held by the Solicitor/Monitoring Officer

Electronic copies of forms for registering interests, gifts, hospitality etc. can be obtained from on-line forms on the Intranet. Completed forms should be e-mailed to the Solicitor/Monitoring Officer or, if in hard copy format, sent to Marmion House in an envelope clearly marked as Confidential

#### 15.6 **Confidential Reporting or Whistleblowing**

If employees believe or suspect that a colleague in the Council or any service user, potential or actual contractor or supplier is involved in corrupt or questionable practices, you should refer to the Counter Fraud and Corruption Strategy and/or the Whistleblowing Policy. These policies detail the relevant reporting procedures.

### 16. **SPONSORSHIP - GIVING AND RECEIVING**

16.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

16.2 When the Council sponsors an event or service neither you nor your partner, any relative or personal friends must benefit from the sponsorship in a direct way without there being full disclosure to your Director.

You must register any such interest with the Solicitor/Monitoring Officer.

16.3 Where the Council through sponsorship, grant aid, financial or other means is giving support in the community, and you are giving advice ensure that it is impartial and that there is no conflict of interest involved.

### 17. **DISCIPLINARY RULES**

17.1 This Code forms part of the Council's Conduct Rules. The rules applied are those of normal good conduct. The rules are expressed in the Council's Conduct & Capability Policy, which has the aims of establishing and maintaining a fair and equitable standard of discipline throughout the Council and encouraging improvements in conduct.

17.2 All employees should have a copy of the Council's Conduct & Capability. If you do not have one please contact your Manager or Human Resources.

DRAFT

**Secondary Employment Request Form**

*Please complete in full and forward to the Human Resources Department where the information will be kept on your personal file.*

The Council will permit you to undertake additional work providing the Council is satisfied that this does not conflict with the following:

- The interests of the Council
- The performance of your normal duties
- The requirements of the Working Time Regulations

**Your Personal Information**

<b>Name:</b>	<b>Service:</b>
<b>Position:</b>	<b>Grade:</b>
<b>Line Manager:</b>	

**Secondary Employment Information**

Please note that ALL employment voluntary/paid or unpaid MUST be declared.

<b>Name of Employer/Business:</b>		<b>Position:</b>
<b>Line Manager:</b>		<b>Contact No:</b>
<b>Total working hours:</b>	<b>Days and hours of work</b>	
Nature of work (description of duties and responsibilities)		

**Additional Information**

There will/will not be instances where my Secondary Employment will conflict with my work at Tamworth Borough Council (this could mean conflict in time or where the performance of your duties at Tamworth Borough Council is affected)

Please circle as appropriate: YES NO

If yes, please give details:

I confirm that the above information is correct and that my secondary employment in this instance will not have a conflict of interest with, or have a detrimental effect on, my work at Tamworth Borough Council. I will inform my Director in writing if there are any changes to the above. I understand and accept that false information given with regard to this secondary employment could be investigated under the Council's capability and conduct policy.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(Employee's signature)

Printed Name: \_\_\_\_\_

I agree to the employee taking on Secondary Employment in accordance with the above information:

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(Director)

Printed Name \_\_\_\_\_

## SCHEDULE 11 - PROTOCOL FOR MEMBER/OFFICER RELATIONS

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## **1 Underlying Principles**

Members and officers are bound by their respective Codes of Conduct which seek to promote the highest ethical standards. This protocol supports those codes and is intended to promote mutual respect between members and officers with regard to their respective roles as set out below and in the Council's Constitution.

## **2 The role of Members**

- 2.1 To promote the social, economic and environmental well-being of the community.
- 2.2 Collectively be the ultimate policy makers and decision makers and carry out a number of strategic and corporate functions.
- 2.3 Represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities.
- 2.4 Deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances.
- 2.5 Balance different interests identified within the ward and represent the ward as a whole.
- 2.6 Be involved in decision making.
- 2.7 Be available to represent the Council on other bodies.
- 2.8 To promote the highest standards of conduct and ethics.
- 2.9 To act collectively as the employer of the staff.
- 2.10 To act in a specific capacity listed below where appointed so to do by the Council in accordance with the Constitution.

Chairman of the Council  
Leader of the Executive  
Executive member  
Portfolio holder (with or without delegated authority)  
Chairman of a Scrutiny Committee  
Member of a Scrutiny Committee  
Chairman of a committee other than Scrutiny  
Representing the Council on outside bodies

## **3 The role of officers**

- 3.1 To initiate and to implement the policies set and the decisions made by members.
- 3.2 To provide professional and technical advice to members.
- 3.3 To carry out those functions delegated to officers.
- 3.4 To provide reasonable help, support and advice to all members.
- 3.5 To represent the Council on outside bodies.

- 3.6 To act in a specific capacity listed below where appointed so to do by the Council.

The Head of Paid Service (as defined by the Local Government and Housing Act 1989 section 4) has the following functions and duties:

to prepare proposals for the consideration of the Council as to the co-ordination of the discharge of the Council's functions; the number and grades of staff that are required to discharge those functions; the organisation of the Council's staff; and the appointment and proper management of the Council's staff.

The Monitoring Officer (as defined by the Local Government and Housing Act 1989 section 5) has the following functions and duties:

to prepare reports for the consideration of the Council where it appears to her/him that any proposal, decision or omission by the Council, a committee, sub-committee, or officer has given rise or is likely to give rise to a contravention of any statute or maladministration or injustice as mentioned in Part III of the Local Government Act 1974.

The Chief Financial Officer (as defined by the Local Government Act 1972 section 151) has the following functions and duties:

to prepare reports for the consideration of the Council where it appears to him that any committee, sub-committee, or officer has or is about to make a decision which involves or would involve the Council incurring expenditure which is unlawful; or has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and is likely to cause a loss deficiency to the Council; or is about to enter an item of account, the entry of which would be unlawful.

#### **4 The Relationship between officers and members**

- 4.1 The relationship between officers and members should be characterised by mutual respect which is essential to good local government.
- 4.2 Close personal familiarity between individual members and officers can damage professional relationships and prove embarrassing to other members and officers. Situations should be avoided that could give rise to suspicion and any appearance of improper conduct. This includes excessive socialising between members and officers.
- 4.3 Any dealing between members and officers should be conducted with courtesy and respect and neither party should seek to take unfair advantage of their position. In particular, members should recognise and pay due regard to their role as an employer in their dealings with officers.
- 4.4 The Council has statutory duties with regard to equalities issues to positively promote equality. Members and officers shall not by their behaviour or speech be discriminatory with regard to a person's ethnicity, gender, disability or sexual orientation. Such principles shall apply to the implementation of all personnel policies, recruitment and promotion as they apply to day to day operations.
- 4.5 Members should not raise matters relating to the conduct or capability of a Council employee or of the employees collectively at meetings held in public or the Press. Employees have no means of responding to criticism like this in public. (If members feel they have not been treated with proper respect, courtesy or have any concern

about the conduct or capability of a Council employee they should raise the matter with the Chief Officer of the department concerned if they fail to resolve it through direct discussion with the employee.)

- 4.6 Members should not require any officers to change their professional advice nor to take any action which the officer considers unlawful or illegal or which would amount to maladministration or breach of a statutory code of conduct.
- 4.7 Members should consult with the Monitoring Officer and the Chief Finance Officer about legality, maladministration, financial impropriety and probity or where they have any doubt as to whether the particular decisions were or are likely to be contrary to the policy framework or budget.
- 4.8 In seeking advice and support members should have due regard to the seniority of the officer with whom they are dealing and the fact that, while those officers owe duties to the Council as their employer such duties are first expressed to their respective manager and the Chief Executive and not to any individual member. For this reason members should not give direct instructions to staff unless authorised so to do by the Constitution. If so authorised instructions shall be given to the relevant chief officer rather than a more junior member of staff.

## **5 The relationship between the Overview and Scrutiny Committees and officers (when Executive decisions are being scrutinised)**

- 5.1 The Council's Overview and Scrutiny Committees shall seek the advice of the Monitoring Officer where they consider there is doubt about the legality of Executive decisions or the Monitoring Officer and other appropriate officers where they consider a decision of the Executive might be contrary to the policy framework.
- 5.2 When considering call officers to give evidence the Committee shall not normally, without the consent of the relevant Chief Officer, request the attendance of a junior officer to ensure that more junior officers are not put under undue pressure.
- 5.3 When asking officers to give evidence before the Committee questions should be confined, so far as possible, to questions of fact and explanation and professional opinion relating to policies and decisions.
- 5.4 Where they consider it appropriate the Committee may ask officers to explain advice given to members (of the Executive) prior to decisions being taken and explain decisions they themselves have taken under the Scheme of Delegation.
- 5.5 The Committee shall not question officers in such a manner whereby the nature and frequency of the questions or tone or language used could be considered by a reasonable person to be harassment, discriminatory or otherwise unacceptable nor deal with matters which are of a possible disciplinary/capability nature.
- 5.6 The Committee shall, at all times, respect the political impartiality of the officers and must not expect officers to give a political view.

## **6 Officer relationships with party groups**

- 6.1 It must be recognised by all officers and members that in discharging their duties officers serve the Council as a whole and not exclusively any political group, combination of groups, or any individual members.

- 6.2 Officers may properly be called upon to support and contribute to the deliberations of political groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner.
- 6.3 The support provided by officers can take many forms, ranging from a briefing with the Leader of the Executive, the leaders of other political groups, or chairmen of committees, to a presentation to a full party group meeting.
- 6.4 Any request for advice given to a political group or member will be treated with strict confidence by the officers concerned and will not be accessible to any other political groups. Factual information upon which any advice is based will, if requested, be available to all political groups.
- 6.5 When attendance is requested for political group meetings
  - 6.5.1 the request to attend a group meeting must be made through the Chief Executive;
  - 6.5.2 unless otherwise agreed by the Chief Executive, officers will not attend party group meetings which include persons who are not members of the Council or be present at purely party political discussions;
  - 6.5.3 such a request can only be made in relation to Council business;
  - 6.5.4 officers must respect the confidentiality of any party group discussions at which they are present.

## **7 Members in their ward role**

- 7.1 When acting in their ward role members:
  - 7.1.1 need to be mindful of their competing roles, i.e. acting for the Council and acting for constituents, and the possible conflicts of interest that can arise and the pressure this can bring on officer time;
  - 7.1.2 recognise the officer's right to suggest that senior officers, the Executive (Council) or a committee should authorise additional work requested by individual members.

## **8 Member access to documents and information**

- 8.1 Save as provided below every member of a committee, sub-committee or the Executive (Council) has a right to inspect documents about the business of that committee, sub-committee or the Executive (Council).
- 8.2 A member who is not a member of a specific committee, sub-committee (or the Executive) may have access to any documents of that part of the Council if they satisfy the Council's Monitoring Officer that they reasonably need to see the documents to perform their duties.
- 8.3 A member is not entitled to inspect any document or have access to any information about a matter in which they have a disclosable interest or where to do so would be in breach of any statutory provision.

## **9 Press releases and correspondence (including e-mails)**

- 9.1 Press releases must operate within the limits of the Local Government Act 1986 which prohibits the Council from publishing material which appears to be designed to affect public support for a political party.
- 9.2 Council press releases are drafted by officers and may contain quotations from the Leader of the Executive, a relevant portfolio holder or chairman, or local member. Press releases about ceremonial events may contain a quotation from the Mayor or Deputy Mayor of the Council. Quotations will generally be made by members rather than officers ( except when this would be inappropriate for example because of the subject matter or if it were in a pre election period)
- 9.3 All correspondence written on behalf of the Council must be written on the relevant headed paper.
- 9.4 When members are writing they must make it clear whether they are writing on behalf of the Council or as the ward member.
- 9.5 All correspondence should be open to the inspection of the public and in accordance with the Council's adopted policies. This does not apply to correspondence written in connection with legal proceedings, contractual matters or any other matter where papers can remain "exempt" within the meaning of Schedule 12A to the Local Government Act 1972, as amended or if it is in conflict with the data protection legislation.

## **10 Enforcement**

- 10.1 Any complaint that an officer has breached the terms of this protocol shall be referred to the Head of Paid Service for appropriate action under the Council's employment procedures.
- 10.2 Any complaint that a member has breached the terms of this protocol shall be referred to the Monitoring Officer for referral to the Audit & Governance Committee if the conduct would otherwise amount to a breach of the Council's Code of Conduct.
- 10.3 Where a complaint against a member involves conduct that would not otherwise breach the Council's Code of Conduct it will be referred to the Head of Paid Service for discussion with the Leader of the relevant political group. Where it is not possible to resolve a complaint by this means the Head of Paid Service may refer it to the Audit & Governance Committee for consideration.

## SCHEDULE 12 - PRE-ELECTION PROTOCOL

The Local Government Act 1986 – S2 states that:-

“Local Authorities shall not publish material which, in whole or in part, appears to be designed to affect public support for a political party.”

This is interpreted to include that the Council must not give financial or other assistance to a person for publication of such material, and applies at all times.

The Local Government Act 1986 – S4:-

Allows for a code of practice on publicity.

The revised wording on elections is:-

“The period between the notice of an election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members or groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the authority’s control. Proactive events arranged in this period should not involve members likely to be standing for election.”

This means that the Council’s resources must not be or even appear to an observer to be used for party political ends, including publicity, in this period of heightened political sensitivity.

Members should take especial care with electronic media such as blogs and twitter accounts and remember that the rules in the Code of Practice on Publicity very clearly apply to these types of communication.

In order to comply with this:-

- 1 Press releases about any policy matter, service delivery, service developments or scrutiny should not include quotes from or mentions of individual councillors or party groups.
- 2 No press releases should be issued on local or other issues promoted by or involving individual members.
- 3 Enquiries from the media will be directed towards appropriate officers only.
- 4 No links be added from the Council’s web site to any site which may be construed as political

EXCEPT that

Where absolutely necessary for the purpose of responding to outside events or to a crisis, the appropriate Councillor, committee chairman or Leader of the Council can be quoted, speaking on behalf of the Council.

At all times the following points must be considered:

Is there a valid reason for the Councillor concerned to represent the Council on this issue/at this event?

Is there a good reason why the event/announcement should be happening now, rather than after the elections?

This does not mean that party groups or individual members themselves may not issue press releases, as long as they are clearly identified as coming from them and not from the Council. It should be noted, though, that this is subject to the rules governing election expenses.

### **Use of Council property for public meetings**

There is provision within the Representation of the People Act 1983 for candidates in an election to have free use of certain rooms for holding public meetings, in the electoral division in which they are standing. This entitlement is from the last day for the publication of the notice of elections until the day proceeding the day of elections.

- 5 A candidate is entitled – for purpose of holding public meetings in furtherance of her/his candidature – to the free use at reasonable times of a room in a school or other Council building. The person using the room must pay the costs of preparing the room, heating, lighting and cleaning.
- 6 Permitting the use of these facilities does not breach this protocol provided the local authority does not publicise the meeting.
- 7 This provision does not allow a candidate to hold surgery-type meetings or to use such rooms as his/her committee rooms, which is illegal.
- 8 If any clarification is required or difficulties encountered, advice should be sought from Democratic Services.
- 9 This guidance can be varied by the Returning Officer in consultation with the Monitoring Officer, according to circumstances.

## **SCHEDULE 13 - PROTOCOL ON MEMBER INVOLVEMENT IN COMMERCIAL TRANSACTIONS**

### **1 Background**

This protocol is designed to support members in their work within the community which is an invaluable part of explaining the intentions of the Council at a local level and which assists in maintaining the Council's responsiveness to legitimate interest groups.

### **2 Principles**

The protocol will be based upon the following principles.

- 2.1 Protecting the personal integrity of Council members and officers.
- 2.2 Ensuring the financial and probity interests of the Council are protected.
- 2.3 Ensuring decisions are based on complete and sound information and advice from appropriate professional staff.
- 2.4 Ensuring decisions are in accordance with the Council's agreed processes and standards.
- 2.5 Protecting the Council, its members and officers from undue pressure or inappropriate contact from contractors and parties with a commercial interest in a transaction.

### **3 Protocol**

The Council is engaged at any one time in a large number of commercial transactions, which range from such matters as the procurement of goods, services and works, the purchase or sale of land or the disposal of surplus property to such matters as the provision of advice and/or grant aid to companies, partnerships or individuals, the negotiation of partnership and joint venture arrangements and the management of such commercial relationships.

Councillors frequently have a substantial and very constructive involvement in such commercial transactions. That involvement is not limited to taking the decision in Council and Committee as to whether to enter into such contracts and arrangements and in exercising their scrutiny functions to ensure that such arrangements complied with the Council's requirements in terms of propriety and are designed and managed so as to provide the Council with the best possible value for money. Such involvement also extends to their role within the community in making the public aware of the services which the Council can make available, and in effecting introductions between such interested parties and the officers who are responsible for administering and delivering those services. Because of their very close involvement with the community which the Council serves, Councillors may also become aware of opportunities for the Council to act to benefit that community, opportunities to buy land, or commercial or voluntary organisations who could expand their activities if the Council were able to secure the opportunity for them to extend their premises, or local businesses who provide high quality goods or services of a sort which the Council requires, and who might benefit from an opportunity to compete to supply the Council. In addition, the political leadership of the Council provides an overall direction for the officers of the Council in their administration and delivery of such commercial services, and provides an opportunity for officers to seek informal, and confidential, guidance at an exploratory stage of a transaction, before the matter is sufficiently advanced for the relevant officers to report the matter to the Council or the appropriate Committee as a formal proposal for authorisation to proceed.

However, such commercial transactions also carry significant responsibilities. These include:

- 3.1 the obligation to secure the best possible value for money for the Council;
- 3.2 the legal obligation on the Council to secure “best consideration” on the disposal of its land, unless it obtains the consent of the Secretary of State;
- 3.3 the Best Value obligations to secure the continuous improvement in all Council services, whether delivered directly or externally procured;
- 3.4 the need to comply with relevant law, and in particular with:
  - 3.4.1 Public Contract Regulations 2015
  - 3.4.2 the Human Rights Act 1998
  - 3.4.3 the Local Government (Contracts) Act 1997
  - 3.4.4 the Contracts (Rights of Third Parties) Act 1999
- 3.5 the need to ensure that a commercial transaction is drafted and documented in such a manner that it can be enforced, for example if the other party defaults or under-performs, or if the goods supplied or the work carried out subsequently prove to be defective;
- 3.6 the requirement that the transaction and all matters leading up to the final transaction, should be fully and clearly recorded, so that it can be audited both by the Council’s internal auditors and by the external auditors, and other inspectorates, to ensure propriety in the procurement process; and
- 3.7 compliance with the requirements of the Council’s Local Code for Councillors and the code of conduct for officers.

In addition, there is the danger that an individual Councillor or officer will be misrepresented by the advocates or opponents of a particular proposal who may, innocently or otherwise, claim that the Councillor or officer has given incorrect information or advice or misrepresented the proposal.

Failure to comply with these requirements can result in serious penalties for the Council, for individual Councillors involved in the transaction and for officers. Such penalties include:

- 3.8 For the Council:
  - 3.8.1 direct financial loss from entering into contracts which are not good value for money for the Council, for example as a result of commitment to buy goods which are not of an appropriate standard, or to buy land where we have failed to establish that there are large liabilities for repairs or for clearing contamination;
  - 3.8.2 inability to enforce the contract or to recover damages for breach;
  - 3.8.3 liability to third parties, for example if the Council were to enter contracts for road-works or construction without appropriate nuisance and contamination conditions, or without securing appropriate indemnities from the contractor against damage to third parties;

- 3.8.4 liabilities where a decision made by or on behalf of the Council is overturned on judicial review because it is held to have been unlawful or unreasonable, or in breach of the Human Rights Act;
  - 3.8.5 Adverse Court judgements, findings of maladministration, or Public Interest reports from the Council's Auditor;
  - 3.8.6 the continuing cost of carrying out maintenance and repairs which could have been made the responsibility of the contractor, or of higher insurance premiums; and
  - 3.8.7 the loss of the Council's reputation as an organisation dedicated to the interests of the community which it serves.
- 3.9 For individual Councillors:
- 3.9.1 Investigation under the Members Code of Conduct;
  - 3.9.2 personal liability, in the event of a Councillor's negligence or reckless or deliberate misconduct causing loss to the Council. There is a duty, upon the Council to seek to recover loss from individual Councillors in the event that the loss is caused by their negligence or reckless or deliberate misconduct); and
  - 3.9.3 prosecution under the Bribery Act or for Misconduct in Public Office. (Note that it is for the recipient of any gift or hospitality from a tenderer or contractor with the Council to prove that it was not an inducement or reward for anything which the recipient has done in their public position).
- 3.10 For an officer:
- 3.10.1 disciplinary proceedings by the Council, possibly leading to dismissal;
  - 3.10.2 personal liability to the Council for any loss caused by their negligence or reckless or deliberate misconduct. (Note that the Council chooses to insure itself against such losses, but such insurance will not cover fraud or deliberate misconduct, and the Council, or its insurers, can still seek to recover the loss from the individual in appropriate cases);
  - 3.10.3 prosecution for bribery or for Misconduct in Public Office.

It is therefore particularly relevant to set out the following ground-rules, for the protection of the Council, of Councillors and of officers.

## **4 Declaration and Registration of Interests**

### **4.1 Councillors**

The legal position on the declaration of Councillors' interests is set out in the Council's Code of Conduct for Members. Every member will have given a written undertaking that in performing their functions they will observe the code. It is the responsibility of each Councillor to identify when they have a declarable interest and to declare it. Where officers are aware of matters which suggest that a Councillor is likely to have a declarable interest, they will prompt the Councillor to consider the point, but Councillors should not rely upon being prompted. A failure by one or more

Councillors to declare an interest can lead to a finding of Maladministration, to a standards complaint against the Councillor, and to the decision of the Council being invalidated.

A declarable interest can arise not only because the Councillor, or a member of their family, stands to gain or lose from the Council's decision on the matter (as where a member of the Councillor's family is employed by the applicant for a grant from the Council) but also where the circumstances are such that the Councillor cannot consider the matter impartially (for example where they have already publicly committed themselves to supporting or opposing the application) or where a reasonable member of the public in possession of the facts might reasonably believe that the Councillor's involvement could affect the way in which the Councillor might speak or vote on the matter. If a Councillor is in any doubt about whether they have a declarable interest, they should seek the advice of the Monitoring Officer or, in his absence, the Chief Executive before taking any part in the consideration of the matter.

Where a Councillor has declared an interest, they must withdraw entirely from any part of a meeting at which that matter is under consideration and take no part in that consideration unless the matter falls within a dispensation which they have obtained or the declarable interest is non-pecuniary, is not significant in its scope, and the Committee has been advised of the interest and invited the Councillor to remain.

These requirements for declaration and withdrawal apply to informal meetings and contacts just as much as they apply to formal meetings of the Council and its Committees. A Councillor who has a declarable interest in a proposed development matter should therefore not attend any meeting between the developer or his agents and officers or Councillors.

#### **4.2 Officers**

Section 117 of the Local Government Act 1972 requires an officer to declare any pecuniary interest in any contract or proposed contract, and failure to do so is a criminal offence. In addition, his/her conditions of employment require declaration of any other conflict of interest.

### **5 Lobbying**

It is a natural part of a political process that those who may be affected by a proposed decision of a local authority should seek to influence that decision. In many cases they will approach their local Councillor, as the interface between the Council and the local community, or the Chairman of the relevant Committee, as the person who is seen as being responsible for the processing of the decision, or a relevant officer. The Council wishes to be an authority which is responsive to the community which it serves, and therefore wishes there to be clear and accessible channels for such approaches, but also to ensure that this process of lobbying does not imperil the decision-making process or the decision-takers.

Councillors must be seen to determine matters on their merits. A Councillor or officer who has given a personal commitment to support or oppose a particular proposal will have committed themselves before the full issues have been explored, which exploration occurs from discussion of the officer's report and recommendation in the Council or Committee meeting. Accordingly, when approached by an advocate or opponent of a particular proposal, a Councillor has to decide whether:

- 5.1 They will remain impartial, in which case they must limit themselves to listening politely to the arguments put forward, declining to state a personal position and advising the person making the approach of the proper channel for making such representations. When they attend any Council, Committee or other meeting at which the proposal is considered, they should report to the meeting that they have received such representations.
- 5.2 They will take sides on the issue by declaring their support or opposition to the proposal. In that case, they are either an advocate or an opponent of the proposal and are no longer impartial. As a result, they should declare an interest and withdraw from any such meeting at which the matter is under consideration. The only exception to this rule is that, where a local Councillor has received and supports strong representations from local residents in his/her ward, that Councillor may be allowed to report those representations to the Committee in declaring an interest at the commencement of discussion of the matter and immediately before withdrawing from the meeting.

No officer should meet and hear advocates or opponents of a proposal on his/her own, but should wherever possible arrange that another officer is present and make a contemporaneous record of the meeting, which should be kept on the matter file and included as a background document, and should report the meeting to the Council or Committee meeting where any matter which is material to the determination of the proposal has arisen.

Where a Councillor is of the opinion that a person or organisation have legitimate representations to make, he/she should advise them that they may make those representations in writing to the relevant officer, and the officer should ensure that any relevant representations which he/she receives are fairly report to the meeting of the Council or Committee at which the matter is considered.

In some cases, it will be appropriate for the advocate or opponent to have a face-to-face meeting with the Council. Where a Councillor is of the view that such a meeting is appropriate, he/she should request the relevant officer to arrange such a meeting. The officer will consider, in consultation with the relevant Committee Chairman as appropriate, whether such a meeting will be constructive and whether it should be at officer or at member level. Where it is at member level, the officer will agree the appropriate Councillor representation and ensure that the relevant Councillors are invited to attend by the Executive Director Corporate Services. All such meetings will be attended by the officer of the Council who is responsible for the matter, or his/her representative, and the officers attending shall make a contemporaneous note of the course of the meeting and ensure that the fact of the meeting and any material issues which came out of it are reported to the meeting of the Council or Committee at which the matter is considered.

## **6 Gifts and Hospitality**

Gifts and hospitality provide a particularly difficult area where local government rules are sharply at odds with private sector business practice. Recent events in national politics illustrate how careful local government Councillors and officers have to be to avoid the suspicion of impropriety, for their own protection as much as for the protection of their authority.

The Bribery Act provides that it is a serious criminal offence for anyone who has or seeks a contract with a local authority to offer, and for any Councillor or officer to receive, any gift or consideration as an inducement to, or reward for, doing anything or declining to do anything in respect of any matter before the Council. What is more, where any Councillor or officer

has received any gift or consideration, the legal presumption is that it was given and received corruptly unless the contrary is proved. So, while modest gifts and hospitality may form a normal part of private sector commercial practice, in local government it is up to the Councillor or officer to prove that the gift or consideration was entirely innocent. It is also an offence for an officer to receive anything beyond the proper recompense for doing his/her job.

The best way to demonstrate such innocence is to be totally open about the matter, and it is for this reason that every local authority maintains a register of gifts and hospitality for Councillors and officers, and the National Code of Local Government Conduct stresses the need to declare not only the receipt but also the offer of any such gift or hospitality.

That is not to say that Councillors and officers should never receive modest gifts or hospitality. A working lunch may be the most efficient way of transacting in a busy schedule. Equally, a contractor may reasonably wish to celebrate the completion of a project with a formal launch, and may wish to include some hospitality in such a launch. Whilst it is important not to offend by ungraciously refusing such an invitation, if innocently offered, it is more important to ensure that the Council's reputation is protected and not to give the impression that a Councillor's or officer might be swayed in the performance of his/her public duties by such an offer.

The simple ground rules are as follows:

- 6.1 always declare to the Monitoring Officer at the earliest opportunity any offer or receipt of a gift or hospitality from any person or organisation which has, or seeks to have, any commercial relationship with the Council, even if the offer is refused;
- 6.2 if you have any suspicion that the offer of a gift or hospitality might have been made from improper motive, to influence you in, or to reward you for the performance of, your public duties you should politely but firmly decline the offer and advise the Monitoring Officer of your suspicions;
- 6.3 any gift or hospitality offered should be appropriate in scale and nature to the occasion. In particular, any offer which is made at a time when an issue relating to the person offering the gift or hospitality is before the Council for determination should be viewed with particular care;
- 6.4 where you accept a gift or hospitality which has a commercial value, such as an invitation to a commercial sports event, you should always ensure that you pay the full commercial price (and not just the face value of the ticket) to the person providing the gift or hospitality, and that you declare this to the Monitoring Officer;
- 6.5 whenever possible, you should put any invitation on an official footing by advising the Monitoring Officer of the offer and requesting her/him to accept or decline the offer on your behalf;

## **7 Professional Advice:**

Councillors are elected to act as community representatives, to give political and strategic direction to the Council and its services, to take critical decisions in the best interests of the community which they serve and to ensure that proper standards of conduct are maintained by officers and Councillors alike in the performance of their duties. Individual Councillors may have very considerable experience and expertise in particular fields, and the knowledge and experience which they have gained from their lives outside the Council can add a valuable extra dimension to the discharge of Council functions and help to keep the

Council in touch with the reality of the community which it serves, as well as being able to articulate the political will of the Council.

The Council is a very big and complex business which operates within a legal and regulatory framework which is significantly more complex than that which applies in most of the private sector. It employs specialist officers whose job it is to ensure that the Council secures the best possible value for money in the discharge of its functions. These officers are trained professionals in their specialist fields.

It is therefore important that the Council should ensure that it obtains the advice of the relevant officers, including the advice of the three statutory officers (the Head of Paid Service in terms of the co-ordination and direction of the Council's staff and resources, the Monitoring Officer in respect of legality and ethical probity and the Chief Finance Officer with regard to financial probity and administration) before taking decisions which affect the community. This is so whether the decision is being taken at Councillor or at officer level.

One area of special sensitivity relates to commercial negotiations, where the Council's public service objectives may conflict with the profit motivation of the other party to the negotiation, and where it is accordingly essential to ensure that the end result of the negotiation secures value for money for the Council and does not leave it exposed to excessive liability or risk. There will be occasions when Councillors can play an invaluable part in such negotiations, not least in expressing to the other party the commitment of the Council to a particular project, or the political constraints within which the transaction occurs. However, given the risks to Councillors from involvement in such negotiations, it must be the general rule that Councillors should never undertake any commercial negotiation without appropriate officers present, and should only undertake such negotiations, even with officers present, where there are clear reasons to conclude that their involvement in the negotiation, rather than in setting the political framework and approving or disapproving the final deal, will add real value to the process.

The Local Government Act 2000 enables individual members of a Council's Executive to bind the authority and when the provision is used it will be especially important to ensure, before concluding any such negotiation, ensure that the appropriate officers are satisfied that the transaction is lawful and represents value for money for the authority, by means of consideration of a written report and recommendation from the relevant officers.

## **8 Proper Authority:**

The Council operates within a strict legal regulatory framework and can only do those things which it has statutory authority to do. Equally the law prescribes the decision-making process within the Council, and a decision which is outside the Council's powers or which is taken without following the due process can be invalid and can give rise to substantial liabilities. It is therefore important, before entering into any commercial negotiation, to ensure that the Council has the legal power to enter into the transaction and that the process will lead to a formal decision by a decision-taker who has authority to take that decision and is within the relevant policies and budget of the Council.

## **9 Confidentiality:**

Commercial transactions, by their nature, involve the commercial activities of one or more party other than the Council. They will involve the disclosure to the Council of matters of commercial confidentiality, such as the business plans, performance standards or pricing structures of commercial organisations, disclosure of which to a competitor or to the market could be very detrimental. This is all the more so as Best Value encourages the development of Partnership and Open Book transactions. The maintenance of

confidentiality is essential both to maintain the integrity of a competitive procurement process and to ensure that those who have commercial dealings with the Council know that they can rely upon the Council to protect their commercial secrets, and are therefore able to be open with the Council.

It is important that Councillors should have access to the information necessary to enable them to understand the business of the Council and to ensure that it is being conducted in accordance with the policies and budgets of the Council and to the highest standards of propriety. The Council will ensure that all Councillors have the information necessary to enable them to perform their duties, but the corollary to that is that Councillors should only request access to confidential information where there are clear reasons why they need access to that information for the performance of their obligations, and should ensure that they do not disclose confidential information to unauthorised persons or organisations. Officers are instructed that if they are concerned that a Councillor's request for access to confidential information may be inappropriate, they are to seek the advice of the Monitoring Officer or the Chief Executive before releasing the information.

[N.B. References to the Monitoring Officer in this document should in her absence be referred to the Deputy Monitoring Officer.]

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## SCHEDULE 14 - PROTOCOL ON THE USE OF PRINTING AND PHOTOCOPYING

### 1 INTRODUCTION

The Council only has power to provide facilities that assist Members in discharging their role as Members of the Council. Such services can therefore only be used on Council business and never in connection with party political or electoral campaigning activity or for private purposes.

This Protocol covers the use of such facilities provided under the Members' Services budget and has been approved.

#### 1.1 PRINTING AND PHOTOCOPYING

##### 1.1.1 Basis of Provision

Printing facilities are available to Members of the Council (1) in their capacity as Ward Councillors for the purpose of the provision of information to constituents in their Wards and (2) in relation to their Special Responsibility for the purpose of the provision of information to residents, elected representatives or public service/third sector partners about:

- (a) the work of the Council, its Committees and Sub Committees
- (b) services in the area provided by the Council or joint authorities [e.g. health]
- (c) how to contact their local Councillors or MP and raise issues
- (d) meetings, consultation and local initiatives for the area organised by or on behalf of the Council.

The facilities are not available for the production of material which in whole or in part appears to be designed to affect public support for or to promote:

- (a) a political party
- (b) a candidate or group of candidates in an election
- (c) an electoral or party political campaign
- (d) the policies or beliefs of any individual group or councillor
- (e) third party campaigns

##### 1.1.2 Detailed Arrangements

**Quantity** Entitlement is for a maximum of 500 A4 copies per Member per calendar month.

**Materials** Standard range of white/tinted paper or card stocked by Democratic Services will be available for use.

**Content** Under no circumstances can the name of a political party appear on the printed material. Slogans, title or phrases which are associated with a political party cannot be part of the text.

**Layout** There is no prescribed format for the layout.

- Logos Material produced should include an indication that it has been printed by the Council under the arrangements for members printing. This can be by use of the Coat of Arms or Logo or the acknowledgement 'Printed by Tamworth Borough Council'
- Names In addition to the names of Members of the Council printed material can contain the name of the MP or MEP for the area and the names of relevant officers of the Council shall not be included, only job titles will be permitted with prior consent of the Officer.
- Photos These can be incorporated on the same basis as that which applies to the inclusion of names.

## 1.2 MULTI FUNCTIONAL DEVICES

Members have use of all Multi Functional Device's (MFD's) in Marmion House on a self service basis. Member's pass number is the login for all MFD's. Members require to undertake their own printing and photocopying at any of the devices in connection with Council business only. Short run printing facilities connected to a networked PC also are provided in Member's Lounge in connection with Council business only.

Members use will be monitored on an individual and overall basis in line with the monthly entitlement.

## 1.3 COAT OF ARMS

The Coat of Arms and the Council's logo are only available for use in connection with Council business, which includes when Members are communicating on legitimate Council business.

Use by members of the Council is only acceptable on material produced under the arrangements for Members printing, or on Members personalised stationery.

## 1.4 PERSONALISED LETTERHEAD AND BUSINESS CARDS

A template is available for Members to print direct from their laptops. A colour printer is available in the Members' Room.

Personalised business cards can include details of advice bureau or reference to other representative roles undertaken where that role arises from being a Member of Tamworth Borough Council.

## SCHEDULE 15 - GIFTS AND HOSPITALITY

The acceptance of gifts and hospitality by Councillors is not merely an administrative issue. It reflects directly upon the perception of Councillors and of the authority as acting in the public interest or as acting for the personal advantage of friends and for what personal benefit Councillors can get out of their position.

The law on the acceptance of gifts and hospitality for members is set out in this Schedule and in the Bribery Act. These requirements are supplemented by the procedures which have been adopted by this authority, to provide a clear set of rules for the protection of both Councillors and the authority. Acceptance of a gift or hospitality in breach of the Code of Conduct for members, or failure to declare receipt of such a gift or hospitality, could lead to disqualification from holding any public office. Corrupt acceptance, under the Bribery Act, of a gift or hospitality can lead to a heavy fine or up to 10 years' imprisonment.

This Protocol of Conduct sets out:

- (a) the principles which you should apply whenever you have to decide whether it would be proper to accept any gift or hospitality
- (b) a procedure for obtaining consent to accept a gift or hospitality, when you consider that it would be proper to accept it
- (c) a procedure for declaring any gift or hospitality which you receive and for accounting for any gift to the authority

This Protocol does not apply to the acceptance of any facilities or hospitality which may be provided to you by this authority.

### 1 General Principles

In deciding whether it is proper to accept any gift or hospitality, you should apply the following principles. Even if the gift or hospitality comes within one of the general consents set out below, you should not accept it if to do would be in breach of one or more of these principles:

#### 1.1 **Never accept a gift or hospitality as an inducement or reward for anything you do as a Councillor**

As a Councillor, you must act in the public interest and must not be swayed in the discharge of your duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner.

The Bribery Act 2010 provides that if you accept any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing or forbearing to do anything in respect of any matter or transaction in which the authority is concerned, you commit a criminal offence carrying a maximum term of imprisonment of 7 years.

Further, the authority's Code of Conduct for Members provides that you must act in the public interest, serving the authority and the whole community, rather than acting in the interests of any particular individual or section of the community, and that it is a breach of the Code improperly to confer any advantage or disadvantage on any person, including yourself.

**1.2 You should only accept a gift or hospitality if there is a commensurate benefit to the authority**

The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the authority which would not have been available but for acceptance of that gift or hospitality.

Acceptance of hospitality can confer an advantage on the authority, such as an opportunity to progress the business of the authority expeditiously through a working lunch, or to canvass the interest of the authority and its area at a meeting. Acceptance of a gift is much less likely to confer such an advantage. But unless the benefit to the authority is clear, and is commensurate with the value of the gift or hospitality, the presumption must be that the gift or hospitality is purely for your personal benefit.

As set out above, the authority's code provides that you must not improperly confer any advantage on anyone, including yourself. Acceptance as a Councillor of a gift or hospitality for your own benefit or advantage, rather than for the benefit to the authority, would be a breach of the Code.

**1.3 Never accept a gift or hospitality if acceptance might be open to misinterpretation.**

The appearance of impropriety can be just as damaging to the authority and to you as a Councillor as actual impropriety. The authority's ability to govern rests upon its reputation for acting fairly and in the public interest. You must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that you or the authority favours any particular person, company or section of the community or as placing you under any improper obligation to any person or organisation. If there is any possibility that it might be so interpreted, you must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.

Certain occasions are particularly sensitive, and require the avoidance of any opportunity for such misunderstanding. These include:

occasions when the authority is going through a competitive procurement process, in respect of any indication of favour for a particular tenderer.

determinations of planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination.

funding decisions, when the authority is determining a grant application by any person or organisation.

**1.4 Never accept a gift or hospitality which puts you under an improper obligation**

Recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If you accept a gift or hospitality improperly, it is possible that they may seek to use this fact to persuade you to determine an issue in their favour. Equally, if others note that you have been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the authority,

## 1.5 Never solicit a gift or hospitality

You must never solicit or invite an offer of a gift or hospitality in connection with your position as a Councillor unless the acceptance of that gift or hospitality would be permitted under this protocol. You should also take care to avoid giving any indication that you might be open to such any improper offer.

## 2 Consent Regimes

### 2.1 General consent provisions

For clarity, the authority has agreed that you may accept gifts and hospitality in the following circumstances:

#### 2.1.1 civic hospitality provided by another public authority

- (a) modest refreshment in connection with any meeting in the ordinary course of your work, such as tea, coffee, soft drinks and biscuits
- (b) tickets for sporting, cultural and entertainment events which are sponsored by the authority
- (c) small gifts of low intrinsic value below £25, branded with the name of the company or organisation making the gift such as pens, pencils, mouse pads, calendars and diaries. However, you should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise
- (d) a modest alcoholic or soft drink on the occasion of an accidental social meeting, such as a pint of beer from an employee of a contractor or party with whom you have done business on behalf of the authority if you meet accidentally in a public house, café or bar. In such cases, you should make reasonable efforts to return the offer where this is practicable
- (e) a modest working lunch not exceeding £10 a head in the course of a meeting in the offices of a party with whom the authority has an existing business connection where this is required in order to facilitate the conduct of that business. Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction, when arranging any such meeting, to make it clear to the other party that such a lunch must not exceed a value of £10 a head.
- (f) modest souvenir gifts with a value below £25 from another public authority given on the occasion of a visit by or to the authority
- (g) hospitality received in the course of an external visit or meeting which has been duly authorised by the authority. Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under

instruction to make it clear that any such hospitality for Councillors and officers is to be no more than commensurate with the nature of the visit.

- (h) other unsolicited gifts, where it is impractical to return them to the person or organisation making the gift, provided that the Councillor deals with the gift strictly in accordance with the following procedure:

The Councillor must, as soon as practicable after the receipt of the gift, pass it to the Civic Officer together with a written statement identifying the information set out in Paragraphs 2(b) below. The Civic Officer will then write to the person or organisation making the gift thanking them on your behalf for the gift and informing them that you have donated the gift to the Mayor's Charity Fund, on whose behalf it will be raffled or other wise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Mayor.

## 2.2 Special consent provisions

If you wish to accept any gift or hospitality which is in accordance with the General Principles set out in Paragraph 1, but is not within any of the general consents set out in Paragraph 2 (a), you may also do so if you have previously obtained specific consent in accordance with the following procedure:

2.2.1 You must make an application in writing to the Monitoring Officer, setting out:

- (a) the nature and the estimate of the market value of the gift or hospitality
- (b) who the invitation or offer has been made by or on behalf of
- (c) the connection which you have with the person or organisation making the offer or invitation, such as work which you have undertaken for the authority in which they have been involved
- (d) any work, permission, concession or facility which you are aware that the person or organisation making the offer or invitation may seek from the authority
- (e) any special circumstances which lead you to believe that acceptance of the gift or hospitality will not be improper

You must not accept the gift or hospitality until you have received the appropriate consent.

2.2.2 The Monitoring Officer will enter details of any approval in a register which will be available for public inspection on the occasion of the public inspection of the authority's accounts for the relevant year. But note that this does not relieve you of the obligation to register the receipt of gifts and hospitality in accordance with Paragraph 3, below.

## 2.3 Reporting

Where you accept any gift or hospitality which you estimate to have a market value or cost or provision of £25 or greater, you must, as soon as possible after receipt of the gift or hospitality, make a declaration in writing to the Monitoring Officer, setting out the information set out Paragraph 2 (b) above. A form for this purpose is attached to this Protocol, but you can send the same information by any convenient means. The Monitoring Officer will retain a copy of any such declaration in a register which will be available for public inspection until the approval of the authority's accounts for the year in question.

Even if the value of the gift or hospitality is less than £25, if you are concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, you may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

## 2.4 Gifts to the authority

Gifts to the authority may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the authority. You should not solicit any such gift on behalf of the authority except where the authority has formally identified the opportunity for participation by an external party and how that participation is to be secured, for example in relation to sponsorship of public musical and theatrical performances and developers' contributions under Section 106 Agreements. If you receive such an offer on behalf of the authority, you must first consider whether it is appropriate for the authority to accept the offer (in terms of whether the acceptance of the gift might be seen as putting the authority under any improper obligation, whether there is a real benefit to the authority which would outweigh any dis-benefits). If you do not have delegated authority to accept the gift, you should report the offer directly to the Monitoring Officer who has such delegated authority, together with your recommendation. The Monitoring Officer will then write back to the person or organisation making the offer to record the acceptance or non-acceptance of the gift, record the gift for audit purposes and ensure that the gift is properly applied for the benefit of the authority. If you have any concerns about the motives of the person or organisation making the offer, or whether it would be proper for the authority to accept the gift, you should consult the Monitoring Officer directly.

## 2.5 Definitions

2.5.1 "Gift or hospitality" includes any:

- (a) the free gift of any goods or services
- (b) the opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public
- (c) the opportunity to obtain any goods or services which are not available to the general public
- (d) the offer of good, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

2.5.2 References to the “value” or “cost” of any gift or hospitality are references to the higher or:

- (a) your estimate of the cost to the person or organisation of providing the gift or consideration
- (b) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the cash sum of any contribution which you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

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To: Solicitor to the Council/Monitoring Officer

**Members Declaration of Receipt of Gifts or Hospitality**

Name	
Address:	
What was the gift or hospitality?	
What is your best estimate of its Market value or cost?	
Who provided it?	
When and where did you receive it?	
Does it come within one of the general consents set out in the protocol of Conduct? If so, which? Gift or Hospitality	
Did you get the consent of any officer Before accepting it? If so, who?	
Were there any special circumstances Justifying acceptance of this gift or Hospitality?	
Do you have any contact in your job with the person or organisation providing the gift or hospitality	
Signed	Date

## **SCHEDULE 16 - LOCAL PROTOCOL FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS**

### **1 INTRODUCTION**

1.1 This protocol has been prepared to guide members and officers in the discharge of the Borough Council's statutory planning functions. This protocol will also inform potential developers and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its planning powers.

1.2 For the avoidance of doubt, when an Executive Member attends and participates in the decision-making of the Planning Committee, s/he does so as a Member of the Committee and not as a Member of the Executive. Accordingly, s/he must, along with other Members of the Committee, exercise an independent mind on issues before the Committee.

1.3 The provisions of this protocol are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and officers making such decisions are held accountable for those decisions. The protocol is also designed to assist Members and officers in dealing with approaches from property owners.

1.4 If you have any doubts about the application of this protocol, you should seek early advice, preferably well before any meeting takes place from the Head of Managed Growth, Regeneration & Development and/or the Solicitor to the Council & Monitoring Officer

1.5 Members should always appreciate that when the Council is dealing with planning matters (especially when determining a planning application at Planning Committee) it must act fairly because it is exercising the Council's discretion as local planning authority. As such, the Committee and each individual member of it should avoid the appearance (as well as the substance) of having pre determined an issue or having a fixed opinion about it, or being biased about the outcome.

1.6 Members should always appreciate that the appearance of what they do is just as important as the substance of it.

1.7 This advice applies, with necessary modification, to Officers as well as Members. In the case of delegated decisions there is a risk of accusations of impropriety because of the lack of any public meeting to discuss applications. If a Member would have to declare an interest and take no part in the processing of or decision on an application, then an Officer in the same position must take no part in it, either directly or in a management/ supervisory capacity.

1.8 This advice does not prevent contact between applicant and case officer, nor does it rule out the case officer tendering advice to an applicant or officer, but it does mean that it must be clear on the appropriate file that the ultimate decision on an application was made or verified by another, unconnected officer. In rare circumstances it may be appropriate for the delegation to be declined and an otherwise delegated item put before Committee.

1.9 Make sure that you always comply with the statutory requirements in respect of Disclosable Pecuniary Interests, and apply the rules in the Members' Code of Conduct. Then apply the rules in this protocol.

## **2. CONTEXT**

2.1 Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is often highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions). This is reinforced by the legal status of development plans and decision notices. It is essential, therefore, that the planning process is characterised by open and transparent decision-making.

2.2 One of the key purposes of the planning system is to ensure development takes place through a framework whereby the public interest is well represented at every point from the preparation of Development Plans and policies, the determination of planning applications and in undertaking enforcement action. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

2.3 This protocol applies to both Councillors and planning officers who become involved in operating the planning system – it is not therefore restricted to professional town planners and Planning Committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

2.4 The Human Rights Act provides additional safeguards for citizens, and encourages the application of best practice. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.

## **3. GENERAL PLANNING CONSIDERATIONS**

3.1 The Council's Cabinet is responsible for preparing and recommending to Council the adoption of the Statutory Development Plan, Development Briefs and other forms of Supplementary Planning Guidance. Members of the Planning Committee, when determining planning applications, must have regard to the Council's policies contained in the Development Plan and Supplementary Planning Guidance adopted by the Borough Council together with Government Guidance contained in the National Planning Policy Framework and other material considerations. Where this is relevant, applications must be determined in accordance with the Plan unless material considerations indicate otherwise.

3.2 Tamworth Borough Council's Code of Conduct for Members must be complied with throughout the decision making process, which includes mandatory requirements with regard to member interests.

3.3 The responsibility for declaring an interest rests with individual Members and Officers of the Council. This protocol outlines further rules applicable to the planning process in Tamworth.

3.4 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. This applies equally to traditional forms of political management based on committees and to models based on forms of executives or elected mayors. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through a decision of the Council, the executive or a committee. A successful relationship between Councillors and officers can only be based upon mutual trust, respect, courtesy and understanding of each others positions. This relationship, and the trust which underpins it, should never be abused or compromised.

3.5 Both Councillors and Officers are guided by codes of conduct. Tamworth's Code of Conduct for Members, provides standards and guidance for Councillors. Employees are subject to the Employees' Code of Conduct. In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business.

3.6 Tamworth's Code of Conduct for Members sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, also appropriate relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the planning process. Of particular relevance to Councillors serving on the Planning Committee or Executive, or who become involved in making a planning decision is the requirement that a Member should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

3.7 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved.

3.8 From time to time applicants may submit confidential information for example a financial appraisal in support of an application. Such appraisals will be taken into account in relation to determination of the application but such information due to its confidential nature should not be disclosed to third parties and members of the public.

#### **4 LOBBYING AND ATTENDANCE AT PUBLIC MEETINGS**

4.1 As a Member of the local planning authority (LPA), and particularly if you are a Member of TBC, you are likely to be approached by members of the public in connection with planning policies or individual planning applications which have been or are about to be made to the Council. The approach may come from an applicant (or his/her agents), or from an objector, or indeed from an amenity society or similar grouping. Ideally, such

approaches should be discouraged, or redirected to planning officers, but realistically they cannot be avoided. You should deal with those approaches having careful regard to the advice in this guidance note.

4.2 Especially with the smaller applications, applicants will frequently wish to seek advice on making or promoting their proposals. If an applicant, or potential applicant, approaches you asking for such advice that person should immediately be directed to the appropriate planning officer in the Directorate of Growth, Assets and Environment. Officers will happily assist applicants who are unsure of what to do.

4.3 Approaches may be by way of letter, e-mail or personally either over the telephone or perhaps at a surgery. If the approach is by letter, or e-mail, the advice is that the letter should be copied to or handed to a planning officer. The views expressed can then be taken into account by the case officer. As a courtesy to the writer, the letter, or e-mail, can be simply acknowledged, together with confirmation that it has been passed to the Planning Officer and will be taken into account.

4.4 Personal approaches to Members are more difficult. You may feel that you are 'put on the spot' by the person concerned and in such cases the response must be carefully considered.

4.5 In such cases, you may listen to the views being expressed, you may also ask questions by way of clarification. In some cases it might even be appropriate to identify aspects of the proposal which might cause you concern or to suggest possible contrary views to the person making the approach to assess their reaction or simply to make sure that the views they are expressing are in the full knowledge of all the arguments.

4.6 However, you should NEVER

4.6.1 state unequivocally that you are opposed to or in favour of a particular outcome to an application;

4.6.2 promise to or actually campaign for or lobby other Members for a particular result of an application;

4.6.3 promise to take a particular stand or vote in a particular way when an application is presented for decision.

4.7 You may express an understanding of, and sympathy with or opposition to particular aspects of the proposal, but you must (rarely) sympathy for a particular view. You may even express a preliminary view on an application, but you must make it clear that:

4.7.1 you are expressing a view before the meeting and you will only make a final decision at the meeting itself

4.7.2 that you are reaching your current view on the basis of the facts you know at that time and that it does not preclude you from reaching a different decision in the future if further or new circumstances come to light; and

4.7.3 when at the meeting making the decision you state that you are not bound by previous decisions or comments that you have made but that you are considering the application on the information before the meeting and with an open mind.

4.8 It would be most unwise to advise any applicant of the likely outcome of an application, even where you are fully aware that the planning policies for the particular area would be very likely to support or conflict with the proposal. You should also always tell a constituent that you can give no promises on how you will speak or vote at a meeting and that you will listen to all the arguments before coming to your own personal decision.

4.9 It should go without saying that it is highly inappropriate to negotiate in respect of a planning application directly with an applicant or with the planning officer on behalf of an applicant or objector. Although it may be tempting to suggest to an applicant that their scheme might be improved by their addressing certain factors, such views should only be expressed via the case officer. That way, any promises made by the applicant can be properly noted and incorporated into planning conditions or any Section 106 agreement.

4.10 If you are unwittingly drawn into doing this, as unfortunate as it may be, you should consider whether you are compromised. If you are now effectively committed to vote for or against the application, can no longer consider the application purely on its merits, or are likely to be perceived as committed to acting as an advocate for either the applicant or the objectors, you should take no further part in its processing and absent yourself from the discussion at the meeting when it comes up for decision.

4.11 You must not put pressure on officers to put forward a particular recommendation. You may ask questions and submit written views, and provide the officers with any local knowledge which you consider to be material. However, outside a meeting, you should only discuss a matter with that officer who is authorised by the Corporate Director Growth, Assets and Environment or Head of Service to discuss such issues with Members. Officers must act in accordance with the Council's Code of Conduct for Officers and their own professional codes of conduct and their recommendations will be presented on the basis of professional expertise and independence. You must accept that, on occasions, this may be at odds with the views and opinions of individual Members and at times, the decision of the Planning Committee.

4.12 You may certainly help members of the public with procedural advice. Many members of the public come into contact with planning perhaps only once or twice in their lifetimes and so may not be familiar with such things as:

4.12.1 how to submit a planning application;

4.12.2 how to inspect a planning application and to make representations in support of to object to an application;

4.12.3 how to find out the relevant planning policies;

4.12.4 which planning applications are determined by officers under delegated powers and which come before the Planning Committee;

4.12.5 whether they can attend the meeting of the Planning Committee and make verbal representations.

You can happily help constituents with this sort of information, but it is a matter of judgement where simple help stops and 'professional advice' begins.

4.13 If you feel that despite having taken all the necessary precautions, you could reasonably be perceived as having pre-determined an application or to have been unduly influenced by your involvement, then you should explain at the meeting that you do not intend to speak and vote because of this and leave the meeting room. This can then be recorded in the minutes.

4.14 Whilst Members involved in making decisions on planning applications may begin to form a view as more information and opinions become available, a decision can only be taken by the Planning Committee after all available information is to hand and has been duly considered. In this regard, any political group meetings prior to the Committee meeting should not be used to determine how Councillors should vote. Decisions can only be taken after full consideration of the Director's report and any public speaking at the Planning Committee.

4.15 The Chair and vice Chair of the Planning Committee should attend a briefing with Officers prior to a Committee, to help give an effective lead in the Committee.

## **5 SITE VISITS**

5.1 Except in accordance with the following provisions of this part of the protocol, you should avoid entering any premises which are the subject of a planning application.

5.2 Whilst the Council has right to enter property on notice to inspect, individual Councillors have no such rights of entry. You should not enter any neighbouring premises unless there is general public access to those premises or if, for instance, they are crossed by a public footpath. Even where the public normally have access to the premises, as in the case of a shop, that invitation is for the purpose of shopping and not for inspection. It may be appropriate for you to view the site from public vantage points, but you should be extremely wary of any situation where you need to gain permission to view a site.

5.3 Where you feel that you need to inspect the site before you can make up your mind on the application, the same is probably true for all members of the Planning Committee. If you genuinely feel that you cannot make up your mind about an application until you have seen the site then the correct course is to attend the appropriate deciding meeting and request or move a site visit stating the reasons. On an official site visit you will attend the site with other Members, with senior Planning Officers in attendance and therefore with professional advice to hand to assist you in interpreting the proposal and what you see, and ensure that any information gained in the site visit is reported back to all members of the Planning Committee.

5.4 Members and Officers are obligated not to waste Council resources and, as such, a site visit is only likely to be necessary if:

5.4.1 the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or

5.4.2 there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.

5.5 The site visit shall take place in accordance with strict guidelines as follows:

5.5.1 Under the Chair's guidance the role of the Planning Officer attending the site visit will be to brief Members on the planning applications(s) the subject of the visit and explain the reasons why the application was deferred for a visit.

5.5.2 The Chair (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.

5.5.3 Members of the Planning Committee should inspect the site as a group. They must ensure that they see or inspect all relevant matters so they can fully assess the planning merits of the proposal.

5.5.4 Members may ask questions, through the Chair, of the applicant or any third parties on the site.

5.5.5 Members should not enter into discussions of the merits of the proposal with the applicant, third parties or other Councillors during the site visit.

5.5.6 Members shall be seen to be perfectly scrupulous and fair to both the applicant and third parties at all site visits.

5.5.7 Members should not leave the site visit until the Chair has indicated the meeting has ended.

5.5.8 Officers shall ensure, where practical, that applicants, Members and interested parties are invited to attend the visit and that they are able to view all key parts within or adjoining the site.

5.6 The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the planning application and which would not be apparent from the planning application to be considered by the Planning Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area. Discussions on site visits shall be confined to the application as currently submitted. A Member of Planning Committee who has a personal and prejudicial interest in a planning application, or who has acted in a way that amounts to predetermination, can not attend the site visit in his or her capacity as a Member of Planning Committee. However, the Member concerned would be entitled to attend the site visit in his or her personal capacity as a member of the public.

5.7 Results of the site visit will be reported to the next available meeting of the Planning Committee and should any new material considerations have been identified the application will be deferred for a further report.

5.8 Once the results of a site visit have been reported back to Planning Committee, Members of the Planning Committee who were not present at the site visit can ask questions, offer opinions, take part in discussions and vote in relation to that planning application.

5.9 If you do attend an official site visit, or otherwise visit a site, this should not be considered to be an opportunity to discuss the matter with either the applicant or any objectors. You may suggest questions to be put to the applicant or objectors, but any discussion of the merits of the application should be reserved to the Planning Committee meeting.

5.10 If you are invited onto land, either by a constituent or applicant, you should have careful regard to the advice in part 2 and (if appropriate) part 9. Remember that such activities are very much open to misinterpretation by the public at large. If you have been invited onto a site it would be as well to announce that when speaking on the application at the Planning Committee meeting.

5.11 Ward Councillors, Councillors whose Ward could be impacted by proposals on a site near to a Ward boundary and MPs may attend and participate in site visits putting forward their point of view. However, the determination of planning applications rests solely with the Planning Committee and no indication should be given by Members of the Committee of the likely decision during the course of the site visit.

5.12 Prospective election candidates who are not already Members of the Council are welcome to attend a site visit on the same basis as members of the public.

## **6 MEETINGS OF THE PLANNING COMMITTEE**

6.1 A clear distinction has to be drawn between a Member and an Officer attending a Public Meeting and their roles when they attend meetings of the Planning Committee.

6.2 No material revision to any planning application which might lead to a change in the recommendation of the Director shall be considered at Planning Committee unless it has been submitted at least 14 clear days before the relevant Planning Committee meeting, and has been the subject of a written report prepared by the Director of Communities Planning and Partnerships.

6.3 Chairship – The chair should ensure:

6.3.1 Members' comments at Committee only relate to the planning merits of the application before them;

6.3.2 Reference at Committee to non-planning issues by the public/Members are discouraged;

6.3.3 The cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined; and

6.3.4 Late evidence from public speakers – Members and the public should be made aware that the late submission of evidence will not be permitted at Committee as late submission can lead to allegations of unfairness.

#### 6.4 Voting –

6.4.1 A decision is made by simple majority of those members voting and present in the meeting at the time the motion is put.

6.4.2 if there are equal numbers of votes for and against the Chair has a second or casting vote. There is no restriction on how the Chair of the meeting chooses to exercise this vote

#### 6.5 Training

6.5.1 Members dealing with planning issues will be required to attend training sessions each year to receive guidance in relation to planning regulations and procedures and on declarations of personal or prejudicial interests. This training should include a balance of the following:-

- Organised visits to review permissions granted, with evaluation and lessons learned presented as a paper;
- Short (half day) sessions on special topics of interest or where overruns have indicated problems with planning policy;
- Special topic groups to consider difficult and challenging issues in depth;
- Formal training by internal and external speakers;
- Visits to other authorities who have received good inspection / audit feedback;
- Quick presentations by officers on hot topics, e.g. new legislation, white papers and their impact, followed by a brief question and answer session;
- Attendance at inquiries where officers have identified that there is something specific to learn which will benefit members.

6.5.2 The report of the Audit Commission 'Building in Quality' recommend that Councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policies. Such reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices. The Corporate Director Growth, Assets and Environment will take responsibility for organising the training and the reviews.

### 6.5.3 TRAINING

The guidance emphasises the potential minefield that could result as a breach of the rules. For that reason, you may not participate in the decision making process on planning matters until you have attended the mandatory training prescribed by the Council. These are run at regular intervals and cover planning law, regulations, procedures, codes of practice and the Development Framework that will assist you to carry out your role properly and effectively.

## 7 OUTSIDE BODIES

7.1 Many Members are also members of outside bodies. In some cases you may have been nominated for membership by the Council. In other cases you may simply have joined because of an empathy with that body's view or because of a feeling of civic duty to assist. In some cases you may have been invited to join by the body itself. The advice in this paragraph applies equally to Parish and County Council Members.

7.2 It may well be that the body on which you sit is called on to respond to a consultation on a planning application. There is no absolute bar on your attending that meeting, but if you do you may find it difficult to avoid the problems set out above. You might find it appropriate to avoid taking part in the discussion if you know you are likely to be part of the meeting which makes the ultimate decision on an application. If you do take part in the meeting of the consultative body, it would be advisable for you to declare at the start that you are going to listen to the views expressed by the body but that you cannot be bound by any decision of that body, neither are you bound to take the same line at the Borough Council meeting deciding the application.

7.3 If you are an employee of, hold paid office in, or have a significant shareholding in a body which has submitted a planning application, you will have a Disclosable Pecuniary Interest in the application and must not participate in the discussion or vote on the application unless you have obtained a dispensation from the Monitoring Officer. Unpaid directorships or membership of the Management Committee of an organisation is likely to amount to bias and so preclude your participation on this matter at Planning Committee. Ordinary membership of that organisation may not amount to bias, but you should still consider carefully whether an applicant or objectors might perceive you as being biased as a result of your membership, in which case you should not participate in this matter.

7.4 As a County Councillor, it may be appropriate for you to take part in a meeting even though that meeting is deciding an application made by the County or is considering a response to an application which is made to the County Council. However, if you took the decision within the County Council to submit the planning application, or if you are likely to be part of the County Council meeting that decides the application (as appropriate) you might consider it appropriate not to take part in the Borough Council meeting that considers the matter.

7.5 Similarly, if you took part in the decision within the Borough Council to submit the planning application, it would not be appropriate for you to take part in the planning meeting which considers planning consent for that scheme. A Member who feels obliged to support a Council scheme at the Borough Council because he or she supported the scheme when it was initiated at the meeting prompting it might have difficulty

demonstrating that all the proper planning considerations were taken into account when considering the grant of consent.

## **8 POLITICAL PARTIES**

8.1 As a general rule, party politics should have no place in the consideration of individual planning applications. The views of your party may be a material consideration, but should never dictate the outcome or replace your personal judgement on an application.

## **9 DISCLOSABLE PECUNIARY INTERESTS**

9.1 The Disclosable Pecuniary Interests which members are required to register are now defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, the list of definitions is appended to this Guidance Note.

9.2 Where you have a Disclosable Pecuniary interest in an item of business, you should disclose that interest to the meeting before or at the start of the consideration on that matter, or as soon as it is apparent and you should not participate in the discussion of, or vote on, the item of business. Failure to comply with these requirements may constitute a criminal offence. The Council's Standing Orders also require you to withdraw from the room in which the meeting is being held for the duration of consideration of the item of business.

9.3 Where you have not previously registered a Disclosable Pecuniary interest in a matter, you are now required to do so within 28 days of becoming aware of the interest, or of the date when the agenda for the meeting was sent out to members, whichever is the earlier.

## **10 OTHER MEMBERS' INTERESTS**

10.1 The Council has adopted a Members' Code of Conduct which requires members to register and disclose 'Non-Disclosable Pecuniary Interests and Non-Pecuniary Interests' as defined in that Code (the full requirements of the Members' Code of Conduct are set out in Part 5 of the Council's Constitution). For ease of reference, these interests are referred to as "Other Interests" in this Guidance Note.

10.2 A member will have an "other interest" in an item of business where:

10.2.1 A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of the member, or of a member of that member's family or a person with whom they have a close association to a greater extent than it would have on the majority if the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which the member has been elected or otherwise of the authority's administrative area; or

10.2.2 it relates to or is likely to affect any of the interests listed in the Appendix to the Code (appended to this Guidance Note), but in respect of a member of family or a person with whom the member has a close association, and that interest is not a Disclosable Pecuniary Interest.

10.3 Where you attend a meeting at which you have an "other interest" in an item of business, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

10.4 The Ombudsman has previously advised that the Council is at risk of a finding of maladministration if a Member who has an interest in an application exercises any of the powers or privileges accorded to Members in respect of that application. There may be a general perception that calling-in a delegated item to Planning Committee ensures that the public will conclude that everything is 'above board'. The Ombudsman does not share that view, so a member who has a Disclosable Pecuniary Interest or an "other interest" in a planning application should not exercise powers of call-in in respect of that application.

10.5 In some cases you may not become aware of your potential interest until after you have submitted comments as local Member or taken some other action. If this happens, you should contact the case officer urgently as soon as you realise the situation so that Officers can take the appropriate action. You should also register this interest with the Monitoring Officer.

10.6 If you do find yourself having to disassociate yourself from an application, you may well feel that your constituents have been disenfranchised. This does not entitle you to set aside this advice. In these cases it is the Ombudsman's view that:

10.6.1 You should invite a Member from the same ward or from a neighbouring ward to take an interest in the matter

10.6.2 Constituents who approach you should be invited to contact that other Member or any other Member of the deciding body

10.6.3 You should avoid expressing any view about the application to other Members (save as set out below) and you must never communicate to other Members of the deciding meeting what you would have said had you been able to do so.

10.7 Having said this, in some circumstances it may be appropriate to comment on a planning application in your private capacity. If this is the case your comments can be reported simply, as third party comments rather than as local/ward Member comments, but to ensure that your comments are treated properly only write in on plain, notepaper, never headed Councillor note paper, and try to avoid contact with the case officer. If you do need to contact the case officer, please remember to advise him/her that you do have an interest and are calling/visiting purely as an ordinary resident.

## **11 APPLICATIONS BY MEMBERS AND OFFICERS**

11.1 Nothing in this Guidance Note should be taken to prevent a member or an officer of the Council from making an application for planning permission in their personal capacity. Where a member or an officer does make such a planning application, it will be dealt within accordance with these provisions, which follow the recommendations of the Local Government Association.

11.2 If you are making an application, or if a close relative or business partner is making one, you or the agent should make this clear in a covering letter with the application. A copy of the letter will be lodged with the Monitoring Officer. Equally, if you act professionally as agent for an applicant or objector this should be declared in the same way.

11.3 If the application is one which would normally be dealt with under delegated powers the Corporate Director Growth, Assets and Environment may decline the delegation and the matter submitted to Planning Committee for determination.

11.4 Prior to the matter being included on a Planning Committee agenda the file and draft report will be submitted to the Monitoring Officer. The Monitoring Officer will certify that the application has been properly dealt with and the report will show this. If it cannot be so certified, the matter will be the subject of a Monitoring Officer's report to full Council prior to any decision being made. You will be asked to consent to the eight week determination period being extended to allow for this extra procedure to take place.

11.5 This guidance applies equally to applications submitted through or which affect companies which are owned by a Councillor or Officer. This includes companies in which a Member or Officer has a controlling or significant interest. You are reminded of the rules regarding pecuniary interests as well. Nothing in this guidance overrides or alters that position.

11.6 Applications which affect an Officer (as opposed to a Member) will be dealt with in the usual manner. Any letter of representation should identify you as an Officer of the Council or, if submitted by a close family member or on behalf of a company in which you or your family are interested, identify that relationship. The file may be referred to the Monitoring Officer before a decision is made if there is a real potential for an allegation of improper influence. In such cases the Monitoring Officer will be asked to certify that the correct procedures have been followed and that all other matters have been dealt with properly. If the Monitoring Officer considers it appropriate, an otherwise delegated item may be submitted to Planning Committee for decision. This will be the norm when applications affect any Officer whose duties include direct involvement in the planning process. As set out above, this review procedure might result in a Monitoring Officer's report being submitted to Council depending on the application submitted.

11.7 It should go without saying that any attempt by an Officer to improperly influence the outcome of a planning application in which there is a personal interest, other than strictly in accordance with normal procedures and the above guidance, would be looked on as a matter of the gravest misconduct and is likely to result in immediate suspension and dismissal.

11.8 Applications by or which affect Directors or the Monitoring Officer may be the subject of external review if the Chief Executive (after consultation with the Mayor, Chair of Planning Committee and all Group Leaders) considers it appropriate.

## **12 PUBLIC SPEAKING**

12.1 Public speaking as currently constituted allows an objector to an application which is recommended for approval the opportunity to address the Planning Committee. The

Ombudsman has made it clear that if you have declared an interest as a Member it is highly inappropriate for you then to attempt to exercise your right as an objector to address the Committee. The Ombudsman has made it clear that his view is that this completely defeats the object of the declaration of interest.

12.2 Even more so, under no circumstances should you exercise a right of reply if you are an applicant or act (professionally or as a friend) on behalf of an applicant.

12.3 At no time during a meeting should you allow a member of the public to communicate with you (either orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

### **13 APPLICANT/OBJECTOR MEETINGS**

13.1 For the larger applications it is not unusual for Members to be invited to "presentations" by both promoters and opposers of the scheme. You are advised to be extremely cautious about accepting such invitations. If, for instance, the invitation is to attend a presentation at a smart hotel where a lavish buffet is laid on for those attending it would be highly inappropriate for you to attend.

13.2 In some limited circumstances it may be appropriate for you to attend such presentations, but you should always seek advice from the Corporate Director Growth, Assets and Environment or the Solicitor to the Council before attending. It would also be wise to check whether the invitation to attend has been extended to Planning Officers, and if it has not, or more importantly if the organiser has intimated that Planning Officers are definitely not welcome, then it would be less appropriate for you to attend.

13.3 If having weighed the above advice you decide that you do wish to attend, you should be careful not to express any views at the presentation, should decline to express a view if called on to do so, and should be careful in the way you phrase any questions that you ask. You should make it clear to the organisers that their presentation material should be copied to the case officer so that he/she may take it into account and advise on it.

13.4 Any hospitality offered to a Member over the value of £25 (this excludes reasonable and normal meeting refreshments such as tea, coffee and light snacks), whether or not accepted, should be notified to the Monitoring Officer who will record it in accordance with paragraph 5 of the Members' Code of Conduct.

### **14 DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

14.1 Legislation requires that where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 38 (6), Planning & Compulsory Purchase Act 2004). Local members may be well placed to identify circumstances in which it might be justified to determine a particular application as a departure from the policies set out in the Development Plan.

14.2 If the Council wants to approve an application which is not in accordance with the Development Plan, the material considerations which lead to this conclusion must be clearly identified by Members and they must also clearly justify why they are overriding the

Development Plan. The personal circumstances of an applicant will rarely provide such grounds. The officer should be given opportunity to explain the implications of the contrary decision.

14.3 If the officer's report recommends approval of an application which conflicts with the Development Plan, the report will include full justification for this.

14.4 Where the Committee has concerns about the validity of reasons for approving or refusing an application, consideration should be given to deferring the application to the subsequent meeting to another meeting to have the putative reasons tested and an updated report produced for consideration at the next meeting at which a decision will be made.

14.5 When a planning application has been deferred following a resolution of "minded to approve" or "minded to refuse", contrary to the officer's recommendation, the Chair shall put to the meeting a proposed statement of why the Director of Communities Planning and Partnership's recommendation for refusal or approval is not considered acceptable to the Committee, which, when agreed by the Committee, will be formally recorded in the Minutes.

14.6 When a planning application has been deferred following a resolution of "minded to approve" "or minded to refuse", contrary to the officer's recommendation, then at the subsequent meeting the Corporate Director Growth, Assets and Environment shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee for granting or refusing permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for granting or refusing permission, and a minute of the Committee's reasons should be made. Such reasons should be clear and justified. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made

14.7 If a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting.

If the Planning Committee makes a decision contrary to the Director of Communities Planning and Partnership's recommendation, the officer should be given an opportunity to explain the implications of the contrary decision. The Courts have expressed the view that reasons for the contrary decision should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds.

14.8 A senior legal officer should always attend meetings of the Planning Committee to ensure the probity and propriety of the planning and decision-making processes. Whilst authorities make extensive use of standard wordings for conditions, in the case of any conditions which Members may wish to add or amend, an officer should be asked to draft any such conditions and bring them back for approval at the subsequent meeting of the Planning Committee.

14.9 Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item, by requesting from each member as to how they have voted, noting this and the member's name.

## **15 CONCLUSION**

15.1 At all times you must appreciate that as a Member of the Council in general and as a Member of Planning Committee that you take on an onerous duty. As the Code of Conduct points out, your duty is to the whole community and not to any one section of it. By the same token, the whole community has a right to look to you and to the Council as a whole to consider matters dispassionately, having regard only to the relevant factors and disregarding irrelevant ones.

## **16 GUIDELINES ON PRE-DECISION DISCUSSIONS**

16.1 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.

16.2 Advice should be consistent and based upon the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies between planning officers.

16.3 A written note should be made of the meeting. If it is known beforehand that a meeting is likely to be contentious arrangements should be made for at least two officers to be present. What was discussed or concluded should be confirmed in a follow up letter, and the receipt of any written material also confirmed. If the other parties produce a meeting note it should always be carefully scrutinised, compared against the notes) taken by Council Officers and any discrepancies challenged in writing. Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be advocacy.

16.4 To maintain impartiality, as well as the appearance of impartiality, it is preferable that Councillors do not take part in such discussions. However, should there be occasions when Councillors are involved they should always be advised by appropriate professional officers from the Council (which must always include a senior Planning Officer) and be authorised on a case by case basis.

16.5 The involvement of Councillors in such discussions should be recorded in the relevant Panel or Committee minutes.

16.6 A senior legal officer always attends the meeting to ensure that procedures have been properly followed. Whilst the Council makes extensive use of standard wording for conditions, in the case of any conditions which councillors may wish to add to or amend, officers have delegated powers to draft such conditions which need to be reasonable and relevant to the permission.

DRAFT

## SCHEDULE 17 - TAMWORTH BOROUGH COUNCIL MONITORING OFFICER PROTOCOL

### 1 GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES

- 1.1 The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged in Tamworth Borough Council.
- 1.2 The current responsibilities of the Monitoring Officer role rest with the Solicitor to the Council, who undertakes to discharge his statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, he will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
- 1.3 A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-
  - 1.3.1 complying with the law of the land (including any relevant Codes of Conduct);
  - 1.3.2 complying with any General Guidance issued, from time to time, by the Audit & Governance Committee and the Monitoring Officer;
  - 1.3.3 making lawful and proportionate decisions; and
  - 1.3.4 generally not taking action that would bring the Council, their offices or professions into disrepute.
- 1.4 In the absence of the Monitoring Officer this Protocol shall apply to the Deputy Monitoring Officer.

### 2 WORKING ARRANGEMENTS

- 2.1 Having good working relations with Members and Officers will assist in the discharge of the statutory responsibilities on the Monitoring Officer and keep the Council out of trouble. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, work with the Monitoring Officer (and his staff) to discharge the Council's statutory and discretionary responsibilities.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:-
  - 2.2.1 be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including, in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
  - 2.2.2 have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council at which a binding

decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings and/or Corporate Management Team (or equivalent arrangements);

- 2.2.3 have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings and/or Corporate Management Team (or equivalent arrangements);
- 2.2.4 in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his functions;
- 2.2.5 ensure the other statutory officers (Head of Paid Service and the Chief Financial Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- 2.2.6 meet regularly with the Head of Paid Service and the Chief Finance Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- 2.2.7 report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service, Chief Financial Officer and the Audit & Governance Committee;
- 2.2.8 as per the statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources he requires to discharge his statutory functions;
- 2.2.9 have a special relationship of respect and trust with the Leader, Deputy Leader and the Chairmen of the Cabinet, Audit & Governance, Licensing, Planning and Overview and Scrutiny Committees with a view to ensuring the effective and efficient discharge of Council business;
- 2.2.10 develop effective working liaison and relationship with the Councils external Auditors and the Local Government Ombudsman (including having the authority, on behalf of the Council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary) and settle any compensation payments for alleged or actual maladministration found against the Council;
- 2.2.11 maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- 2.2.12 give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Audit & Governance Committee (unless the Chairman of Audit & Governance Committee agrees a report is not necessary);

- 2.2.13 have sufficient resources to enable him to address any matters concerning his Monitoring Officer functions;
  - 2.2.14 subject to the approval of the Audit & Governance Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues; and
  - 2.2.15 appoint a deputy and keep him or her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer.
- 2.3 To ensure the effective and efficient discharge of the arrangements set out in paragraph 5 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.
  - 2.4 The Monitoring Officer is also available for Members and Officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (e.g. Standing Orders, policy framework, terms of reference, scheme of delegations etc.).
  - 2.5 To ensure the effective and efficient discharge of this Protocol, the Chief Financial Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

### **3 SANCTIONS FOR BREACH OF TAMWORTH'S CODE OF CONDUCT FOR MEMBERS AND THIS PROTOCOL**

- 3.1 Complaints against any breach of Tamworth's Code of Conduct for Members must be referred to the Monitoring Officer. Complaints against any breach of this Protocol by a Member will be referred to the Audit & Governance Committee and to the relevant Leader and/or Chief Whip of the Political Party Group. Complaints against any breach of this Protocol by an Officer may be referred to the relevant Chief Officer and/or the Chief Executive.

## **SCHEDULE 18 - GUIDANCE NOTES IN COMPLETING THE REGISTER OF MEMBERS' INTERESTS FORM**

Guidance is given below on the specific paragraphs and information required in the statutory Register of Members' Interests form.

### **1 Section A – Financial Interests**

#### **1.1 Employment and/or business details carried on by me:**

(You should include under this heading every employment, trade, profession, occupation or vocation which you have to declared for income tax purposes, i.e. that is carried on for profit or gain.

Give a short description of the activity concerned, e.g. "Computer Operator", "Farmer" or "Accountant". For these purposes being a Councillor need not be declared as an occupation. Equally Cabinet members do not need to declare their Cabinet responsibilities or the amount of responsibility allowance that they are in receipt of from the Borough Council for carrying out those duties. That information is available to the public through other means.)

#### **1.2 The name of the person who employs or has appointed me:**

(You should include under this heading the name of any individual, company, partnership, public body etc who employs you or who has appointed you. If employed by a company, give the name of the company paying your wages or salary, not that of any ultimate holding company).

#### **1.3 The name of the firm of which I am a partner:**

(You should include the name of the firm(s) in which you have a business interest (or interests) as a partner.)

#### **1.4 The name of the company to which I am a remunerated director:**

(You should list under this heading the names of all companies in which you are remunerated as a director.)

#### **1.5 The name of any person (other than the relevant authority) who has made a payment to me in respect of my election or any expenses incurred by me in carrying out my duties:**

(You should include under this heading any names of any person or political parties who have made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties, e.g. a member is expected to register the name of any person, or political party, who helped to fund his/her election campaign. There is however no need to register the payment of legitimate expenses by the Borough Council.)

#### **1.6 The name of any corporate body which has a place of business or land in the authority's area, and in which I have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issues share capital of that body:**

(Give the names of any companies, industrial and provident societies, co-operative societies or other corporate bodies which have any business or land in Tamworth Borough and in which your beneficial interest exceeds £25,000 or 1/100th of the

total issued share capital. The key point is that the nominal value of the shares is taken account, not the market value of such shares. Classes of securities include shares, bonds and future/options dealing. The nominal value of shares is the face value of those shares (i.e. the value recorded on the share certificate).

The registration of any PEPs, ISAs or pensions which a member has is not necessary unless, given the above criteria, the member knows the companies in which his/her PEP, ISA or pension fund was invested and that:

- 13 those companies have a place of business or land in the authority's area; and
- 14 the member's beneficial interest in the investment was greater than the levels indicated above

You are only required to register interests which are known to you. The Code does not require you to investigate the investment portfolio of any PEP, ISA or pension scheme to which you may belong.)

**1.7 A description of any contract for goods, services or works made between the authority and myself or a firm of which I am a partner, a company of which I am a remunerated director, or a body of the description specified in sub-paragraph 1.4) above:**

(You should include under this heading all relevant contracts entered into with the Borough Council. If you have been awarded a contract but no financial agreement has, as yet, been signed, it is good practice to declare the same and to advise the Monitoring Officer of any amendment to the Register as and when the contract has been formally signed. Equally, if the contract is terminated (for whatever reason) or comes to an end, the member should notify the Monitoring Officer in writing of the change to the Register within 28 days of such event.)

**1.8 The address or other description (sufficient to identify the location) of any land in which I have a beneficial interest and which is in the area of the authority:**

(If you live within the Borough of Tamworth, your home property address should be included under this heading. Beneficial interest includes a mortgage interest in a property, including a tenanted interest, whether as a landlord or tenant. All relevant interests in the Borough must also be declared in addition to your home address.)

**1.9 The address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which I am a partner, a company of which I am a remunerated director, or a body of the description specified in sub-paragraph 1.4) above:**

(You will need to include details of any tenanted land that you hold from the Borough Council. You may hold such land in your personal capacity or as a partner of a firm, a company of which you are a remunerated director or of any other legal body. Sufficient details of any such land need to be given to identify the same.)

**1.10 The address or other description (sufficient to identify the location) of any land in the authority's area in which I have a licence (alone or jointly with others) to occupy for 28 days or longer:**

(You will need to include details of any licence to occupy land or premises in the Borough Council's area for 28 days or longer. Temporary occupations of less than 28 days do not therefore, need to be declared on the form. It is also important to recognise that the occupation by you may be in joint or several names.)

## 2 Section B – Other Interests

In accordance with the Local Government Act 2000, I hereby give written notification to Tamworth Borough Council's Monitoring Officer of my membership of or position of general control or management of any of the following:

**2.1 A body to which I have been appointed or nominated by the authority as its representative:**

(You should declare membership of, a position of general control or management in, any bodies to which you have been appointed by the Borough Council. This will not include Committees which are part of the Borough Council. You must however include any company directorship or other representation if you have been appointed or nominated by the Borough Council as its representative on such company.)

**2.2 Public Authority or body exercising functions of a public nature:**

(It will be necessary for you to include your membership or position of general control of such organisations as (inter alia) health authorities, police authorities, housing associations, statutory undertakers, magistrates, County Council, Parish Council(s); and the Local Government Association (including WMLGA).

**2.3 Company, industrial and provident society, charity or body directed to charitable purposes:**

(Membership of or position of general control or management of any company, industrial and provident society, charity or body directed to charitable purposes need to be inserted here. These bodies are those on which you serve in your own capacity as opposed to being appointed or nominated by the Borough Council as its representative. The latter needs to be included within section B a) as indicated earlier. Equally, charitable purposes include educational establishments and, as such, school governorships need to be declared.)

**2.4 Body whose principal purposes include the influence of public opinion or policy:**

(You should mention here membership of any relevant political parties and other relevant public opinion or policy/pressure groups.)

**2.5 Trade union or professional association:**

(You need to include on the form your membership of any trade union or professional association, e.g. National Union of Teachers; the Law Society or the British Medical Association.)

**2.6 Private club or society such as freemasons, recreational club, working men's club or private investment club:**

(You should include on the form your membership of any private club or society such as freemasons, recreational club, working men's club or private investment club.)

## NOTES

Societies registered under the Industrial and Provident Societies Act 1965 are bodies corporate with limited liability and are known as “industrial and provident societies”. To qualify as such a society, its membership should not be less than three. A society with any withdrawable share capital shall not carry on the business of banking. Otherwise a society for carrying on any industry, business or trade, whether wholesale or retail, is regarded as an industrial or provident society if that society is a bona fide co-operative society, or if the society is or is intended to be conducted for the benefit of the community. A society’s rules must contain provision in respect of matters mentioned in schedule 1 of the above Act, and the society’s registered office must be in Great Britain or the Channel Islands. Examples, some leisure trusts, some working men’s clubs and some housing associations.

A trade union means an organisation, whether temporary or permanent, which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers’ associations. A trade union can also mean an organisation, whether temporary or permanent, which consists wholly or mainly of constituent or affiliated organisations which fulfil the conditions mentioned in the previous sentence, or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions or representatives of such constituent or affiliated organisations, and whose principal purposes include the regulation of relations between workers and employers, or between workers and employers’ associations, or the regulation of relations between its constituent or affiliated organisations.

If a legal body to which you have been appointed or nominated by the Borough Council subsequently appoints or nominates you to another company, industrial and provident society, charity or body directed to charitable purposes, then that other body must also be declared in Section B c).

Members must inform the Monitoring Office in writing, and within 28 days, of any changes or additions which should be made to their entries in the Register of Members’ Interests.

Declaring an interest in the Statutory Register of Members’ Interests form does not remove the duty on the member to declare the interest at any relevant meeting of the Borough Council, the Cabinet, Committees etc.

## **6 PART 6 - MEMBERS' ALLOWANCES SCHEME**

The Tamworth Borough Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003, hereby makes the following scheme:-

This scheme may be cited as the Tamworth Borough Council Members' Allowances Scheme, and shall have effect for the year commencing on 1st April 1999 and subsequent years.

In this scheme:

"Councillor" means a Member of the Tamworth Borough Council who is a Councillor;

"Year" means the 12 months ending with 31st March.

### **6.1 Basic Allowance**

Subject to Paragraph 6, for each year a basic allowance of £5,171 shall be paid to each Councillor.

### **6.2 Special Responsibility Allowances**

6.2.1 For each year a special responsibility allowance shall be paid to those Councillors who hold the special responsibilities in relation to the Authority that are specified in Schedule 1 to this Scheme subject to a discount of 10% for any Member who attends less than 75% of the scheduled meeting of the Committees that they are appointed to.

6.2.2 Subject to paragraph 8, the amount of each such allowance shall be the amount specified against that special responsibility in that Schedule subject to a discount of 10% for any Member who attends less than 75% of the scheduled meeting of the Committees that they are appointed to.

6.2.3 A Councillor shall be entitled to claim only one special responsibility allowance

### **6.3 Renunciation**

A Councillor may by notice in writing given to the Corporate Director - Resources elect to forego any part of his/her entitlement to an allowance under this scheme.

### **6.4 Part-year Entitlements**

6.4.1 The provisions of this paragraph shall have effect to regulate the entitlements of a Councillor to basic and special responsibility allowances where, in the course of a year, this scheme is amended or that Councillor becomes, or ceases to be, a Councillor, or accepts or relinquishes a special responsibility in respect of which a special responsibility allowance is payable.

6.4.2 If an amendment to this scheme changes that amount to which a Councillor is entitled by way of a basic allowance or a special responsibility allowance, then in relation to each of the periods:

- (a) beginning with the year and ending with the day before that on which the first amendment in that year takes effect, or
- (b) beginning with the day on which amendment takes effect and ending with the day before that on which the next amendment takes effect, or (if none) with the year;
- (c) the entitlement to such an allowance shall be to the payment of such part of the amount of the allowance under this scheme as it has effect during the relevant period as bears to the whole the same proportion as the number of days in the period bears to the number of days in the year.

6.4.3 Where the term of office of a Councillor begins or ends otherwise than at the beginning or end of a year, the entitlement of that Councillor to a basic allowance shall be to the payment to such part of the basic allowance as bears to the whole the same proportion as the number of days during which his term of office subsists bears to the number of days in that year.

6.4.4 Where this scheme is amended as mentioned in sub-paragraph (2) and the term of office of a Councillor does not subsist throughout the period mentioned in sub-paragraph (2) (a), the entitlement of any such part of the basic allowance shall be to the payment of such part of the basic allowance referable to each such period (ascertained in accordance with the sub-paragraph) as bears to the whole the same proportion as the number of days during which his term of office as a Councillor subsists bears to the number of days in that period.

6.4.5 Where a Councillor has during part of, but not throughout, a year such special responsibilities as entitle him or her to a special responsibility allowance, that Councillor's entitlement shall be to payment of such part of that allowance as bears to the whole the same proportion as the number of days during which he has such special responsibilities bears to the number of days in that year.

6.4.6 Where this scheme is amended as mentioned in sub-paragraph (2) and a Councillor has during part, but does not have throughout the whole, or any period mentioned in sub-paragraph (2) (a) of that paragraph any such special responsibilities as entitle him or her to a special responsibility allowance, that Councillors entitlement shall be to payment of such part of the allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days in that period during which he or she has such special responsibilities bears to the number of days in that period.

## 6.5 **Payments**

6.5.1 Payment shall be made in respect of basic and special responsibility allowances, subject to sub-paragraph (2), in instalments of one-twelfth of 90% of the amount specified in this scheme on the 20th day of each month. The remaining 10% paid as a lump sum at the end of the

municipal year where Members have attended 75% of the scheduled meetings of the Committees that they are appointed to;

6.5.2 Where a payment of one-twelfth of the amount specified in this scheme in respect of a basic allowance or a special responsibility allowance would result in the Councillor receiving more than the amount to which, by virtue of Paragraph 8 he or she is entitled, the payment shall be restricted to such amount as will ensure that no more is paid than the amount to which he or she is entitled.

## 6.6 **Approved Duties**

An “approved duty” means a meeting of the authority or of any Committee or sub-Committee or of any other body to which the authority makes nomination or any other duty approved by the Solicitor to the Council after consultation if necessary with the Cabinet, for the purpose of or in connection with the discharge of the functions of the Committee, or any of its Committees or sub-Committees or any duty of a class so approved

## 6.7 **Travelling and Subsistence**

Payment to Councillors and Co-optees for travelling and subsistence will be made in accordance with HMRC rates where expenditure is incurred for the purpose of performing any approved duty.

## 6.8 **Attendance at Conferences and Training Events**

The Solicitor to the Council, after consultation with the Cabinet if necessary, may approve the payment of the cost of attendance at Conferences and Training Events and the payment of travelling, subsistence and attendance allowance(s) in accordance with the rates prescribed by the Secretary of State

## 6.9 **Childcare and Dependent Relatives Allowance**

Payment for childcare and dependent relatives’ allowance will be in accordance with Schedule 2

## 6.10 **Claims Payment**

Claims for travelling, subsistence and attendance allowance(s) should be submitted to Democratic Services in writing on a form approved by the Executive Director Corporate Services.

## 6.11 **Variation**

This Scheme shall be varied from 1st April 2000 and on the 1st April in each subsequent year by the amounts payable by way of basic or special responsibility allowance being increased by an amount equivalent to the increase in the preceding period of twelve months of the earnings of all Local Authority employees.

## 6.12 **Local Government Superannuation Scheme**

All Members of the Council shall be entitled to pensions in accordance with the scheme made under Section 7 of the Superannuation Act 1972. Both the Basic Allowance and Special Responsibility Allowances shall be treated as amounts in

respect of which such pensions are payable in accordance with the said superannuation scheme.

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## SCHEDULE 1

The Council determined a Basic Allowance per annum of £5,338 with 10% discount applied then repaid for all members who achieve 75% attendance at all of their scheduled meetings.

The Council determined an allowance of £45 per meeting under four hours duration and £90 for each meeting over four hours duration for Chairs of Licensing Sub-Committees and Co-optees.

For Members with special responsibilities the following Special Responsibility Allowances (SRA) per annum were determined as follows:-

SRA Payable with 10% discount applied then repaid when 75% attendance achieved in Municipal Year	
	<b>SRA £</b>
SRA's Payable Leader (1)	£13,359
Deputy Leader (1)	£10,019
Other Cabinet Member (4)	£8,683
Chair of Scrutiny (3)	£3,967
Chair Planning	£6,011
Chair Licensing	£1,335
Chair Audit & Governance	£3,339
Leader of Larger Opposition Group	£6,011
Deputy Leader of Larger Opposition Group	£3,339
Deputy Leader of Larger Opposition Group (7 or less members)	£2,004
Leader Minor Opposition Group (4 or more members)	£1,335

## SCHEDULE 2

### CHILDCARE AND DEPENDENT RELATIVES ALLOWANCE

A Childcare and Dependent Relatives Allowance shall be paid to those Councillors incurring costs for the care of a dependent relative or child in the course of, or to permit, the undertaking of his or her duties as a councillor when attending official Council meetings.

Dependants are defined as:

- children under the age of 14 for whom the councillor is normally responsible.
- 
- elderly, ill or disabled dependants who require full time care and for whose care the councillor is normally responsible.

[The claim for payment must be for actual expenses incurred, for carers over age 21 at a rate of £6.50 per hour and carers aged 18-20 at a rate of £5.13 per hour and carers aged 16-17 at a rate of £3.79 per hour. Rates are revised annually in October. Claims shall also be indexed to the minimum wage. All claims shall be made on the attached form, Annex 1.]

The Council has discretion to consider payment of an amount exceeding the amount specified in 3. above if special circumstances apply.

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**ANNEX 1**

(a) TAMWORTH BOROUGH COUNCIL

**APPLICATION FOR PAYMENT OF CHILDCARE AND DEPENDENT RELATIVES ALLOWANCE**

COUNCILLOR.....

DESCRIPTION OF APPROVED DUTY (INCLUDING HOURS) EG: COMMITTEE TIMES, DATES ETC

.....

.....

DATE OF APPROVED DUTY.....

AMOUNT CLAIMED.....

AGE OF CARER.....

I declare that to enable me to perform an approved duty I have necessarily incurred expenditure to provide care for a child aged 14 or under/\*a dependant with a disability/\*an elderly relative requiring care/\*a dependant who is ill.

Signature of Councillor.....

Date.....

Signature of Authorised Officer .....

Name of Authorised Officer .....

Date.....

\*Delete as appropriate

Please attach copy receipt of the payment to carer

Please return this form to Democratic Services

## TAMWORTH BOROUGH COUNCIL; JOB DESCRIPTIONS FOR MEMBER ROLES

### COUNCILLORS

#### Purpose

1. To participate constructively in the good governance of the Borough of Tamworth
2. To contribute actively to the formation and scrutiny of the authority's policies, budget, strategies and service delivery
3. To represent effectively the interests of the Ward for which the councillor was elected, and deal with constituents' enquiries and representations
5. To represent the council effectively, when appointed to an outside body
6. To act at all times with probity and propriety and in the best interests of the Council.

#### Duties and Responsibilities

1. To fulfil the statutory and locally determined requirements of an elected member of a local authority and the authority itself, including compliance with all relevant codes of conduct, and participation in those decisions and activities reserved to the full Council
2. To participate effectively as a member of any Committee when so appointed
3. To participate in the activities of any outside body when so appointed
4. To participate in the scrutiny or performance review of the services of the authority including, where the authority so decides, the scrutiny of policies and budget, and their effectiveness in achieving the strategic objectives of the Council
5. To participate, as appointed, in consultative processes with the community and other organisations and to provide a link between the authority to the community
6. To develop and maintain a working knowledge of the authority's services, management arrangements, powers/duties, and constraints, and to develop good working relationships with relevant officers
7. To develop and maintain a working knowledge of other organisations and services which serve the Borough of Tamworth
8. To participate in the activities of any political group of which the councillor is a member
9. To maintain confidentiality in all relevant Council business

## **LEADER**

### **Purpose**

1. To provide effective political leadership and strategic direction for the Council.
2. To ensure effective Corporate Governance
3. To provide effective stewardship of the Council
4. To chair the Executive and ensure that it achieves its terms of reference
5. To provide the policy framework and direction necessary to ensure that the Council delivers high quality, value for money services

### **Duties and Responsibilities**

1. To provide political leadership to the Council, take appropriate executive action and propose the policy framework within which the Council will operate
2. To ensure effective Corporate Governance including working with opposition groups to seek to achieve where possible cross party cooperation
3. To appoint and lead the Executive and be responsible for the Council's corporate and resource strategy
4. To ensure that the Executive achieves its terms of reference both collectively and as individual portfolio holders
5. To ensure the effective integration of roles, responsibilities and functions within the Executive membership
6. To appoint Member Champions where considered appropriate in accordance with the Constitution
7. To provide reports to Council in accordance with the Constitution
8. As Leader, to be the key contact for outside organisations and the Council's Chief Executive and other Senior Officers
9. To be the voice of the Council and to positively promote the Council in the media.
10. To act as the political spokesperson for the Council
11. To promote the long term financial, business and economic stability and growth of the Borough
12. To encourage the highest standards of probity and corporate governance

### **Skills desired**

1. Good communication and interpersonal skills
2. The ability to analyse and grasp complex issues
3. A good understanding of how local, national and European government operates,
4. An understanding of the operation of the Council and the economic and social situation within Tamworth
5. Business and financial acumen, with the ability to understand and manage the Council's budget
6. Effective leadership skills
7. Excellent political knowledge and awareness
8. The ability to chair meetings and facilitate open discussion

9. The ability to work effectively with Council officers, the public, the media and outside organisations

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## **DEPUTY LEADER**

### **Purpose**

1. To assist and work with the Leader to provide effective political leadership and strategic direction for the Council.
2. To assist the Leader with his other responsibilities such as ensuring effective Corporate Governance and Stewardship of the Council and to provide the policy framework and direction necessary to ensure the Council delivers high quality, value for money services
3. To act in the absence of the Leader as appropriate

### **Duties and Responsibilities**

1. To assist and work with the Leader in delivering his responsibilities to the Council
2. To deputise for the Leader in his absence from Council meetings and to deputise in the Leader's absence at Executive meetings
3. In the Leader's absence to carry out the requirements of his job profile so far as legally possible and permissible.
4. To carry out such other duties and undertake portfolio responsibility as delegated by the Leader

### **Skills desired**

1. Good communication and interpersonal skills
2. To have the ability to analyse and grasp complex issues
3. A good understanding of how local, national and European government operates,
4. A clear understanding of the operation of the Council, and the economic and social situation within Tamworth
5. Business and financial acumen, including the ability to understand and manage the Council's budget
6. Effective leadership skills
7. Excellent political knowledge and awareness
8. The ability to chair meetings and facilitate open discussion
9. The ability to work effectively with Council officers, the public, the media and outside organisations

## **EXECUTIVE MEMBERS**

### **Purpose**

1. To provide collective and individual leadership as part of the Executive
2. To undertake lead responsibility for allocated portfolios
3. To contribute effectively towards the strategic direction of the Council

### **Duties and Responsibilities**

1. To participate effectively as a Member of the Executive; taking joint responsibility with other Executive Members for all actions.
2. To exercise appropriately any delegated powers from the Leader
3. To participate in shaping and developing the policy and vision of the Council,
4. To act as the Lead Member for a particular portfolio as may be determined by the Leader, and in doing so, have regard to the overall collective responsibilities of the Executive and the Council's corporate policy objectives and championing the portfolio concerned within that strategic context, being aware of key budgetary issues relating to the portfolio
5. To build good working relationships with appropriate officers and work with them in developing policy or strategic issues prior to formal reporting.
6. To keep abreast of related developments and policies at national, regional and local level
7. To represent the Executive where appropriate at an Overview & Scrutiny Committee in connection with any matter that may be called in; and to attend O&S at their request in connection with any issues associated with the Executive Member portfolio that are being scrutinised.
8. To be aware of issues of importance to the community and other stakeholders concerning the portfolio are
9. To represent the Council on external bodies, as appointed, and feedback to the Executive any issues of relevance/importance.
10. To be available as appropriate for other Members to discuss any queries or matters of concern.
11. To positively promote the portfolio and where appropriate to act as the spokesperson with the media for the portfolio area.

### **Skills desired**

1. Good communication and interpersonal skills
2. Ability to analyse and grasp complex issues
3. An understanding of national and local government statutory and financial frameworks
4. An understanding of the Council, including the economic and social situation within Tamworth
5. The ability to understand the Council's budget especially in respect of the relevant portfolio
6. Leadership skills
7. Political knowledge and awareness
8. Ability to work effectively with Council officers, the public, the media and outside organisations
9. Ability to work as part of a team

## **CHAIRMAN OF A COMMITTEE**

**General- to include Audit and Governance Committee and Governance Committee**

### **Purpose**

1. To provide leadership of and direction to the Committee
2. To chair Committee meetings and ensure the Committee achieves its terms of reference

### **Duties and responsibilities**

1. To encourage Committee members to obtain the necessary skills to contribute effectively to the work of the Committee and to work with officers to ensure the provision of necessary training
2. To endeavour to engage all members of the Committee in its work
3. To lead the Committee, in consultation with officers, to most effectively prioritise its Work load
4. To develop a constructive relationship with the relevant senior officers and their staff and with relevant portfolio holders
5. To be willing to learn about the professional disciplines and services relevant to the work of the Committee
6. To be available to Chair meetings and carry out other duties as Chairman, allowing sufficient time to support the work of the Committee outside meetings
7. To Chair the committee in a fair, open and balanced manner in accordance with the procedures of the committee
8. To guide, with the assistance of officers, the committee to reach legally sound decisions based on the information presented to it
9. To provide and present a report concerning the Committees activities to Council at the council meeting in April each year or at any other time as may be requested

### **Skills desired**

1. Good communication and interpersonal skills
2. Leadership and chairmanship skills
3. Project and time management skills
4. Ability to influence and work constructively with members, officers, the public, external advisors and outside organisations
5. Ability to work as part of a team

## **CHAIRMAN OF A REGULATORY COMMITTEE**

### **Purpose**

1. To provide leadership and direction to the Committee
2. To demonstrate to the public and to any applicants and objectors that there is fair and open decision making by or on behalf of the Committee
4. To chair and manage Committee meetings and ensure the Committee achieves its terms of reference

### **Duties and responsibilities**

1. To lead the Committee, in consultation with officers, in prioritising its work
2. To be available to chair meetings and carry out other Chairman duties, allowing sufficient time to support the work of the Committee outside meetings
3. To encourage Committee members to obtain the skills to contribute the work of the Committee and to work with officers to ensure the provision of necessary training to members
4. To endeavour to engage all members of the Committee in Committee activities
5. To develop a constructive and effective relationship with relevant Chief Officers and their staff
6. To be willing to learn about the professional disciplines and services relevant to the work of the Committee
7. To Chair the committee in a fair, open and balanced manner in accordance with the procedures of the committee; and ensuring an appropriate and fair hearing to applicants and objectors
8. To guide, with the assistance of officers, the committee to reach legally sound decisions based on the information presented to it
9. To work with the Officers of the Council to ensure that the Council policies and procedures in relation to the Committees activities are up to date and applied correctly
10. To provide and present a report concerning the Committees activities to Council at the Council meeting in April each year or at any other time as may be requested

### **Skills desired**

1. Good communication and interpersonal skills
2. Leadership and excellent chairmanship skills
3. Project and time management skills
4. Ability to influence and work constructively with members, officers, the public, external advisors and outside organisations
5. Ability to work as part of a team

## **OVERVIEW AND SCRUTINY COMMITTEE CHAIRMAN**

### **Purpose**

1. To provide leadership of and direction to the Committee
2. To chair Committee meetings and ensure the Committee achieves its terms of reference

### **Duties and responsibilities**

1. To encourage Committee members to obtain the necessary skills to contribute effectively to the work of the Committee in carrying out the Scrutiny Role and to work with officers to ensure the provision of necessary training
2. To endeavour to engage all members of the Committee with the scrutiny process
3. To lead the Committee, in consultation with officers, to most effectively prioritise its Work load so as to ensure effective scrutiny, paying particular regard to the Forward Plan
4. To co-ordinate work with the other Overview and Scrutiny Committees, so as to ensure that the scrutiny and review work of the Committees is not duplicated by them; and to share learning
5. To develop a constructive relationship with the Executive, especially with relevant portfolio holders
6. To develop a constructive relationship with the Chief Officers and other senior officers in the areas that the Committee scrutinises
7. To develop a constructive relationship with the relevant senior officers and their staff and with relevant portfolio holders
8. To be available to Chair meetings and carry out other duties as Chairman allowing sufficient time to support the work of the Committee outside meetings
9. To Chair the committee in a fair, open and balanced manner in accordance with the procedures of the committee
10. To provide and present a report concerning the Committees activities to Council at the Council meeting in April each year or at any other time as may be requested

### **Skills desired**

1. Good communication and interpersonal skills
2. Leadership and chairmanship skills
3. Project and time management skills
4. Ability to influence and work constructively with members, officers, the public and outside organisations
5. Ability to work as part of a team

## **LEADER OF THE OPPOSITION**

### **Purpose**

1. To provide strong, clear political leadership for the main Opposition Group on the Council and act as main opposition spokesperson.
2. To promote good governance, member development, and discipline within the main Opposition Group and manage the work of members in the group.
3. To co-ordinate the participation of the Opposition Group in the business of the Council

### **Duties and Responsibilities**

1. To provide constructive challenge of and comment upon the Council's vision, policies, strategies and the delivery of services
2. To provide strong, clear leadership in the development and co-ordination of credible alternative policies, strategies and service delivery; providing new ideas and alternative viewpoints to the council
3. To promote and support good governance of the Council and its affairs and the adherence by Opposition Group members to the Code of Conduct
4. To establish and represent the views of the Opposition Group on matters of council policy and priorities
5. To represent the Opposition Group on working parties and informal working groups
6. To play an effective part in the work of the Councils Scrutiny and Overview Committees, liaising with Committee Chairman as appropriate
7. To liaise with officers and other political groups as appropriate.

### **Skills desired**

1. Good communication and interpersonal skills
2. Ability to analyse and grasp complex issues
3. An understanding of national and local government statutory and financial frameworks
4. An understanding of the Council, including the economic and social situation within Tamworth
5. The ability to understand the Council's budget
6. Leadership skills
7. Political knowledge and awareness
8. Ability to work effectively with Council officers, the public, the media and outside organisations
9. Ability to work as part of a team

## **DEPUTY LEADER OF THE OPPOSITION**

### **Purpose**

To deputise for the Leader of the Opposition Group in his absence.

### **Duties and Responsibilities**

1. To assist and work with the Leader of the main Opposition Group
2. To act in the absence of the Leader of the main Opposition Group as appropriate
3. To fulfil the duties of the Leader of the Opposition in his or her absence
4. To assist the Leader of the Opposition in specific duties as required.

### **Skills desired**

1. Good communication and interpersonal skills
2. Ability to analyse and grasp complex issues
3. An understanding of national and local government statutory and financial frameworks
4. An understanding of the Council, including the economic and social situation within Tamworth
5. The ability to understand the Council's budget
6. Leadership skills
7. Political knowledge and awareness
8. Ability to work effectively with Council officers, the public, the media and outside organisations
9. Ability to work as part of a team

## PART 7 - MANAGEMENT STRUCTURE



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## COUNCIL

THURSDAY, 16TH MAY 2017

### REPORT OF THE PORTFOLIO HOLDER FOR REGENERATION

#### TAMWORTH START UP BUSINESS GRANT

##### EXEMPT INFORMATION

Not applicable

##### PURPOSE

The purpose of this report is to update Council on a Start-Up Business Grant scheme that was approved at Cabinet on the 6<sup>th</sup> April. The Grant will be available for individuals wishing to start up in self-employment or business and young businesses that have been trading for no more than 3 years. The report seeks approval for amendments to Grants subcommittee constitution by full Council.

##### RECOMMENDATIONS

- That the principles of the Start-up Business Grant are understood.
- That I Council agrees to amend the Cabinet Grants (Sub Committee) constitution to include the addition of the Start-up Business Grants scheme.
- That Cabinet Grants (Sub Committee) makes final decisions on all Start Up Business Grants applied for on a quarterly basis.
- That Council is made aware the Start-up Grants scheme will be available up to a total value of £20,000per annum subject to annual budget agreements and reviews up until 31<sup>st</sup> March 2020.
- That the impact and need for a business grants scheme be reviewed on an annual basis through the business planning process and relevant key performance indicators.
- That after 3 years, a report on the success of the project be formally reported to Cabinet, detailing at a minimum impact, outcomes and learning.

##### EXECUTIVE SUMMARY

For the past 7 years through the Voluntary and Community Sector budgets, Tamworth Borough Council has contracted out the provision of business support in various forms to an external supplier, BDS Ltd. These contracts provided a mixture of one to one support and workshops aimed at improving skills within the local business community.

The Economic Development and Regeneration (EDR) team works with partners across the two Local Enterprise Partnership (LEP) Geographies to deliver, promote and monitor a number of grants to businesses, however there is little or no financial support for individuals and very new businesses. Any funding currently available to businesses tends to come with a requirement to “match” the amount being granted and have strict requirements on the type of business applying and the business activity they deliver. These requirements leave a large number of small new businesses unable to access start up finance. Over the years the EDR team has had a number of enquiries from individuals requiring small amounts of money to buy equipment, help with marketing or buy relevant insurances in order to allow them to trade.

The Council has recently engaged with Solihull Council to deliver a European funded enterprise programme called Enterprise for Success which offers 12 hours of one to one advice for:

- Individuals to explore the idea of starting their own businesses
- Business to actually start up
- Businesses that have been trading for up to 3 years.

The contract to deliver this work has been given to Blue Orchid Limited, who has 15 years of experience running similar contracts across the country. Blue Orchid will provide their services at no cost to the Council as this forms part of their existing contract with Solihull MBC, through the Enterprise for Success contract, which the EDR service already contributes £10,000 towards per annum and matches officer time to.

This programme ensures individuals and businesses have the right skills they need to run their business and results in the creation of a business plan.

The Council currently offers a number of small grants to encourage Voluntary Sector growth, and sporting achievement, it currently does not directly offer anything for individuals looking to start their own business.

The proposal, using £20,000 per annum that was previously used to fund BDS Ltd support to businesses, will be to award grants of between £500 and £1500 to new and young (up to 3 years old) businesses. This funding will be directly used to address a significant gap in small finance for self-employment and start-ups. This grant in combination with the one to one support available by Blue Orchid will significantly contribute towards helping to promote entrepreneurship, self-employment and new business start-ups in Tamworth that have seen low levels across the Borough in the past.

A requirement of receiving these grants and satisfying some basic eligibility criteria will be to attend the Enterprise for Success courses, and receive 12 hours of support culminating in the production of a basic business plan. It is the intention to deliver all of this activity from the soon to be opened Tamworth Enterprise Centre at Philip Dix House – formerly the Phil Dix Centre.

Grant applications will be recommended to the Cabinet Grants (Sub committee) on a quarterly basis for approval. Eligibility and grant criteria are attached in Appendix 1. The process from enquiry through to award of grant can be found in Appendix 2. Staff from the EDR Team will work closely with Blue Orchid, the company awarded the contract to deliver the Enterprise for Success project, to ensure individuals are right for the grant scheme and have the basic skills in place to maximise success and minimise risk of failure. Success will be measured against the number of people becoming self-employed, registered their business and jobs created.

The EDR team will work closely with Blue Orchid to ensure the grant meet the needs of the customer base. Take up, needs of customers and all of the criteria will be reviewed on a quarterly basis after every funding round. An annual review, in line with the corporate business planning process and key performance indicators will be put in place. Upon completion of the project in 2020, the whole, 3 year, project will be fully assessed, with outcomes, impact and learning summarised in a report to Cabinet.

#### **OPTIONS CONSIDERED**

**Do nothing** – Small businesses will have no funding options to help their business set up and grow. By delivering small grants, the Borough Council can provide a pipeline of individuals and businesses for the Tamworth Enterprise Centre and the Enterprise for Success programme it is jointly delivering, also improving entrepreneurial skills, enterprise creation and raising aspirational levels in Tamworth.

**Deliver a business support service similar to previous years** – Due to the development of Growth Hubs by the LEPs there is now a variety of online and face to face support available to businesses. A further business support scheme would confuse potential end users and create duplication in service provision, in affect cannibalising an already small pool

of individuals who may want to start their own business. Therefore the small grant scheme is seen as the best approach as it will encourage take up of existing support schemes and provide financial support to businesses, who are currently unable to attract funding.

### **RESOURCE IMPLICATIONS**

£20,000 is currently allocated for this project, for the next 3 years financial years in the Voluntary and Community sector budget – GS1002 57025. A virement will be required to move the £20,000 to Economic Development budget GS0402 34537. Success of the grants programme will be reviewed on annual basis, to ensure relevance to residents and appropriate take up. Any budget underspent at year end will be transferred to a retained fund subject to the Revenue Reserves Policy Statement.

The Business Liaison Officer post from the EDR team will be primarily involved in liaising with individuals and assessing initial applications in conjunction with Blue Orchid. Whilst there is additional workload created from this grant fund, it improves engagement with local businesses / residents, raises the profile of the Council in supporting Enterprise and will help towards generating activity from the Tamworth Enterprise Centre. The costs of administering the grant scheme will be met from existing budgets and staff resources.

### **LEGAL/RISK IMPLICATIONS BACKGROUND**

The main risks are that grants to individuals and new starts ups are not spent on the items they were approved for. This will be mitigated by ensuring that applicants must go on the 12 hours Enterprise for Success course, and produce a basic business plan before they can receive the grant. The grants will be monitored by the EDR team in conjunction with Blue Orchid, with supporting relevant information received, (e.g. as invoices, receipts and photos of goods), before the grant is released.

### **SUSTAINABILITY IMPLICATIONS**

Whilst the EDR team will be responsible for delivering the Start-up Business Grant, ultimate responsibility for the annual budget lies with the Head of Partnerships and Commissioning. The Start Up Business Grants programme will be reviewed on an annual basis to ensure that take up is at an appropriate level, with recommendations made should this not be the case. The whole project will be reviewed in 2020 with outcomes, impact, learning and recommendations for future delivery being made to Cabinet.

### **BACKGROUND INFORMATION**

None

### **REPORT AUTHOR**

Matthew Fletcher – Senior Economic Development and Regeneration Officer

### **LIST OF BACKGROUND PAPERS**

Report of the Leader of the Council – Cabinet Report, 26<sup>th</sup> November 2015 – VCS and Locality Commissioned Services Contract Review.

### **APPENDICES**

Appendix 1 – Tamworth Start up Business Grants – Guidance and Criteria

Appendix 2 – Application process flowchart

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# **Tamworth Start Up Business Grant**

## **Guidance Notes for Applicants**

### **1. Purpose:**

The Tamworth Start-Up Business Grant is designed to offer grants of between **£500** and **£1500** to individuals wanting to set up a new business, become self-employed or for existing small business, up to 3 years old, to grow.

In conjunction with 12 free hours of business support provided by Blue Orchid through the Enterprise for Success Programme, individuals or small businesses will ultimately benefit from a business plan, start up advice and if successful a grant to help them establish and grow.

### **2. Grant detail:**

- Minimum **£500** up to a maximum of **£1500**.
- The grant is designed to assist businesses in getting over barriers preventing them from trading, starting up, reaching new customers or dealing with unexpected costs.
- Grants **can be** used towards items such as the following examples:
  - Insurances – public liability, professional indemnity
  - Professional qualifications – e.g. Gas Safe, ISO quality standards, membership of a professional body.
  - Equipment.
  - Set up fees – registration / incorporation.
  - Marketing
  - Inventory / stock.
- Grants **cannot** be used for:
  - Refundable rental deposits
  - Income tax or national insurance payments
  - VAT (unless the business is not VAT registered)
  - Working Capital – for cash / debtor / creditor management excluding stock.
  - Lease / Hire Purchase
  - Personal Vehicles
  - Purchase of an existing business
  - Salaries or owner drawings
  - On-going premises/rental costs
  - Recurring business running expenses, such as business rates, mobile phones, broadband etc.
  - Any other cost the Council may from time to time deem to be ineligible.

### **3. Who can apply?**

#### **Eligible:**

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Author MF

**Either:**

- Individuals who have a permanent residence with the boundary of Tamworth Borough Council.

**Or**

- A small business that has been trading for **no more than 3 years**, with **no more than 5 employees**, registered in and actively trading from within the boundary of Tamworth Borough Council.

**Ineligible:**

- Applicants that do not live in Tamworth or wish to open a premises outside of the Borough.
- Applicants who have not been given the correct and relevant permission (Mortgage holder / landlord / planning permission etc) to run a business from their premises or home address.
- Businesses that have been **registered / trading for more than 36 months** (3 years)
- Business activities deemed as counter-productive to any of Tamworth Borough Council's policies and strategies. These include but are not exclusive to: Betting Shops; ticket agents; landlords; money lending; debt factoring; hire purchase financing; projects which have as their object the promotion of political or religious views; social clubs; night clubs; nudity; illegal or immoral activities.
- Any other business that the Council may from time to time deem to be ineligible.
- Projects, activities or events which promote or condone extremist ideology, activities or terrorism.

**4. When can I apply for a grant?**

Grant applications can only be submitted quarterly in rounds and must be submitted by the **last** Friday of the following months:

- Round 1 - June
- Round 2 – September
- Round 3 - December
- Round 4 – March

A maximum of **£5000** will be awarded in grants per quarterly round. If grants awarded do not meet the quarterly round total of £5000, any amount unspent will be rolled over to the next round.

Grant applications will then be taken to the Council's Cabinet Grants (Sub-Committee) for approval within a month of the round deadline.

**5. How do I apply for funding?**

To register interest and check if you are eligible for a grant please contact:

Lorraine Farley (Business Liaison Officer)

01827 709 525 or [lorraine-farley@tamworth.gov.uk](mailto:lorraine-farley@tamworth.gov.uk)

**Before** a grant can be applied for applicants **must** attend a 12 hour / 2 day workshop ran by Blue Orchid as part of the Council supported Enterprise for Success Programme. More information can be found here:  
<http://www.enterpriseforsuccess.co.uk/>

Once interest in the grant is registered with Tamworth Borough Council, details will be passed to Blue Orchid to arrange attendance at a relevant workshop. Application forms will be handed out at the workshops **only**. These workshops will be held at least **monthly** at the Tamworth Enterprise Centre – Corporation Street, Tamworth, B79 7DN. <http://www.tamworthenterprisecentre.co.uk/>

Advisors from Blue Orchid will support applicants in completing the application form and completing a basic business plan. Final applications **must be** signed by a Blue Orchid Business Advisor.

#### **6. Payment of grant funding:**

- As part of the application process, applicants must provide relevant evidence of the cost of goods and services proposed for purchase.
- Goods / services purchased no more than one month prior to the date of application will be eligible for the grant if proof of purchase can be provided.
- Businesses must purchase or order eligible services and goods, submitting proof of expenditure (i.e. invoices and / or receipts) within 3 (three) months of the date of the grant approval letter.
- All grant funding will be paid by BACS directly into the applicant's bank account.
- Once the application is approved by the Cabinet Grants (Sub-committee) a formal award letter will be sent to the Applicant, for signing. Once a signed letter has been received by the Council, payment will be released.

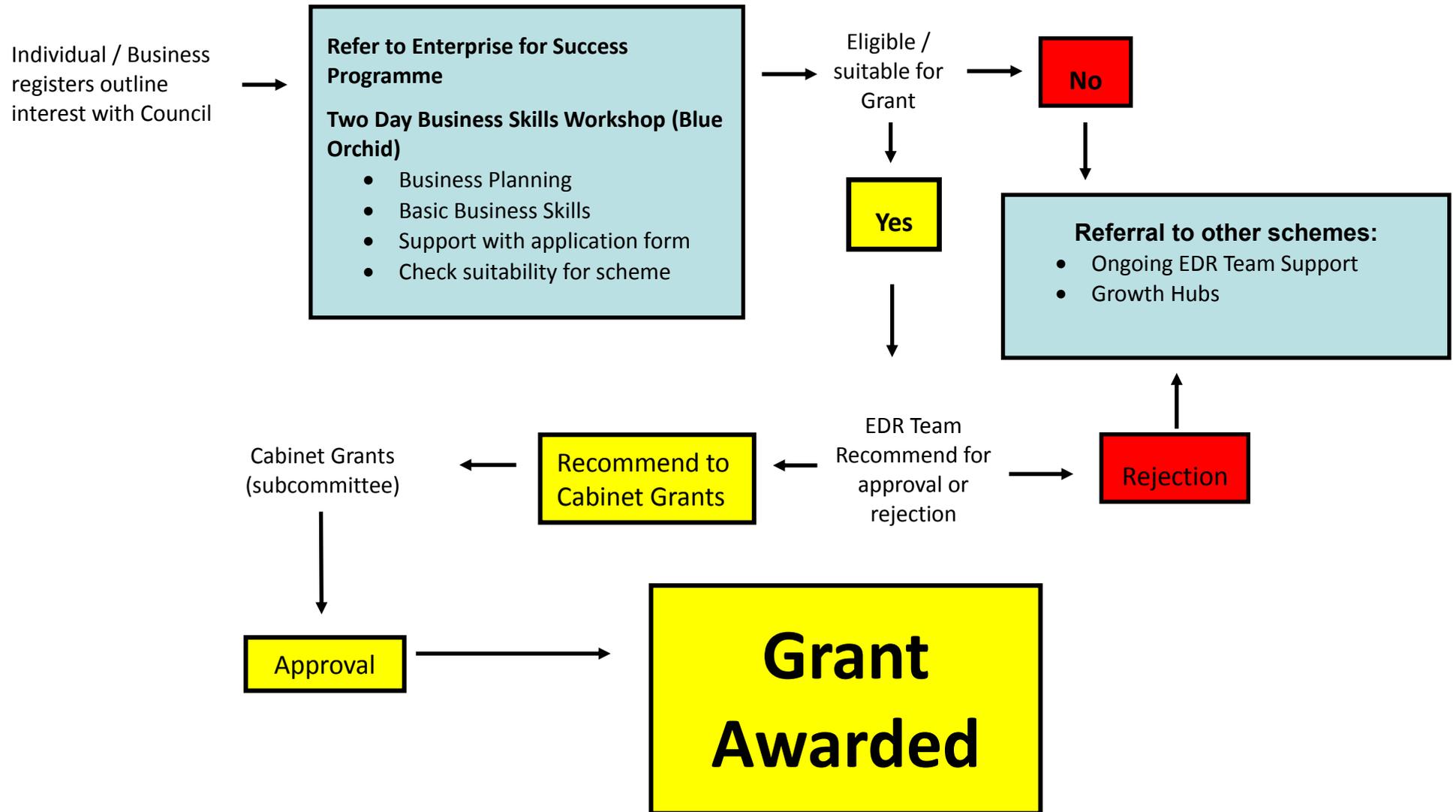
#### **7. Terms and Conditions:**

Tamworth Borough Council reserves the right to change any of the eligibility criteria and details of the grant with no advanced notice.

Any grant awarded will be conditional upon the applicant agreeing to the Council's Terms and Conditions. These terms and conditions form the basis of the agreement between the applicant and the Council. If the applicant accepts the offer, he / she is agreeing to all the Council's Terms and Conditions. **Failure to adhere to the terms and conditions may result in recovery of the grant wholly or in part.**

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# Tamworth Start Up Business Grant - Process



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16 MAY 2017

**REPORT OF THE PORTFOLIO HOLDER FOR ENVIRONMENT AND CULTURE**  
**TAXI LICENSING POLICY – AMENDMENT AND UPDATE**

**EXEMPT INFORMATION**

Nil

**PURPOSE**

To consider the updates and amendments to Tamworth Borough Council's Taxi Licensing Policy 2017-2022 for adoption.

**RECOMMENDATIONS**

That Council adopt the policy and in doing so demonstrate their commitment to meeting the Taxi Licensing objectives in particular safeguarding the public.

**EXECUTIVE SUMMARY**

The Policy is at Appendix 1 to the Report and reflects the new arrangements for the delivery of the Taxi Licensing service. The main amendments are listed in the background paper and summarised below;

- Applicants making their own arrangements for application and renewal rather than Tamworth Borough Council for the administration of the service.
- Increasing awareness of safeguarding and child exploitation measures by voluntary attendance at training offered by the Council. (To date all but three drivers have attended the scheme).
- Following an application for executive plating being considered by Licensing Committee on 2 March 2017 and noting there is currently no mechanism within the Councils adopted policy on this matter, the Committee recommended Cabinet considers including amendment to current policy and to delegate responsibility for dealing with applications to officers.

Cabinet recommended adoption on 27 April 2017.

**RESOURCE IMPLICATIONS**

Provision is made in the Council's budget for the taxi licensing service, which is run on a cost recovery basis. In addition to this, a budget exists to cover the costs of officer time for enforcement and enquiries.

Members are reminded that failure of the Authority to review and publish the Taxi Licensing Policy on a regular basis may result in a Judicial review being brought against the Council.

**LEGAL/RISK IMPLICATIONS**

Decisions in relation to a licence are likely to amount to consideration of civil rights and obligations with the result that Article 6 (1) of the Human Rights Act 1998 is engaged. Should parts of the industry believe the authority's Taxi Licensing Policy is

not sound it would be open to them to undertake judicial review proceedings.

## **SUSTAINABILITY IMPLICATIONS**

An effective Taxi Licensing service will enable the three corporate priorities, 'Living a quality life in Tamworth', 'Growing Strong in Tamworth' and 'Delivering quality services in Tamworth' to be met.

## **BACKGROUND INFORMATION**

Tamworth Borough Council has responsibility for licensing Hackney Carriage and Private Hire vehicles, drivers and operators within the Borough of Tamworth.

The policy will remain in existence for a period of five years, during which time it shall be kept under review and revised as appropriate or after any significant legislative change. There are no substantive changes and draft reflects the current arrangements following the change of fitness testing provider and changes to the types of licence that are available.

The Local Government (Miscellaneous Provisions) Act 1976 requires that identification (licence) plates be displayed on licensed private hire vehicles, and that licensed drivers of those vehicles wear a driver's badge.

For vehicles used by the "general public," display of identification plates on a licensed vehicle and of the driver's badge is important in terms of public safety and reassurance. They indicate to the travelling public and to enforcement authorities that prior to being licensed both the vehicle and the driver have been subjected to checks to ensure their (the public's) safety.

There are occasions when the requirement to display an external identification plate may have the opposite effect in terms of customer safety and could have commercial implications for the operating business. The display of Local Authority licence plates externally may also deter some corporate customers from using the service; and in some circumstances the identification of the vehicle as a licensed vehicle may allow "high risk" passengers to be more readily targeted putting both them and the driver at risk. For example, vehicles used by Government Ministers or celebrities.

The legislation does give us discretion to exempt vehicles from the need to display the Council's approved identification plate and, where that exemption applies, the requirement for the driver to wear a private hire driver's badge. We will only exercise these discretionary powers in rare cases, where we are satisfied that there is a genuine operational business need and business requirement, and where we are certain that the safety of the public will not be compromised as a result. This is consistent with current practice at neighbouring authorities.

There is no "right" to plate exemption, nor is there any right of appeal against the Council's decision NOT to exercise its discretion and allow an exemption. In creating a policy Tamworth Borough Council does not seek to provide a definitive list of vehicle it considers to be suitable (subject to use) for exemption from the requirement to display external identification plates.

The policy outlines the type of operational business need and business requirement and describes the minimum standard of vehicle comfort and type appropriate before we will consider an application for plate exemption. The policy should be read in conjunction with our existing policy relating to private hire vehicles and establishes additional criteria that the Council (and its officers) will take into account when

determining an application for a private hire vehicle to be exempt from displaying external identification plates.

An application for a vehicle to be exempted from displaying an external identification plate must be made by the vehicle proprietor using the appropriate application form. Additional documentation may be requested as reasonably necessary to allow the Council to make an informed decision. Where such documentation is not provided to the satisfaction of the Council the application will be refused.

**REPORT AUTHOR**

*“If Members would like further information or clarification prior to the meeting please contact Steve Lewis, Head Of Environmental Health. Ext 437*

**LIST OF BACKGROUND PAPERS**

1. Draft Taxi Licensing Policy 2017-2022.
2. List of Amendments to Draft Taxi Licensing Policy 2017-2022.

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# **Hackney Carriage and Private Hire Licensing Guidance**

**As of 11 April 2017**

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## **PART 1 – INTRODUCTION**

### **Scope**

- 1.0 The Hackney Carriage and Private Hire Guidance is applicable to the licensing of hackney carriage and private hire drivers and vehicles and to the licensing of private hire operators.

### **Purpose**

- 1.1 The fundamental purpose of licencing is to protect the safety and welfare of the public who live, work and visit Tamworth. The importance of a thriving hackney carriage and private hire trade to the growth and prosperity of Tamworth local economy is recognised; however, the safety and welfare of the public is the overriding principle that will be considered when matters are dealt with under the Guidance.
- 1.2 Tamworth Borough Council ('the Council') is particularly concerned to ensure:
- the safeguarding of children, young persons and adults with care and support needs who are at risk of abuse and neglect;
  - that any person who applies to be a hackney carriage or private hire vehicle driver or operator is a fit and proper person and does not pose a threat (in any form) to the public;
  - that the public are safeguarded from dishonest persons; and
  - that vehicles used to convey passengers are safe and fit for the purpose for which they are licensed.
- 1.3 This document provides guidance to any person with an interest in hackney carriage and private hire licensing; in particular, but not restricted to:
- persons who wish to apply for hackney carriage and private hire vehicle, drivers or operator licences;
  - persons who hold existing licences, including those that are the subject of review;
  - the Council, in its capacity as the licensing authority, including licensing officers, members of the relevant licensing committees and the internal panel (or other relevant decision making bodies);
  - licensing consultants, solicitors and barristers advising and/or representing applicants/licence holders; and
  - magistrates and judges hearing appeals against Council decisions.
- 1.4 The Guidance is also designed to put the Council's licensing requirements into context.

### **Consultation and Communication**

- 1.5 In determining this Guidance, the views of relevant stakeholders have been taken into consideration.

- 1.6 In order to deliver a transparent, accountable and efficient licensing service the Council is committed to ongoing communicating and consultation with all stakeholders. In particular, the Council welcomes the opportunity to communicate and consult with representatives of the hackney carriage and private hire trade to enable and encourage the exchange of views and information in relation to the Guidance, conditions, changes in the law and reviews. The specific methods to achieve this communication and consultation will be determined as required.

### **Review**

- 1.7 This Guidance will be reviewed periodically, however, it will be the subject of continuous evaluation and, if necessary, formally reviewed at any time. At the time of review all relevant stakeholders will again be consulted. Any licensed driver, proprietor or operator may request a review of the policy at any time.

### **Legislative framework**

- 1.8 The operation of the Council's licensing service is undertaken in accordance with relevant legislation and applicable licence conditions. The primary legislation relating to hackney carriage and private hire licensing is contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. In addition, the service is provided in accordance with all relevant Council policies, but in particular the following:

- Equal Opportunities Policy
- Disability and Discrimination
- Race Equality Scheme
- Data Protection Policy
- Enforcement Policy

- 1.9 This Guidance and associated conditions do not address health and safety at work requirements. Drivers and operators are required to ensure all relevant health and safety at work provisions are satisfied.

### **Conditions**

- 1.10 The Council will adopt any reasonable conditions that it deems necessary and appropriate to ensure that proprietors, operators, drivers and vehicles comply with relevant legislation and the fundamental purpose of the guidance, i.e. to protect the safety and welfare of the public. Any licensed driver, vehicle proprietor operator may request a review of any condition or any element of this Guidance at any time. Requests will be dealt with on their individual merits. Those initiatives that lead to the improvement of any element of the service in particular enhancing the safety of the public are actively sought.

### **Safeguarding Children and Adults at Risk**

- 1.11 All local authorities, including district/borough councils in England, have a responsibility to safeguard and promote the welfare of children and adults with care and support needs who are at risk of abuse and neglect. Safeguarding children and adults who are at risk is everyone's responsibility. Abuse is not acceptable and must not be tolerated. Often children and adults at risk do not realise they are a victim of abuse, or are unable to protect themselves from harm. This is why it is important that action is taken and people know what to do when they have safeguarding concerns. It is paramount that all individuals working either directly or indirectly with children and adults at risk have an understanding of safeguarding commensurate to their role, and know how to recognise and

report safeguarding concerns, in relation to children and/or adults at risk. Tamworth Borough Council provides safeguarding awareness training for all taxi drivers, the training includes information on recognising and responding to concerns in relation to child exploitation and trafficking (for further information please see **Appendix A**).

## **PART 2 – LICENSING PRINCIPLES, PROCESS AND DELEGATION**

### **Introduction**

- 2.0 The Council has adopted Part II of the Local Government (Miscellaneous Provisions) Act 1976 and, together with the provisions contained in the Town Police Clauses Act 1847, the Council carries out the licensing of hackney carriage drivers and vehicles and private hire drivers, vehicles and operators.
- 2.1 This part focusses on the principles the Council will follow when administering licence applications, reviewing conditions, setting fees and setting the table of fares. It explains the roles and duties of the Licensing Committee, the Sub-Committee and officers of the Council.

### **Licensing principles**

- 2.2 The Council aims to provide a clear, consistent and responsive service to prospective and current licence holders, members of the public and other stakeholders. This includes the provision of advice to prospective applicants, including advice on the effect that convictions, etc. may have on any application, and to existing licence holders. The Council will be mindful of the needs of the applicant but this will be balanced against the over-riding duty that the Council has to protect the safety and welfare of the public.
- 2.3 All licence applications will be considered and determined on their own individual merits.

### **Licensing process and delegation of functions**

- 2.4 The Council has delegated its licensing function to the Licensing Committee and further delegated authority to Licensing committee, additionally, officers of the Council who will determine all applications in accordance with this Policy.
- 2.5 Whilst officers and the relevant committees will, in the majority of cases, follow the guidance, there may be specific circumstances that require a departure from the guidance. In such circumstances, the reasons for departing from the guidance will be made clear.

### **Committees**

- 2.6 Licensing Committee

This Committee is made up of 13 members of the Council. It deals with conditions of licence, the setting of fees and charges and hackney carriage fares.

### **Decisions**

- 2.8 The Council has the power to refuse to grant or renew licences and also to suspend or revoke existing licences in accordance with relevant legislative provisions. In addition, the Council may choose to issue written warnings.
- 2.9 Any decision to refuse to grant or renew a licence or to suspend or revoke an existing licence, including the decision to suspend or revoke with immediate effect or to issue a written warning will be made in accordance with the Council's scheme of delegation and other relevant procedures.

- 2.10 Where applications are to be determined, the officer, and/or Licensing committee will take into consideration the facts of the application, any information and/or evidence provided by other interested parties including, but not restricted to, officers from the Council with responsibility for safeguarding and officers from Staffordshire Police together with the recommendation made by the licensing officer presenting the report. Applicants will be given the opportunity to submit written and/or verbal representations as appropriate.
- 2.11 Following the determination of an application by the Council the applicant will receive a copy of the decision in writing. This written decision will be delivered as soon as is practicable after the decision has been made. This will include information on the right of appeal where appropriate.

### **Appeals**

- 2.12 Parties aggrieved by a decision of the Council have a right of appeal. This must be lodged with the relevant Court in accordance with the relevant statutory provisions. The Council strongly advises parties to promptly seek appropriate independent legal advice in such circumstances.

### **Working in partnership**

- 2.13 The Council aims to work in partnership when dealing with hackney carriage and private hire licensing issues. Such partnerships will include (but are not restricted to) relevant hackney carriage and private hire trade associations, neighbouring authorities, Staffordshire Police, Driver and Vehicle Standards Agency (DVSA), Revenues and Benefits teams and consumer groups.

## **PART 3 – LICENSABLE ACTIVITIES**

### **Introduction**

- 3.1 This part of the Guidance focusses on the licensable activities and the necessary steps required to obtain and to hold such a licence. These steps will include the standards that applicants must attain and the conditions that apply. Where appropriate, any reference to ‘applicant’ is deemed to include existing licence holders.
- 3.2 The following are applicable to all licence types:
- Where an applicant has failed to declare relevant information or provided false information the application is likely to be refused; where this relates to an existing licence, the licence is likely to be suspended or revoked. Applicants are reminded that it is an offence to knowingly or recklessly make a false declaration or omit any material particularly when giving information required by the application for a licence;
  - All licence fees payable at the time of application are non-refundable;
  - In the event that an application for a licence is paid by cheque, the licence will not be valid until such time as the cheque has cleared. In the event that the cheque does not clear and the licence has been issued, the licence will be null and void with immediate effect;
  - The application process must be completed within 6 months unless prevented from doing so by matters that are outside the applicant’s control, e.g. external delays in the DBS process, otherwise the application process will cease to progress further and the process must recommence from the beginning;
  - Where a licence has been surrendered or revoked a new application must be submitted in accordance with the relevant new licence procedures before the Council will consider the application;
  - When a licence expires, the Council will not permit any ‘periods of grace’ for the submission of a renewal application.

### **Appointments**

- 3.3 The Council (Customer Services) runs an appointment system. Applicants will not be seen without an appointment. To assist drivers and operators to make appointments in a timely manner, the Council will notify all operators, drivers and the proprietors of vehicles that their licence is due to expire and are given sufficient notice for their applications before the expiry of a licence.

### **Criminal record disclosure**

- 3.4 The Council follows the Disclosure and Barring Service (DBS) Code of Practice for Registered Persons and Other Recipients of Disclosure Information (April 2009) and abides by the handling of DBS certificate information requirements on the secure storage, handling, use, retention and disposal of disclosure certificates and certificate information. Further information about the DBS can be found on the GOV.UK website at <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>.

- 3.5 Drivers who undertake contract work for Staffordshire County Council e.g. Education are advised to contact them in order to ascertain the standard of criminal record disclosure required and any other requirements in this respect. The Staffordshire County Council will share information with the Licensing Team about individuals and businesses that apply and/or tender to deliver passenger transport contracts.
- 3.6 All drivers are encouraged to register for the DBS Update Service <https://www.gov.uk/dbs-update-service> further information can be found at. Any drivers who have registered for this service need to supply the last Certificate number during their application process.

### **3a. HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS**

#### **Summary**

- 3a.1 Any person who drives a hackney carriage must hold the appropriate vehicle driver's licence. Hackney carriage vehicle driver's licences are issued in accordance with section 46 of the Town Police Clauses Act 1847.
- 3a.2 Any person who drives a private hire vehicle licence must hold the appropriate vehicle driver's licence. Private hire vehicle driver's licences are issued in accordance with section 51 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3a.3 The Council issues a dual Hackney Carriage and Private Hire licence entitling the driver to drive both vehicles.

#### **Fit and proper person**

- 3a.4 Licensed drivers provide a public service. The Council will not licence anyone to drive a hackney carriage or private hire vehicle unless it is satisfied that they are a fit and proper person.
- 3a.5 In considering the fit and proper person test, all applicants on initial application and renewal must complete an enhanced Disclosure and Barring Service (DBS) check and undergo a medical examination. The Council may also make additional enquiries with Staffordshire Police (and other relevant police forces, where appropriate), other relevant local authorities and any other appropriate organisation, agency or person in order to ensure the Council is in a position to make as accurate an assessment of the applicant's fitness to hold a licence as is reasonably practicable.
- 3a.6 With specific reference to existing licence holders, where there is any cause for a licence to be reviewed, the Council may request the licence holder to consent to a further enhanced DBS check the cost of which lies with the licence holder. Where a licence holder refuses to consent to a further check the Council will take this into consideration in determining their continuing fitness to hold a licence.
- 3a.7 When assessing the fitness of an applicant to hold a drivers licence, the Council will consider the applicant's criminal history as a whole, together with all other relevant evidence, information and intelligence including their history (e.g. complaints and positive comments from the public, compliance with licence conditions and willingness to co-operate with licensing officers) whilst holding a licence from the Council or any other authority. Particular attention will be given to patterns of behaviour, irrespective of the time-scale over which they have occurred, both in terms of proven criminal offences and other behaviour/conduct that may indicate the safety and welfare of the public may be at risk from the applicant.
- 3a.8 In addition, an important element associated with the fitness to hold a licence is the appearance and behaviour of a licensed driver. Consequently, the Council requires all licensed drivers to maintain a reasonable standard of appearance and behaviour when in contact and dealing with other road users, pedestrians, customers, the general public, other licensed operators and drivers of hackney carriage and private hire vehicles, Council officers and elected members at all times. Applicants and licensed drivers must also co-operate with any reasonable request made by an authorised officer of the Council or any police officer.

- 3a.9 It must also be recognised that the Council will consider all criminal history, behaviour and conduct irrespective of whether the specific history, behaviour or conduct occurred whilst drivers were directly engaged in hackney carriage or private hire licensed work at the time or whether they occurred during the drivers' own personal time.

### **Criminal record disclosure**

- 3a.10 As referred to above, hackney carriage and private hire vehicle drivers are required to undertake an enhanced criminal record disclosure (DBS check) and due to the nature of the occupation such drivers are deemed to be an exempt occupation under the provisions of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act (Exceptions) Order 2003.
- 3a.11 The effect of this, in relation to hackney carriage and private hire drivers, is to render the Rehabilitation of Offenders Act 1974 inapplicable and therefore convictions are deemed never to be spent. As a result, all convictions, including cautions, will be taken into account when considering a person's suitability to hold a driver's licence. Consequently, applicants are required to provide details of all convictions and cautions, including driving endorsements and disqualification periods relating to 'major' traffic offences.
- 3a.12 Although cautions are generally not as serious as convictions, they do require an admission of guilt before they can be issued and are therefore a valuable indication as to an applicant's character and whether they are a fit and proper person to hold or be granted a licence.
- 3a.13 A criminal record does not automatically bar an applicant from holding a drivers licence; however, it will be a significant factor when determining whether a licence ought to be granted or not. Where an applicant has previous criminal convictions, these will be considered in line with the guidance set out in **Appendix H**. However, the over-riding consideration will always be to ensure the safety and welfare of the public.
- 3a.14 Applicants must have a UK traceable DBS record of at least 5 years or if the applicant has not been resident in the UK for an unbroken period of at least 5 years have obtained a Certificate of Good Conduct from the Consulate of the applicant's country of origin. The Council may contact the relevant Embassy, High Commission, solicitor or other appropriate body to verify any documents provided. Proof of a right to work in the United Kingdom will also be required. Contact details for Embassies and High Commissions can be found from the Foreign & Commonwealth Office (FCO) on the GOV.UK website at <https://www.gov.uk/government/world>. The FCO may be contacted for further assistance by telephone on 020 7008 1500, by email at [fcocorrespondence@fco.gov.uk](mailto:fcocorrespondence@fco.gov.uk) or by post at the FCO, King Charles Street, London, SW1A 2AH.

### **Period of licence**

- 3a.15 Except in exceptionally circumstances Driver licences will be issued for a period of three years.

### **Application process**

- 3a.16 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing

information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence (which includes the cost of the DBS check, unless applicants provide proof of online subscription to the DBS update service, and the initial knowledge test) is payable at the time the application is submitted.

### **New applications**

3a.17 All new applicants must be at least 21 years old and have held a full DVLA/EC/EEA category B driving licence for at least 1 year at the time of application. The 1 year period is calculated from the date of issue of the full driving licence.

3a.18 In addition, applicants must:

- Submit a completed application form
- Pay the appropriate licence fee
- Provide a passport sized photograph countersigned in accordance with passport rules to prove the applicant's identity
- Have a satisfactory enhanced DBS report
- Where applicable have a satisfactory report in respect of the enquiries made through Staffordshire (or other relevant force), other local authorities and any other organisation, agency or person that the Council has deemed appropriate to seek information from
- Pass the Council's knowledge test
- Provide a completed medical examination form (Group 2)

### **Renewal applications**

3a.19 On renewal of an existing licence, applicants must:

- Submit a completed application form
- Pay the appropriate licence fee
- Currently on all applications the applicant's must provide a passport sized photograph countersigned in accordance with passport rules to prove the applicant's identity
- Complete a DBS disclosure – or provide proof of registration to the DBS Update Service
- Where required, pass a Group 2 medical examination (refer to paragraphs 3a.30 to 3a.40 below to determine whether a medical examination is/is not required)

3a.20 Providing the above are satisfied, the Council will renew the licence subject to the receipt of a satisfactory enhanced DBS report and satisfactory reports through Staffordshire Police (or other relevant force), other local authorities and any other

organisation, agency or person that the Council has deemed appropriate to seek information from.

- 3a.21 To allow continuous driving, a licence application must be received by the Council by the 1<sup>st</sup> day of the month of the expiry month to allow the Council sufficient time to process the renewal application. Once a licence expires, is revoked (subject to a statutory appeal process) or surrendered, it ceases to exist.
- 3a.22 Once a licence ceases to exist, a renewal application will not be accepted by the Council and the applicant must submit a new driver's licence application which will be processed in accordance with the Council's new application procedures.

### **Arranging DBS**

- 3a.23 Appointments are made by the applicant booking an appointment with the Council's Customer Services department with the applicant to complete a DBS application form, knowledge test.

Applicants can subscribe to the DBS Update Service, but proof of subscription reference number and the last DBS certificate number must be provided.

### **Knowledge test**

- 3a.24 Applicants for a licence to drive a hackney carriage or private hire vehicle will be required to take and pass the Council's knowledge test. This test is aimed at assessing the driver's knowledge of streets, locations, attractions, entertainment venues and general geography of the Council's administrative area in order to satisfy the Council that they will be able to convey passengers who may be unfamiliar with the locality. This test will be conducted in English. Details of what is required in the knowledge test are provided within the application pack.
- 3a.25 Normal examination conditions will apply during the knowledge test. Any person found to be using unfair means during the test will be excluded from the test and will be required to take a fresh test and pay the appropriate fee. This may also affect their fitness and propriety to be granted a licence.
- 3a.26 The charge for the initial knowledge test is included in the licence fee. Where an applicant fails the knowledge test there is an additional fee for every subsequent test and every missed test. Once an appointment has been allocated for the test, the applicant must give 2 clear working days' notice to cancel an appointment otherwise they will be required to pay the test fee. In such circumstances the Council will deem that the applicant has failed the test.
- 3a.27 An applicant is permitted to take the knowledge test up to a maximum of 3 times per application, subject to the additional re-test fees being paid. Where an applicant fails the knowledge test three times, the application will be refused, subject to a manager who has responsibility for licensing permitting a further test or tests where the circumstances are considered appropriate. The applicant will not be permitted to re-apply for a drivers licence until the expiry of a 12 month period from the date of the last failed knowledge test.
- 3a.28 The holder of a driver's licence may be required to satisfactorily undertake a further knowledge test or tests at the discretion/request of the Council.
- 3a.29 Failure to submit to or pass any knowledge test will permit the Council to refuse to grant or renew a driver's licence or to revoke or suspend the licence as required.

## Medical requirements

- 3a.30 The Council is permitted to satisfy itself that an applicant for a licence is physically fit and remains so during the currency of any licence. Consequently, all applicants for a hackney carriage or private hire vehicle driver's licence are required to undertake a medical examination on initial application, at defined intervals thereafter and at any other such time as the Council requires to ensure their fitness to drive. The standards required are set out in the DVLA publication 'At a Glance Guide to the Current Medical Standards of Fitness to Drive' (May 2014). The standard required is the 'Group 2 Entitlement'. No grandfather rights are given by the Council in relation to medical matters.
- 3a.31 Applicants must undertake the medical examination and provide a satisfactory medical certificate before a licence is issued. Every 5 years upto the age of 45, or sooner if stipulated by the examining doctor.
- 3a.32 Applicants aged 45 to 65 will be required to undertake a medical examination every 3 years, or sooner if stipulated by the examining doctor. Applicants must provide satisfactory medical certificate.
- 3a.33 Applicants over the age of 65 must undertake a medical examination and provide a satisfactory medical certificate annually, or sooner if stipulated by the examining doctor.
- 3a.34 In particular, applicants must consider the medical conditions listed in **Appendix I** as the Council may refuse to grant an application or revoke an existing licence where an applicant has any of the listed conditions. Where relevant, the applicant must comply with the additional requirements detailed in **Appendix I**.
- 3a.35 If once licensed, the driver's medical circumstances change during the currency of the licence, the driver must inform the Council within 7 days. The Council may require the driver to immediately undertake a further medical examination and provide an approved medical certificate confirming the outcome of this examination and the driver's fitness (or otherwise) to continue as a licenced driver.
- 3a.36 Should an authorised officer of the Council have reason to believe that a licensed hackney carriage or private hire vehicle driver has a medical condition that renders them unfit to drive, a further medical examination will be requested.
- 3a.37 All medical examinations must be carried out by the Council's appointed Medical examiner who is a - General Practitioner (GP) registered with the General Medical Council. The Council reserves the right to refer any medical matters to its own appointed Medical Officer whose decision on the fitness (or otherwise) of a driver to continue as a licensed driver will be final.
- 3a.38 The Council will not grant or renew, as the case may be, any driver's licence unless the foregoing provisions are complied with and the driver can demonstrate that they are medically fit to hold a drivers licence.
- 3a.39 With respect to current licence holders, if it is deemed necessary to do so, a licence may be revoked or suspended in the interests of protecting the public until further medical examination(s) has/have been carried out or if the licence holder is unable to demonstrate that they are medically fit to hold a drivers licence.
- 3a.40 Medical exemptions involving the carriage of disabled persons and assistance dogs may apply to new applicants or licensed drivers who suffer from certain medical conditions. Where this is the case, the applicant/licensed driver must submit to a rigorous medical examination and provide sufficient proof that they

have a history of a specific health problem(s) that means they qualify for such a medical exemption. However, the Council reserves the right to refuse to grant a licence if deemed appropriate to do so.

### **DVLA and other relevant driving licences**

- 3a.41 A person applying for a drivers licence must be at least 21 years old and have held a full DVLA/EC/EEA category B driving licence for at least 1 year at the time of application. This includes European Union (EU), European Economic Area (EEA) and Northern Irish licences.
- 3a.42 Throughout the currency of the licence, the driver must possess a full driving licence in accordance with the above requirements.
- 3a.43 Applicants are required to produce the original of their driving licence. Copies will not be accepted.
- 3a.44 All applicants holding driving licences issued by agencies other than the DVLA must produce a certificate to show a driving record from the country of issue.
- 3a.45 The Council will not provide photocopies of any driver's driving licence from Council records.

### **English speaking**

- 3a.46 The applicant is expected to complete the knowledge test without any translation being offered. And must be able to show they are capable of completing a receipt.

### **Licence conditions**

- 3a.47 The applicable conditions with which a driver holding a hackney carriage, private hire or drivers licence must comply are set out at **Appendix B**. These conditions are in addition to any matters set out within the main body of the Policy.

### **Main legal requirements**

- 3a.48 Production of documents

The driver must, on request, produce for inspection their driver's licence forthwith or within 5 days to either the Council's offices or a police station.

- 3a.49 Driver's badges and licences

There are two badges issued. One must be worn by the driver at all times when driving the licensed vehicle and the badge must be plainly and distinctly visible.

The second badge must be displayed in a prominent position within the vehicle to be seen by members of the public.

- 3a.50 All drivers of vehicles licensed for hackney purposes of which they are not the operator, must before commencing driving that vehicle, deposit a copy of their driver's licence with the operator for retention by him until such time as the driver ceases to be permitted or employed to drive the vehicle or any other vehicle of his.
- 3a.51 On ceasing to be a licensed driver through suspension, revocation, refusal to renew or expiry of the driver's licence, the licence holder must return the badge

and licence to the Council within 7 days (or earlier if the Council so demands) of the suspension, revocation, refusal to renew or expiry becoming effective.

3a.52 Journeys

Drivers must not unnecessarily prolong a journey, in distance or in time.

3a.53 Vehicles permitted to be driven for private hire and hackney carriage purposes

Only vehicles licensed by the Council are permitted to be used for hackney carriage and private hire purposes.

3a.54 Driving licensed vehicles

Only drivers who are licensed by Tamworth Council are permitted to drive vehicles that are licensed by this authority. The only exceptions to this are when the vehicle is undergoing a fitness test and needs to be driven by the MOT examiner or it is being driven by a qualified mechanic for the purposes of a vehicle service, recovery or maintenance or otherwise permitted by legislation.

3a.55 Touting

A proprietor or driver of a hackney carriage, when standing or plying for hire, must not call out or otherwise importune any person to hire such vehicle and must not make use of the services of any other person for this purpose.

3a.56 Plying for hire

Drivers of private hire vehicles must NOT 'ply for hire'. The Council's interpretation of 'plying for hire' is set out at **Appendix G** and is based on relevant legislation and case law.

3a.57 Transporting children

As a minimum, drivers must comply with the requirements set out in the table below.

<b>Category</b>	<b>Front seat</b>	<b>Rear seat</b>	<b>Who is responsible?</b>
<b>Child up to 3 years</b>	Correct child restraints must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver
<b>Child from 3<sup>rd</sup> birthday up to 135 cm in height or 12<sup>th</sup> birthday, whichever they reach first</b>	Correct child restraints must be used	Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third. A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.	Driver
<b>Child over 135 cm in height or 12 or 13 years old</b>	Seat belt must be worn if available*	Seat belt must be worn if available.	Driver
<b>Passengers aged 14 years and over</b>		Seat belt must be worn if available.	Passenger

\*Vehicles built before 1965 are not required to have fitted seatbelts.

### 3a.58 Smoking in vehicles

Drivers must not, at any time, smoke or permit passengers to smoke in their vehicle as required by the Health Act 2006 and the Smoke-Free (Exemptions and Vehicles) Regulations 2007.

### 3a.59 Refusing to convey passengers

A driver of a hackney carriage who is waiting at a rank/stand must not refuse to carry a passenger without a reasonable excuse.

### 3a.60 Overcharging

Drivers of hackney carriages must not charge more than is permitted under the current table of fares.

### 3a.61 Persons riding without consent

Drivers of hackney carriages must not permit persons to be carried in the vehicle unless they have the consent from the person who is actually hiring the vehicle.

### 3a.62 Unauthorised drivers

Licensed drivers of hackney carriages must not allow any persons to drive a hackney carriage unless they are authorised to do so by the proprietor and hold an appropriate license to do so.

### 3a.63 Unattended vehicles

Hackney carriage drivers must not leave their vehicle unattended in any street or public place or venue, where in contravention to parking regulations.

### 3a.64 Obstruction

Hackney carriage drivers must not obstruct other hackney carriage drivers/vehicles from undertaking their normal hiring and driving activities.

### **3b. HACKNEY CARRIAGES**

#### **Summary**

- 3b.1 Hackney carriages are licensed in accordance with the provisions contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.
- 3b.2 Commonly known as 'taxis', hackney carriages are licensed to stand for hire at a taxi rank or can be hailed in the street in the administrative area of the Council with which it is licensed and may also undertake pre-booked journeys anywhere in the country.
- 3b.3 The Council does not limit the number of hackney carriage licences that it will issue.
- 3b.4 The Council will not licence a vehicle for hire and reward which is licensed by another local authority or allow or permit a hackney carriage identification plate issued by another authority to be displayed on the vehicle.
- 3b.5 All hackney carriages must be capable of providing for at least one wheelchair. Transitional arrangements set out at paragraph 3b.7 apply.

#### **Relevant licensable area**

- 3b.6 The Council will not operate separate zones for licensing of hackney carriages and the relevant licensable area will be the whole administrative area of the Council.

#### **Intended use of vehicles**

- 3b.7 A person applying for a licence for a hackney carriage vehicle should do so with the intention of using the vehicle in the administrative area of Tamworth Borough Council. Where the intention is to use a hackney carriage licensed vehicle in another council's area for private hire, then the applicant should apply to that council for an appropriate licence. 3b.9 In accordance with section 57 of the Local Government (Miscellaneous Provisions) Act 1976, a person applying for a hackney carriage licence will be required to indicate whether the vehicle will be used primarily within the administrative area of Tamworth Borough Council or outside the area. Details will be required as to the proportion of business that will be carried out both within and out of Tamworth Borough Council's administrative area. In addition, details of the location of business carried on outside the Council's area will be required. Applications received where the primary use of the vehicle is or is likely to be outside the Council's area will be refused.
- 3b.8 Full details of the Council's intended use policy for the licensing of hackney carriages is set out at **Appendix J**.

#### **Period of licence**

- 3b.9 Vehicle licences will be issued for 12 months.

#### **Applicant**

- 3b.10 The applicant for a vehicle licence must be the person who is the legal owner of the vehicle concerned and entitled to have the ownership of the vehicle registered under the provisions of Regulation 10 of the Road Vehicles (Registration and Licensing) Regulations 2002 in their own name. Prior to licensing and thereafter, as required, satisfactory evidence must be produced to demonstrate compliance with this requirement.

## **Vehicles**

3b.11 The Council requires all hackney carriage vehicles to comply with the following requirements:

### **Safety**

3b.12 Every new type of taxi must comply in all respects with the requirements of the Motor Vehicle (Type Approval) Regulations 1980, the Motor Vehicle (Type Approval) Regulations (Great Britain) 1984, the Motor Vehicles (EC Type Approval) Regulations 1998 and with any further national or international legislation as may be applicable. They must also comply in use with the Road Vehicles (Construction and Use) Regulations 1986 (C & U). Every new type of taxi offered for approval must comply in all respects with British and European vehicle regulations and be “type approved” to the requirements of the M1 category of European Whole Type Approval Directive 2007/46/EC as amended. Those taxis which have not been “type approved” to the M1 category (e.g. conversions) must be presented with approved certification that the specific vehicle meets the requirements of that category. Each vehicle must also have passed the Council’s fitness test.

### **Other Requirements**

3b.13 Vehicles must not seat more than eight passengers (not including the driver). Any alterations to the manufacturer seating configuration must be inspected and certified by DVSA and:

- (a) Be a Light Passenger Vehicle as defined by section 85 of the Road Traffic Act 1988 and have a minimum of 4 wheels
- (b) Provide sufficient means by which any person in the carriage may communicate with the driver.
- (c) Entire external bodywork of the vehicle must be of a uniform colour. (This does not prohibit the display of advertisements as authorised by the Council.
- (d) All paintwork must be maintained in a high gloss finish of a uniform colour (but note the specific requirement at ‘c’ above) and free from dents, scratches or rust.
- (e) Have a watertight roof or covering.
- (f) Provide at least two windows on each side of the vehicle of which one window on one side must have a means of opening/closing.
- (g) Tinted windows will only be permitted in accordance with the manufacturers or specialist coachbuilder’s specification and must comply with the Road Vehicles (Construction & Use) Regulations 1986 as amended.
- (h) Have seats that are properly cushioned and covered.
- (i) Have a floor provided with a proper carpet, mat, or other suitable covering.
- (j) Have fittings and furniture in a clean condition and be well maintained and in every way fit for public use.

- (k) Provide means for securing luggage if the carriage is so constructed as to carry luggage.
- (l) All seats must have unobstructed access. (No tilting or sliding seats) :-  
have a three point seatbelt as specified in the Road Vehicle (Construction and Use) Regulations 1986 (as amended)
- (m) Have a minimum of four passenger doors including an entry/exit point for the driver if a vehicle other than a taxi approved to the specifications of the Public Carriage Office.
- (n) Be maintained in a sound mechanical and structural condition at all times.
- (o) Have a spare pneumatic tyre or suitable manufacturers repair kits. Where tyres, including the spare must comply with the vehicle manufacturer's specification and any relevant legislation.
- (p) Be maintained in a clean and safe condition at all times from both exterior and interior perspectives.
- (q) Have provision for the legal transportation of a minimum of one wheelchair at all times.

### **Application process**

- 3b.14 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence is payable at the time the application is submitted.
- 3b.15 The application process to licence a hackney carriage vehicle is the same for a new or renewal application.
- 3b.16 Any person wishing to licence a hackney carriage vehicle must submit:
- a completed application form;
  - the appropriate licence fee;
  - a valid Certificate of fitness
  - a valid certificate of insurance for public hire
  - all vehicles must have current Vehicle Excise Duty (Road Tax) this can be checked online
  - the V5 registration certificate
  - the vehicle is fitted with a taximeter in accordance with the requirements

### 3b.17 Taximeters must be:

- certified by a notified body in accordance with the Measuring Instruments Directive (MID) (2004/22/EC), in particular Annex 007;
- fitted with a device, the use/action of which will bring the taximeter into action and cause the word 'HIRED' to appear on the face of the taximeter and such a device must be capable of being locked in a position such that the machinery of the taximeter is not in action and that no fare is recorded on the face of the taximeter;
- calibrated against an appropriate standard to ensure the tariff charged does not exceed the maximum fares agreed by the Council;
- calendar controlled;
- fixed to the vehicle with appropriate seals/appliances to prevent any person from tampering with the meter except by breaking, damaging, or permanently displacing the seals/appliances; and
- have the word 'FARE' printed on the face of the meter in plain letters so as clearly to apply to the fare recorded thereon.

### **Fitness test requirements**

### 3b.18 Fitness tests are required in accordance with the following requirements:

- Vehicles must be submitted for an fitness test in accordance with Tamworth borough Council's testing policy at intervals (and any other inspection deemed necessary by an authorised officer).
- Vehicles are tested every 6months when under 4years of age, and at 4 monthly intervals when over 4 years of age.
- Fitness tests must be undertaken by a 'Nominated Tester' or Authorised Vehicle Examiner at a Vehicle Testing Station appointed under Section 45 of The Road Traffic Act 1988 and the Motor Vehicles Test Regulations 1981; the cost of all tests must be met by the vehicle operator.
- The vehicle must have a valid fitness test throughout the licence period.
- With respect to a licensed vehicle, in the event of a proprietor failing to present to the Council a fitness test certificate as required (unless delayed or prevented by sufficient cause accepted and agreed by the Council), the Council may suspend the licence and require the proprietor of that hackney carriage to return the plate to them within 72 hours.

### **V5 registration certificate**

3b.19 The Council accepts that a full V5 registration form in the new owner's name is not always available upon first licence; however, the V5/2 green section of the V5 form must be produced, or a bill of sale. Where the green section has been produced on first licensing the vehicle, a full V5 form in the new owner's name must be produced to the Council within 7 days of the form being received by the owner of the vehicle. A V5 form or proof of purchase must be produced upon transfer of a vehicle licence.

### **Renewal of a licence**

- 3b.20 To allow the vehicle's licence to be renewed, a renewal application form must be received by the Council at least 10 working days prior to the expiry date of the original licence to allow the Council sufficient time to process the renewal application. Once a licence expires, is revoked (subject to a statutory appeal process) or surrendered, it ceases to exist. In such circumstances the vehicle must not be used after the expiry date until the renewal plate has been issued.
- 3b.21 Once a licence ceases to exist a renewal application will not be accepted by the Council and the applicant must submit a new vehicle licence application which will be processed in accordance with the Council's new application procedures.

### **Vehicle not fit for the conveyance of passengers**

- 3b.22 Where a proprietor has notified the Council that damage has occurred to a vehicle, otherwise than in accordance with relevant road traffic legislation, or an inspection of the vehicle by an officer of the Council has determined that a vehicle is not fit for the purpose of conveying passengers, an authorised officer of the Council will decide if the condition is such that the vehicle may continue in service or not. If not, the Council may at that time suspend the licence and require the proprietor of the vehicle to return the vehicle's plate to them within 72 hours. The suspension will be lifted and the plate returned at such time when the condition of the vehicle is demonstrated, to the satisfaction of the Council, to be fit for conveying passengers. The officer may require the proprietor to arrange for a further MOT test to be undertaken and certificate produced before the vehicle will be permitted to operate; this is at the discretion of the authorised officer.

### **Advertising**

- 3b.23 Proprietors may advertise on hackney carriages in accordance with the conditions set out at **Appendix K**. This is subject to prior approval from the Council.

### **Closed circuit television (CCTV)**

- 3b.24 Proprietors of hackney carriage vehicles are permitted to install closed circuit television (CCTV) systems providing such systems are installed in accordance with the appropriate legal framework and the Council has been notified, in writing, of their intention to do so. The relevant legislation must be adhered to.

### **Trailers**

- 3b.25 Hackney carriages are permitted to tow trailers when undertaking the licensable activity, providing the conditions set out at **Appendix L** are complied with.

### **Ranks**

- 3b.26 The Highways section of Staffordshire County Council will work with the hackney carriage trade, Licensing and Staffordshire Police to determine where ranks/stands ought to be situated.
- 3b.27 Where a driver is plying for hire and is illegally parked or if, in the opinion of an officer of the Council or police officer, the driver is plying for hire in a dangerous location, the driver's licence may be reviewed and such conduct may be deemed a reasonable cause to revoke or suspend the licence or to take any other appropriate action.

### **LPG converted vehicles**

- 3b.28 The Council must be satisfied that any vehicle that has been converted to LPG has been converted correctly prior to a licence being issued. To this end, the Council will undertake checks with the UK LPG Vehicle Register.
- 3b.29 With respect to new applications, where it is established that a conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will refuse the application.
- 3b.30 In the event that an LPG conversion has been undertaken on a vehicle during a current licenced period and the proprietor of the vehicle fails to notify the Council within 7 days of the conversion and provide the LPG Association Conversion Certificate, the Council will suspend the vehicle licence until such time as the certificate is produced. If the certificate is not produced within 28 days from the date the licence was suspended the Council will revoke the licence.
- 3b.31 In the case of a conversion that has been undertaken on a vehicle during a current licenced period and it is subsequently established that the conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will suspend the licence until such time as the conversion has been undertaken correctly and/or it is demonstrated to the satisfaction of the Council that the vehicle is safe. If this does not occur within a period of 28 days from the date the licence was suspended the Council will revoke the licence.

### **Hackney carriage fares**

- 3b.32 The hackney carriage trade will be expected to apply for any change to the hackney carriage fares. Any proposed changes will be notified to all hackney carriage licence holders, considered by Licensing Committee and advertised in the local press before they are adopted. This does not preclude the Council from putting forward changes to the fares or taking a decision not to accept the application from the trade.

### **Licence conditions**

- 3b.33 The applicable conditions relevant to a hackney carriage licence are set out at **Appendix C**. These conditions are in addition to any matters set out within the main body of the Policy.

### **Main legal requirements**

- 3b.34 Change of proprietor

The proprietor must give notice to the Council of any transfer in his interest in the hackney carriage vehicle to a person other than the proprietor whose name is specified in the licence. Such notice must be given, in writing, within 14 days specifying the name and address of the person to whom the vehicle has been transferred.

- 3b.35 Change of address

The proprietor of a hackney carriage must notify the Council in writing, within 7 days, of any change of their address.

- 3b.36 Retention of drivers licences

Where a Hackney Carriage is working for an Operator they must ensure that each driver's licence is lodged with the operator before the driver is employed to carry out work and must retain the licence in their possession for the period during which the driver remains in their employ. When a driver leaves their employment, the operator must return the driver's licence unless the licence holder has been guilty of misconduct in which case the operator may retain the licence and must issue a summons to have the cause of complaint determined by the Courts. (Note: If the Courts find that the licence has been improperly retained they have the powers to order its return and to award compensation.)

### 3b.37 Inspection

The proprietor must present their hackney carriage for inspection/testing by the Council as required per year.

3b.38 The proprietor must provide, on request, the address where the hackney carriage is kept and allow the Council to inspect/test the vehicle at that address.

### 3b.39 Accidents

The proprietor, notwithstanding their responsibilities under relevant road traffic legislation, must report to the Council any accident as soon as reasonably practicable. However, where the vehicle has suffered accident damage that materially affects the safety, performance or appearance of the vehicle, or the comfort or convenience of fare paying passengers, the driver must notify the Council within 72 hours.

### 3b.40 Production of documents

The proprietor must, on request, produce for inspection the hackney carriage vehicle licence and insurance certificate within 7 days.

### 3b.41 Return of identification plate

Where a licence is revoked, suspended or expires, the proprietor, when required by the Council to do so must return the identification plate within 7 days.

### 3b.42 Transporting children

As a minimum, vehicles must be capable of complying with the requirements set out in the table below.

	Front seat	Rear seat	Who is responsible?
<b>Child up to 3 years</b>	Correct child restrains must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver
<b>Child from 3<sup>rd</sup> birthday up to 135 cm in height or 12<sup>th</sup> birthday, whichever they reach first</b>	Correct child restraints must be used	Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third. A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.	Driver
<b>Child over 135 cm in height or 12 or 13 years old</b>	Seat belt must be worn if available*	Seat belt must be worn if available.	Driver
<b>Passengers aged 14 years and over</b>	Seat belt must be worn if available*	Seat belt must be worn if available.	Passenger

\*Vehicles built before 1965 are not required to have fitted seatbelts.

### 3b.43 Ranks

Hackney carriage ranks/stands are provided in accordance with the Local Government (Miscellaneous Provisions) Act 1976. The Council may appoint ranks/stands for hackney carriages. It is not a mandatory statutory requirement for the Council to do so. Before providing ranks/stands the Council will liaise with the police and the highways department of the Council.

### 3b.44 Fares

Drivers undertaking journeys ending outside the Council's area and in respect of which no fare and no rate of fare was agreed before the journey commenced must not charge more than that indicated on the taximeter or more than the current table of fares allows.

3b.45 Where a hackney carriage is used for a private hire contract the fare charged must not exceed the fares set down in the current table of fares.

### **3c. PRIVATE HIRE VEHICLES**

#### **Summary**

- 3c.1 Private hire vehicles are licensed in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1976. Private hire vehicles must not have the appearance of a hackney carriage vehicle.
- 3c.2 When considering whether a vehicle is a private hire vehicle by the nature of the work it does, Tamworth Borough Council shall have regard to the document Private Hire Vehicle Licensing - A note for guidance from the Department for Transport (August 2011)
- 3c.3 The Council does not limit the number of private hire vehicle licences that it will issue.
- 3c.4 The Council will not licence a vehicle for hire and reward which is licensed by another local authority or allow or permit a private hire vehicle identification plate issued by another authority to be displayed on the vehicle.

#### **Period of licence**

- 3c.5 Vehicle licences will be issued for 12 months.

#### **Applicant**

- 3c.6 The applicant for a vehicle licence must be the person who is the legal owner of the vehicle concerned and entitled to have the ownership of the vehicle registered under the provisions of Regulation 10 of the Road Vehicles (Registration and Licensing) Regulations 2002 in their own name. Prior to licensing and thereafter, as required, satisfactory evidence must be produced to demonstrate compliance with this requirement.

#### **Vehicles**

- 3c.7 The Council requires private hire vehicles to comply with the following requirements:

#### **Safety**

- 3c.8 Every new type of taxi must comply in all respects with the requirements of the Motor Vehicle (Type Approval) Regulations 1980, the Motor Vehicle (Type Approval) Regulations (Great Britain) 1984, the Motor Vehicles (EC Type Approval) Regulations 1998 and with any further national or international legislation as may be applicable. They must also comply in use with the Road Vehicles (Construction and Use) Regulations 1986 (C & U). Every new type of taxi offered for approval must comply in all respects with British and European vehicle regulations and be "type approved" to the requirements of the M1 category of European Whole Type Approval Directive 2007/46/EC as amended. Those taxis which have not been "type approved" to the M1 category (e.g. conversions) must be presented with approved certification that the specific vehicle meets the requirements of that category. Each vehicle must also have passed the Council's fitness test.

#### **Other Requirements**

- 3c.9 Vehicles must not seat more than eight passengers (not including the driver) and:

- a) Be a Light Passenger Vehicle as defined by section 85 of the Road Traffic Act 1988 and have a minimum of 4 wheels;
- b) Provide sufficient means by which any person in the carriage may communicate with the driver;
- c) All paintwork must be maintained in a high gloss finish of a uniform colour and free from dents, scratches or rust;
- d) Have a watertight roof or covering;
- e) Provide at least two windows on each side of the vehicle of which one window on one side must have a means of opening/closing.
- f) Tinted windows will only be permitted in accordance with the manufacturers or specialist coachbuilder's specification and must comply with the Road Vehicles (Construction & Use) Regulations 1986 as amended.
- g) Have seats that are properly cushioned and covered;
- h) Have a floor provided with a proper carpet, mat, or other suitable covering.
- i) Have fittings and furniture in a clean condition and be well maintained and in every way fit for public service.
- j) Provide means for securing luggage if the carriage is so constructed as to carry luggage;
- k) All seats must have unobstructed access. (No tilting or sliding seats) :-
- l) All seats must have have a three point seatbelt
- m) Have a minimum of four passenger doors including an entry/exit point for the driver.
- n) Be maintained in a sound mechanical and structural condition at all times.
- o) Have a spare pneumatic tyre, or manufacturers repair kit. All tyres, including the spare must comply with the vehicle manufacturer's specification and any relevant legislation.
- p) Be maintained in a clean and safe condition at all times from both exterior and interior perspectives.

### **Application process**

- 3c.10 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence is payable at the time the application is submitted.
- 3c.11 The application process to licence a private hire vehicle is the same for a new or renewal application.

3c.12 Any person wishing to licence a private hire vehicle must submit:

- a completed application form;
- the appropriate licence fee;
- a valid fitness test (in accordance with the requirements set out at paragraph 3c.12 below);
- a valid certificate of insurance for private hire
- Evidence that appropriate Vehicle Excise Duty (Road Tax) has been paid, e.g. email confirmation from the DVLA or Post Office receipt; (which can be checked online)
  
- the V5 registration certificate. (The Council accepts that a full V5 registration form in the new owner's name is not always available upon first licence; however, the V5/2 green section of the V5 form must be produced, or a bill of sale. Where the green section has been produced on first licensing the vehicle, a full V5 form in the new owner's name must be produced to the Council within 7 days of the form being received by the owner of the vehicle. A V5 form or proof of purchase must be produced upon transfer of a vehicle licence.)
- evidence of compliance with the relevant European Emission Standards as set out in paragraph 3C.8 either at the point of vehicle construction or by a subsequent adaption or conversion approved by the Council - the compliance must be relevant to the engine installed in the vehicle and this must be reflected in the V5 registration certificate; and

### **Fitness test requirements**

3c.13 Fitness test are required in accordance with the following requirements:

- Vehicles must be submitted for an fitness test in accordance with Tamworth borough Council's testing policy at intervals (and any other inspection deemed necessary by an authorised officer).
- Vehicles are tested every 6mnths when under 4years of age, and at 4 monthly intervals when over 4 years of age.
- Fitness tests must be undertaken by a 'Nominated Tester' or Authorised Vehicle Examiner at a Vehicle Testing Station appointed under Section 45 of The Road Traffic Act 1988 and the Motor Vehicles Test Regulations 1981; the cost of all tests must be met by the vehicle operator.
- The vehicle must have a valid fitness test throughout the licence period.
- With respect to a licensed vehicle, in the event of a proprietor failing to present to the Council a fitness test certificate as required (unless delayed or prevented by sufficient cause accepted and agreed by the Council), the Council may suspend the licence and require the proprietor of that hackney carriage to return the plate to them within 72 hours.

### **V5 registration certificate**

3c.14 The Council accepts that a full V5 registration certificate in the new owner's name is not always available upon first licence; however, the V5/2 green section of the V5 form must be produced. Where the green section has been produced on first licensing the vehicle, a full V5 form in the new owner's name must be produced to

the Council within 7 days of the form being received by the owner of the vehicle. A V5 form or proof of purchase must be produced upon transfer of a vehicle licence.

### **Renewal of a licence**

- 3c.15 To allow the vehicle's licence to be renewed, a renewal application form must be received by the Council at least 10 working days prior to the expiry date of the original licence to allow the Council sufficient time to process the renewal application. Once a licence expires, is revoked (subject to a statutory appeal process) or surrendered, it ceases to exist.
- 3c.16 Once a licence ceases to exist a renewal application will not be accepted by the Council and the applicant must submit a new vehicle licence application which will be processed in accordance with the Council's new application procedures.

### **Vehicle not fit for the conveyance of passengers**

- 3c.17 Where a proprietor has notified the Council that damage has occurred to a vehicle, otherwise than in accordance with relevant road traffic legislation, or an inspection of the vehicle by an officer of the Council has determined that a vehicle is not fit for the purpose of conveying passengers, an authorised officer of the Council will decide if the condition is such that the vehicle may continue in service or not. If not, the Council may at that time suspend the licence and require the proprietor of the vehicle to return the vehicle's plate to them within 72 hours. The suspension will be lifted and the plate returned at such time when the condition of the vehicle is demonstrated, to the satisfaction of the Council, to be fit for conveying passengers. The officer may require the proprietor to arrange for a further MOT test to be undertaken and certificate produced before the vehicle will be permitted to operate; this is at the discretion of the authorised officer.

### **Advertising**

- 3c.18 Proprietors may advertise on private hire vehicles in accordance with the conditions set out at **Appendix K**. This is subject to prior written approval from the Council.

### **Closed circuit television (CCTV)**

- 3c.19 Proprietors of private hire vehicles are permitted to install closed circuit television (CCTV) systems providing such systems are installed in accordance with the appropriate legal framework and the Council has been notified, in writing, of their intention to do so. The relevant legislation must be adhered to.

### **Trailers**

- 3c.20 Private hire vehicles licensed by the Council are permitted to tow trailers when undertaking the licensed activity providing that the conditions set out at **Appendix L** are complied with at all times.

### **Meters**

- 3c.21 Private hire vehicles will not require a meter. However if a meter is fitted, it must be:
- certified by a notified body in accordance with the Measuring Instruments Directive (MID) (2004/22/EC), in particular Annex 007;
  - fitted with a device, the use/action of which will bring the taximeter into action and cause the word 'HIRED' to appear on the face of the taximeter and such a device must be capable of being locked in a position such that the machinery

of the taximeter is not in action and that no fare is recorded on the face of the taximeter;

- calibrated against an appropriate standard to ensure the tariff charged does not exceed the maximum fares agreed by the Council;
- calendar controlled
- fixed to the vehicle with appropriate seals/appliances to prevent any person from tampering with the meter except by breaking, damaging, or permanently displacing the seals/appliances; and
- have the word 'FARE' printed on the face of the meter in plain letters so as clearly to apply to the fare recorded thereon.

### **LPG converted vehicles**

3c.22 The Council must be satisfied that any vehicle that has been converted to LPG has been converted correctly prior to a licence being issued. To this end, the Council will undertake checks with the UK LPG Vehicle Register.

3c.23 With respect to new applications, where it is established that a conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will refuse the application.

3c.24 In the event that an LPG conversion has been undertaken on a vehicle during a current licenced period and the proprietor of the vehicle fails to notify the Council within 7 days of the conversion and provide the LPG Association Conversion Certificate, the Council will suspend the vehicle licence until such time as the certificate is produced. If the certificate is not produced within 28 days from the date the licence was suspended the Council will revoke the licence.

3c.25 In the case of a conversion that has been undertaken on a vehicle during a current licenced period and it is subsequently established that the conversion has not been undertaken correctly and/or the vehicle is unsafe in any way, the Council will suspend the licence until such time as the conversion has been undertaken correctly and/or it is demonstrated to the satisfaction of the Council that the vehicle is safe. If this does not occur within a period of 3 months from the date the licence was suspended the Council will revoke the licence.

### **Licence conditions**

3c.26 The applicable conditions relevant to a private hire vehicle licence are set out at **Appendix D**. These conditions are in addition to any matters set out within the main body of the Policy.

### **Main legal requirements**

3c.27 Change of proprietor

The proprietor must give notice to the Council of any transfer in his interest in the private hire vehicle to a person other than the proprietor whose name is specified in the licence. Such notice must be given, in writing, within 14 days specifying the name and address of the person to whom the vehicle has been transferred.

3c.28 Inspection

The proprietor must present their private hire vehicle for inspection/testing by the Council as required, up to a maximum of 3 times per year.

3c.29 The proprietor must provide, on request, the address where the private hire vehicle is kept and allow the Council to inspect/test the vehicle at that address.

### 3c.30 Accidents

The proprietor, notwithstanding their responsibilities under relevant road traffic legislation, must report to the Council any accident as soon as reasonably practicable. However, where the vehicle has suffered accident damage that materially affects the safety, performance or appearance of the vehicle, or the comfort or convenience of fare paying passengers, the driver must notify the Council within 72 hours.

### 3c.31 Production of documents

The proprietor must, on request, produce for inspection the private hire vehicle licence and insurance certificate within 7 days.

### 3c.32 Return of identification plate

Where a licence is revoked, suspended or expires, the proprietor, when required by the Council to do so must return the identification plate within 7 days.

### 3c.33 Transporting children

As a minimum, private hire vehicles must be capable of complying with the requirements set out in the table below.

	Front seat	Rear seat	Who is responsible?
<b>Child up to 3 years</b>	Correct child restraints must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver
<b>Child from 3<sup>rd</sup> birthday up to 135 cm in height or 12<sup>th</sup> birthday, whichever they reach first</b>	Correct child restraints must be used	Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third.  A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.	Driver
<b>Child over 135 cm in height or 12 or 13 years old</b>	Seat belt must be worn if available*	Seat belt must be worn if available.	Driver
<b>Passengers aged 14 years and over</b>	Seat belt must be worn if available*	Seat belt must be worn if available.	Passenger

\*Vehicles built before 1965 are not required to have fitted seatbelts.

### 3c.34 Ranks/stands

### **3d. Private Hire Executive vehicles**

- 3d.1 The Council will consider requests to licence a vehicle for Private Hire Vehicle Executive Plating. This is a licence that will allow for discreet plating but can only be used for trips of an executive nature and not for general private hire use.
- 3d.2 Vehicles must be pre-approved by an authorised officer and must be such, in the opinion of the licensing officer, of such quality and character to be considered an executive vehicle.
- 3d.3 The applicable conditions relevant to a private hire vehicle licence are set out at **Appendix E**. These conditions are in addition to any matters set out within the main body of the Policy.

### 3e. PRIVATE HIRE OPERATORS

#### Summary

3e.1 Private hire operators are licensed in accordance with the Local Government (Miscellaneous Provisions) Act 1976. Any person who wishes to take bookings, in the course of a business, for a private hire vehicle must hold a private hire operator licence.

#### Period of licence

3e.2 Operator licences will be issued for a period of 5 years.

#### Application process

3e.3 The application form must be fully completed and include all relevant information, supporting documentation and appropriate fee. If any part of the application form is incomplete or the relevant information or supporting documentation is not provided, the applicant will be requested to provide the missing information/documentation and informed that the application will not be processed until such time as all the information/documentation is provided. The full fee for the licence (including the cost of a DBS check, where appropriate) is payable at the time the application is submitted.

3e.4 The application process to licence a private hire operator is the same for a new or renewal application.

3e.5 Any person (including a sole trader, partnership or company) wishing to become a licensed private hire operator must submit:

- a completed application form (where the application relates to a partnership or a company, the application form must provide the name, address and date of birth of all partners, directors/company secretaries, as appropriate);
- the appropriate licence fee;
- a list of the vehicles and drivers which they operate

#### Criminal record disclosure

3e.6 In addition, all applicants (including sole traders, partnerships and companies) for a private hire operator's licence must prove that they are a fit and proper person to hold an operator's licence.

3e.7 Have a satisfactory enhanced DBS check

Enquiries may be made through Staffordshire Police (or other relevant force), other local authorities and any other organisation, agency or person that the Council has deemed appropriate to seek information from

3e.8 **N.B** For partnerships or companies, the above requirements apply to all partners and directors/company secretaries who are directly involved in the management of drivers. Where there is no direct involvement with the management of drivers, all partners and directors/company secretaries are required to provide a satisfactory basic criminal record disclosure from Disclosure Scotland. Applicants can apply to Disclosure Scotland online at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk) or contact them by telephone on 0870 609 6006, by email at [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk), by fax 0870 609 6996 or in writing to Disclosure Scotland at PO Box 250, Glasgow, G51 1YU.

3e.9 The Council adopts the same principles when determining whether an applicant is a fit and proper person to hold a private hire operator's licence as it does to persons applying for a drivers licence. In this respect, applicants are required to have due regard, as appropriate, to the requirements and information set out at paragraphs 3a.4 to 3a.16 of this guidance.

3e.10 Applicants must have a UK traceable DBS record of at least 5 years or if the applicant has not been resident in the UK for an unbroken period of at least 5 years have obtained a Certificate of Good Conduct from the Consulate of the applicant's country of origin. The Council may contact the relevant Embassy, High Commission, solicitor or other appropriate body to verify any documents provided. Proof of a right to work in the United Kingdom will also be required. Contact details for Embassies and High Commissions can be found from the Foreign & Commonwealth Office (FCO) on the GOV.UK website at <https://www.gov.uk/government/world>. The FCO may be contacted for further assistance by telephone on 020 7008 1500, by email at [fcocorrespondence@fco.gov.uk](mailto:fcocorrespondence@fco.gov.uk) or by post at the FCO, King Charles Street, London, SW1A 2AH.

### **Operator's premises**

3e.11 The Council will not grant an operator's licence unless the operator can demonstrate to the Council that they have the appropriate planning consent required to operate their business.

3e.12 The Council will only grant operator licences applicable to the physical premises from which the operator's business will be run.

3e.13 The Council will not grant an operator's licence to apply to any physical premises that falls out of the administrative area of Tamworth Borough Council.

3e.14 There are a number of specific conditions set out in the operator licence conditions that apply to premises. Operators must be particularly mindful of complying with these and should they fail to do so the Council will consider revoking the operator's licence.

### **Insurance**

3e.15 Any premises that provide access to members of the public must be covered by Public Liability insurance for a minimum of £5,000,000.

3e.16 The operator must also obtain information as to any requirement for them to have Employers Liability indemnity; if there is such a requirement, it must be for a minimum of £1,000,000.

### **Record keeping**

3e.17 Operators must keep records in accordance with the conditions attached to their licence. Such records must be available upon request from an authorised officer of the Council or a police officer

### **Vehicle not fit for the conveyance of passengers**

3d.18 Where an operator has notified the Council that damage has occurred to a vehicle, otherwise than by an accident that has led to the involvement of the relevant insurance company, or an inspection of a vehicle by an officer of the Council has determined that a vehicle is not fit for the purpose of conveying passengers, an

authorised officer of the Council will decide if the condition is such that the vehicle may continue in service or not. If not, the Council may at that time suspend the licence and require the proprietor of the vehicle to return the vehicle's plate to them 72 hours. The suspension will be lifted and the plate returned at such time when the condition of the vehicle is demonstrated, to the satisfaction of the Council, to be fit for conveying passengers. The officer may require the proprietor to arrange for a further MOT test to be undertaken and certificate produced before the vehicle will be permitted to operate; this is at the discretion of the authorised officer.

### **Closed circuit television (CCTV)**

3e.19 Operators are permitted to install closed circuit television (CCTV) systems in premises to which the public have access to make bookings or to wait providing such systems are installed in accordance with the appropriate legal framework and the Council has been notified, in writing, of their intention to do so.

### **Licence conditions**

3e.20 Applicable conditions relevant to a private hire operator licence are set out at **Appendix E**. These conditions are in addition to any matters set out within the main body of the Policy.

### **Main legal requirements**

3e.21 Contract

Every contract for the hire of a private hire vehicle is deemed to be made with the operator who accepted the booking for that vehicle whether or not the operator provided the vehicle.

3e.22 Production of records/documents

Any records required to be retained in accordance with the licence must be produced, on request, to any authorised officer of the Council or to any police officer. The operator licence must also be produced if requested.

3e.23 Transporting children

As a minimum, operators must ensure the vehicles they operate are capable of complying with the requirements set out in the table below.

	<b>Front seat</b>	<b>Rear seat</b>	<b>Who is responsible?</b>
<b>Child up to 3 years</b>	Correct child restrains must be used	Correct child restraint must be used. If a restraint is not available in a licensed hackney carriage or private hire vehicle, the child may travel unrestrained.	Driver

<p><b>Child from 3<sup>rd</sup> birthday up to 135 cm in height or 12<sup>th</sup> birthday, whichever they reach first</b></p>	<p>Correct child restrains must be used</p>	<p>Where seat belts are fitted, the correct child restraint must be used. The child must use adult belt if the correct child restraint is not available as follows: in a licensed hackney carriage or private hire vehicle; or for a short distance in an unexpected necessity; or two occupied child restraints prevent fitting of a third.</p> <p>A child 3 years and over may travel unrestrained in the rear seat of a vehicle if seat belts are not fitted in the rear.</p>	<p>Driver</p>
<p><b>Child over 135 cm in height or 12 or 13 years old</b></p>	<p>Seat belt must be worn if available*</p>	<p>Seat belt must be worn if available.</p>	<p>Driver</p>
<p><b>Passengers aged 14 years and over</b></p>	<p>Seat belt must be worn if available*</p>	<p>Seat belt must be worn if available.</p>	<p>Passenger</p>

\*Vehicles built before 1965 are not required to have fitted seatbelts.

## **PART 4 – COMPLIANCE, ENFORCEMENT AND COMPLAINTS**

### **Summary**

- 4.0 This part of the Policy sets out the manner in which the Council approaches compliance and enforcement, including the way in which complaints will be dealt with, as it relates to hackney carriage and private hire licensing.

### **Compliance and enforcement**

- 4.1 The Council's licensing officers will work closely with the hackney carriage and private hire trades to achieve compliance with the relevant legislation and the Council's conditions of licence. The Council will do so in accordance with the Council's Enforcement Policy. In addition, hackney carriage and private hire vehicle drivers and operators must comply with all reasonable requests made by officers of Tamworth Borough Council and the police.
- 4.2 The Council will work closely with other enforcement authorities, particularly Staffordshire Police when dealing with licensed and unlicensed vehicles and drivers, especially concerning cross boundary related issues.

### **Complaints**

- 4.3 Where appropriate, complainants will be encouraged to raise complaints with the relevant licence holder or business concerned. However, the Council will also respond to complaints in line with its Enforcement Policy and will use complaint information to assist in the determination of licensing decisions.

## **Part 5 - CONSULTATION**

- 5.0 In determining this Guidance, the views of relevant stakeholders have been taken into consideration.
- 5.2 In order to deliver a transparent, accountable and efficient licensing service the Council is committed to ongoing communicating and consultation with all stakeholders. In particular, the Council welcomes the opportunity to communicate and consult with representatives of the hackney carriage and private hire trade to enable and encourage the exchange of views and information in relation to the Guidance, conditions, changes in the law and reviews. The specific methods to achieve this communication and consultation will be determined as required.
- 5.3 The views of relevant stakeholders will be considered in any major changes to this guidance.

## PART 6 – LICENSING CONTACT DETAILS

### Contact details

For information, advice and guidance relating to hackney carriage and private hire licensing please contact:

Tamworth Borough Council  
Marmion House  
Lichfield Street  
Tamworth  
Staffordshire  
B79 7BZ

Telephone: 01827 709445

Email: general email: [publicprotection@tamworth.gov.uk](mailto:publicprotection@tamworth.gov.uk)

[www.tamworth.gov.uk](http://www.tamworth.gov.uk)

Tamworth Borough Council is open  
Monday - Thursday 8.45am - 5.10pm  
Friday - 8.45am - 5.05pm

## CHILD SEXUAL EXPLOITATION AND TRAFFICKING OF CHILDREN AND YOUNG PEOPLE

### Introduction

- A1.0 Set out below is information for hackney carriage and private hire vehicle drivers and operators to help them report, to the relevant authorities, matters of concern that could relate to the safety of children in relation to child sexual exploitation and trafficking.

### General information

- A1.1 Tamworth Borough Council's Licensing Service is helping to tackle child sexual exploitation and trafficking by working together with key partners particularly Staffordshire Police, Children and Adult Services within the County Council and the Staffordshire Safeguarding Children Board.
- A1.2 Through agencies working together and sharing information, we aim to identify and prevent sexual exploitation, disrupt the activities of perpetrators, protect children and young people and prosecute perpetrators of sexual exploitation. Sharing information with Staffordshire Police and Staffordshire Children Social Care First Response Service helps to protect young people from harm. Safeguarding children and young people is everyone's business and everyone's responsibility.
- A1.3 Child sexual exploitation is a crime that can affect any child, anytime, anywhere regardless of their social or ethnic background. Sexual exploitation of children and young people involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive something, e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money, etc. as a result of them performing, and/or another or others performing on them, sexual activities. Violence, coercion and intimidation are commonly involved in such exploitative relationships.
- A1.4 Child sexual exploitation involves perpetrators grooming children and using their powers to sexually abuse them. Sexual exploitation of children and young people can take many forms, whether it occurs through a seemingly 'consensual' relationship with an older boyfriend, or a young person having sex in return for attention, gifts, alcohol or cigarettes. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology.

### **How hackney carriage and private hire vehicle drivers and private hire operators can help tackle child sexual exploitation.**

- A1.5 Drivers of hackney carriages and private hire vehicles as well as private hire operators are in a good position to help identify victims of sexual exploitation because, through the transport services they provide, drivers and operators regularly come into contact with children and young people. This means that licenced drivers and private hire operators are in an ideal position to help protect young people. In particular, drivers should ask themselves the following questions when picking up a fare.

- Does your customer appear to be under 18 years old?
- Are they with a much older person and appear to be in a relationship?
- Do you think that they are under the influence of alcohol or drugs?
- Are you taking them to a hotel, party or secluded location? If so, ask yourself why?
- Are children/young people being taken regularly to the same localities? If so, ask yourself why?

**A1.6 If the answers to any of the questions above gives you even the slightest cause for concern, these concerns should be reported in accordance with the relevant provisions relating to the ‘Safety of children and adults at risk’ detailed in the Council’s Hackney Carriage and Private Hire Licensing Guidance.**

**A1.7 If you have reason to suspect that a child is being abused or at risk of abuse it is your responsibility to report your concerns and share information with Staffordshire Police (Tel: 101) and Staffordshire Children Social Care First Response Service (Tel: 08001313126).**

**A1.8 If a child is in immediate danger phone 999**

A1.9 Further information about Safeguarding Children can be found at:

<http://www.staffsscb.org.uk/Home.aspx>

## HACKNEY CARRIAGE/PRIVATE HIRE VEHICLE DRIVERS LICENCE - CONDITIONS OF LICENCE

### General

- B1.0 The list of conditions set out below is not finite. Additional information regarding all aspects of driver licensing is available in Tamworth Borough Council's Hackney Carriage and Private Hire Licensing Policy. The Policy must be read in conjunction with the specific conditions set out below. Any legal requirements that apply to the operation of a driver's licence are regarded as if they are conditions of the licence, whether specifically listed or referred to below or in the policy or not. Where reference is made to legal requirements either in the conditions below or in the Council's policy, drivers are advised that such references are not exhaustive and it is the driver's responsibility to ensure they are fully aware of all relevant legal requirements with which they must comply.
- B1.1 All references to 'driver' in the conditions set out below mean a driver who holds a driver's licence issued by the Council in accordance with the Council's Hackney Carriage and Private Hire Licensing Policy and relevant legislation.

### Fit and proper person

- B1.2 Throughout the currency of the licence, the driver must continue to be a fit and proper person to hold the licence. In this respect, the driver must have due regard to the relevant provisions of the Council's policy, be aware of the checks that will be undertaken by the Council and act in accordance with the responsibilities that being a fit and proper person would reasonably place on a licensed driver.
- B1.3 In particular, during the currency of a licence, the driver must notify the Council, in writing, within 72 hours, if:
- They receive any warnings, cautions, fixed penalties or driving endorsements;
  - Are arrested (whether or not charged with an offence);
  - Are charged with any criminal offence;
  - Are convicted of any criminal offence; or
  - Allegations are made of their involvement in criminal activity.

### Driver's badge and licence

- B1.4 Loss of a driver's badge must be reported immediately to the Council and the local police. An incident number must be obtained from the police and the number given to the Council. The driver must immediately obtain a new driver's badge from the Council for which a fee will be charged. If the original badge is then found, it must be returned to the Council.
- B1.5 Drivers must display a photocopy of their driver's badge, issued by the Council, on the inside of the windscreen of the vehicle (where the tax disc used to appear) so as to be plainly visible at all times to fare paying passengers.

## **Insurance**

- B1.6 It is the responsibility of a driver with a drivers licence to ensure they are correctly insured to drive the vehicle.

## **Conduct**

- B1.7 The driver MUST, at all times, when driving a hackney carriage or private hire vehicle:
- Wear their driver's badge around their neck using the council issued lanyard and badge holder ensuring that their photograph and licence details are visible.
  - Be clean and respectable in their dress and person and maintain a high standard of personal hygiene.
  - Behave in a civil and orderly manner towards all persons including, but not limited to, other road users, pedestrians, customers, the general public, other licensed operators and drivers of hackney carriage and private hire vehicles, police officers, officers and elected members of the Council.
  - Be courteous to passengers, e.g. greeting passengers and opening vehicle doors on behalf of passengers.
  - Take all reasonable steps to assist passengers when they are entering or alighting from the vehicle and to convey them, subject to any instructions given by them, to their destination by the shortest practicable route and to ensure their safety.
  - When requested to do so by a passenger, convey a reasonable amount of luggage and afford reasonable assistance in the loading and unloading of any luggage.
  - When, having agreed or been hired to attend a specific location at an appointed time with their vehicle, unless delayed/prevented from doing so by some sufficient/reasonable cause, punctually attend at such appointed time and place.
  - Show due consideration when driving through residential areas.
- B1.8 The driver MUST NOT, at any time, when driving a hackney carriage or private hire vehicle:
- Use offensive, abusive, profane or insulting language or behaviour.
  - Smoke or permit passengers to smoke in their vehicle.
  - Without the express permission of the hirer, eat or drink in the vehicle. (Drivers are only permitted to eat or drink in a vehicle when the vehicle is stationery.)
  - Cause or permit sound emitted from any radio/sound reproducing instrument or equipment in the vehicle to be an annoyance/nuisance to any person, whether inside or outside the vehicle.

- Sound their vehicle's horn to alert passengers of the vehicle's arrival.
- permit persons to be carried in the vehicle unless they have the consent from the person who is actually hiring the vehicle.
- allow any persons to drive a vehicle unless they are authorised to do so by the proprietor and hold an appropriate license to do so.
- leave their vehicle unattended in any street or public place or venue.
- obstruct other drivers/vehicles from undertaking their normal hiring and driving activities.

### **Animals**

- B1.9 When driving a hackney carriage or private hire vehicle, a driver must not carry any animal belonging to them, the proprietor or operator of the vehicle or in their custody whilst fare paying passengers are being conveyed in the vehicle.
- B1.10 In general the transportation of animals belonging to or in the custody of any fare paying passengers is permitted at the discretion of the vehicle owner/company and if undertaken must be in the rear of the vehicle in the foot well or floor pan of the vehicle.
- B1.11 However, assistance dogs (unless the driver holds a medical exemption) **MUST** be transported when requested by a passenger. Drivers **MUST NOT** impose a charge for carrying assistance dogs. Assistance dogs may be permitted to travel in the front of the vehicle.

### **Medical exemption**

- B1.12 Where a driver is exempt on medical grounds from carrying wheelchair bound passengers or assistance dogs, they must carry the Council issued letter confirming the exemption in the vehicle at all times.

### **Change of particulars**

- B1.13 The driver must notify the Council, in writing, of any change of particulars which may occur during the currency of their licence, including any change of address or change of employer/operator. Any such change must be notified within 14 days. Where a change of address occurs, the driver must also amend the address on their driving licence and produce their driving licence showing the new address to the Council within 7 days of receipt from the issuing body, e.g. DVLA. Both the paper and the plastic photo card licence must be produced.

### **Roof signs**

- B1.14 The driver of a hackney carriage must ensure that the roof signs are maintained and kept in such condition that the information is clearly visible to public view at all times and that the light in the sign is connected to the meter switch such that the light is switched on when the hackney carriage is available for hire and switched off when the hackney carriage is not available for hire.

## **Passengers**

B1.15 The driver must not convey or permit to be conveyed in a licensed hackney carriage or private hire vehicle a greater number of passengers than the number prescribed in the relevant vehicle licence.

B1.16 The driver of the licensed vehicle must only carry one person in the front of the vehicle beside the driver unless the vehicle has been specifically designed to carry more.

## **Transporting children**

B1.17 Drivers must inform parents/carers that the decision to permit children to travel in the vehicle, without the correctly sized seat restraints (as permitted by relevant legislation) and with the obvious risks associated with such an action, remains with the parent/carer responsible for the children and not with the driver of the vehicle.

## **Lost property**

B1.18 After fare passengers have alighted from the hackney carriage or private hire vehicle, the driver must, as soon as is practicable, search the vehicle for any property which may have been left. Where such property is found and irrespective of the value, the driver must, if it has not been claimed by or on behalf of the passenger (or their representative) who left it within 24 hours, hand it, in the case of a private hire driver to their operator or in the case of a hackney carriage driver directly to a police station as soon as is practicable.

## **Parking between bookings**

B1.19 Where drivers are driving in the Council's area, they must as soon as they have dropped passengers at their required destination and unless prevented from doing so by another booking, return to a suitably safe place to park.

## **Meters**

B1.20 Where taximeters are fitted to vehicles, the driver must not cause the fare recorded thereon to be cancelled or concealed until the hirer has had an opportunity to examine the meter and has paid the fare (or credit has been given).

B1.21 The driver must ensure:

- the meter is sufficiently illuminated so that when it is in use it is visible to all passengers;
- the meter is used for the whole of any journey;
- the fare or charge is calculated from the point at which the hirer commences the journey and does not exceed that displayed on the meter on the completion of such journey;
- the meter is only brought into action at the commencement of the hirer's journey; and
- the correct tariff for that journey is displayed.

## **Fares**

- B1.22 The driver must not demand from the hirer a fare in excess of any fare previously agreed between the operator and the hirer, or if the vehicle is fitted with a taximeter and no previous agreement as to the fare, the fare shown on the face of the taximeter.
- B1.23 The driver must, if requested by a fare paying passenger, provide a written receipt for any fare paid.

## **Identification plates**

- B1.24 Drivers must not cause or suffer any vehicle plate to be concealed from public view whilst the vehicle is being used for hackney carriage or private hire purposes.

## **Condition of vehicle**

- B1.25 A driver must not drive a licensed vehicle if he has reason to believe that the vehicle is in an unsafe, dangerous or illegal condition. He is advised to inform the operator or proprietor of the vehicle immediately of any defect arising in the vehicle whilst under his control.

## **Accidents**

- B1.26 The driver must, notwithstanding their responsibilities under relevant road traffic legislation, report to the operator or proprietor any accident involving a hackney carriage or private hire vehicle under their control as soon as is practicable. However, where the vehicle has suffered accident damage that materially affects the performance or appearance of the vehicle, or the comfort or convenience of fare paying passengers, the driver must notify the operator or proprietor within 72 hours.

## **Complaints**

- B1.27 A driver must advise passengers of their right to refer any complaint to the Council.

# HACKNEY CARRIAGE LICENCE – CONDITIONS OF LICENCE

## Council’s Vehicle Licensing Criteria

C1.0 All vehicles presented for licensing as hackney carriages must be purpose built wheelchair accessible London type cabs which comply with the specifications of the Public Carriage Office of the Metropolitan Police.

## Conditions of Licence

C1.2 Requirements of the Hackney Carriage Byelaws, the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

### C1.3 Hackney Carriage Byelaws

1 Throughout these byelaws "the Council" means the Mayor Aldermen and Burgesses of the Borough of Tamworth, acting by the Council, and "the district" means the Borough of Tamworth.

2.

a) The proprietor of a hackney carriage shall cause the number of the licence granted to him in respect of the carriage to be legibly painted or marked on the outside and inside of the carriage, or on plates affixed thereto. (Plate provided for outside and Tariff Card provided for inside).

b) A proprietor of a hackney carriage shall:

not wilfully or negligently cause or suffer any such number to be concealed from public view while the carriage is standing or plying for hire;

not cause or permit the carriage to stand or ply for hire with any such painting, marking or plate so defaced that any figure or material particular is illegible.

3. The proprietor of a hackney carriage shall:

provide sufficient means by which any person in the carriage may communicate with the driver;

cause the roof or covering to be kept water tight;

provide any necessary windows and a means of opening and closing with not less than one window on each side;

cause the seats to be properly cushioned or covered;

cause the floor to be provided with a proper carpet, mat, or other suitable covering;

cause the fittings and furniture generally to be kept in a clean condition well maintained and fit for public service;

provide means of securing luggage if the carriage is so constructed as to carry luggage;

provide an efficient fire extinguisher which shall be carried in such a position as to be readily available for use;

provide at least two doors for the use of persons conveyed in such carriage and a separate means of ingress and egress for the driver;

cause the carriage to be fitted with a "TAXI" sign which shall be capable of illumination and which shall be illuminated during the hours of darkness only when the carriage is standing or plying for hire within the Borough. For the purpose of this Byelaw "the hours of darkness" shall be the hours in which lighting up times operate in the Borough. The sign shall be attached to the roof or rack, and be of overall size not less than 9 inches long and 4 inches high and showing the work "TAXI" to the front of the carriage in letters not less than 3 inches high and of proportionate width;

cause the carriage to be fitted with an interior light of sufficient brightness to reasonably illuminate the interior of the carriage;

cause the carriage to be provided with a spare wheel and tyre in such a condition that it is readily available for use in the case of a punctured or damaged tyre or wheel together with all the necessary tools and equipment for readily effecting the replacement.

- 4 The proprietor of a hackney carriage shall cause any taximeter with which the carriage is provided to be so constructed, attached and maintained as to comply with the following requirements, that is to say:
- a) the taximeter shall be fitted with a key, flag or other device the turning of which will bring the machinery of the taximeter into action and cause the work "HIRED" to appear on the face of the taximeter;
  - b) such key, flag, or other device shall be capable of being locked in such a position that the machinery of the taximeter is not in action and that no fare is recorded on the face of the taximeter;
  - c) when the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in clearly legible figures a fare not exceeding the rate or fare which the proprietor or driver is entitled to demand and take for the hire of the carriage by distance in pursuance of the byelaw in that behalf;
  - d) the word "FARE" shall be printed on the face of the taximeter in plain letters so as clearly to apply to the fare recorded thereon;
  - e) the taximeter shall be so placed that all letters and figures on the face thereof are at all times plainly visible to any person being conveyed in the carriage, and for that purpose the letters and figures shall be capable of being suitably illuminated during any period of hiring;
  - f) the taximeter and all the fittings thereof shall be so affixed to the carriage with seals or other appliances that it shall not be

practicable for any person to tamper with them except by breaking, damaging or permanently displacing the seals or other appliances.

5. A proprietor of a hackney carriage shall not tamper with or permit any person to tamper with any taximeter with which the carriage is provided, with the fittings thereof, or with the seals affixed thereto.
6. A proprietor of a hackney carriage, when standing or plying for hire, shall not, by calling out or otherwise, importune any person to hire such carriage and shall not make use of the services of any other person for the purpose.
7. The proprietor of a hackney carriage who has agreed or has been hired to be in attendance with the carriage at an appointed time and place, shall unless delayed or prevented by some sufficient cause, punctually attend with such carriage at such appointed time and place.
8. A proprietor of a hackney carriage shall not convey or permit to be conveyed in such carriage any greater number of persons than the number of persons determined by the Council and specified on the plate attached to the outside of the carriage.
9. Every proprietor of a hackney carriage who knowingly conveys in the carriage the dead body of any person shall immediately thereafter notify the fact to the Medical Officer of Health/Consultant for Communicable Disease Control via Tamworth Borough Council.
10. The Proprietor of a hackney carriage shall not permit the exhibition of any advertisement in or upon such carriage, unless it shall have been previously approved by the Council.
11. The proprietor or driver of a hackney carriage shall be entitled to demand and take for the hire of the carriage the rate of fare prescribed by the Council in accordance with Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 the rate or fare being calculated by distance unless the hirer expresses at the commencement of the hiring his desire to engage by time.

Where a hackney carriage furnished with a taximeter is hired by distance the proprietor shall not be entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for any extra charges authorised by the Council which it may not be possible to record on the face of the taximeter.

12.
  - a) The proprietor of a hackney carriage shall cause a statement of the fares fixed by the byelaw in that behalf to be exhibited inside the carriage, in clearly distinguishable letters and figures.
  - b) The proprietor of a hackney carriage bearing a statement of fares in accordance with this byelaw shall not wilfully or negligently cause or suffer the letters or figures in the statement to be concealed or rendered illegible at any time while the carriage is plying or being used for hire.

13. The proprietor or driver of a hackney carriage shall immediately after the termination of any hiring or as soon as practicable thereafter carefully search the carriage for any property which may have been accidentally left therein.
14. The proprietor or driver of a hackney carriage shall, if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him:
  - a) carry it as soon as possible and in any event within 48 hours if not sooner claimed by or on behalf of its owner, to the office of the Council, and leave it in the custody of the officer in charge on his giving a receipt for it;
  - b) be entitled to receive from any person to whom the property shall be re-delivered an amount equal to five pence in the pound of its estimated value (or the fare for the distance from the place of finding to the office of the Council, whichever be the greater) but not more than five pounds.

### **Penalties**

- C1.4 Any person contravening the byelaws shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale and in the case of a continuing offence to a further fine of two pounds for each day after written notification of the offence has been given by the Council.

### **Requirement of the Town Police Clauses Act 1847**

#### **Employment of Unlicensed Drivers**

- C1.5 The licensee may not employ to drive the licensed vehicle any person who does not have a current hackney carriage driver's licence issued by Tamworth Borough Council.

#### **Notification of Change of Address**

- C1.6 The licensee shall notify the Council of any change in address during the currency of the licence and shall return the licence to the Offices of the Council for endorsement with the new particulars of address.

#### **Retention of Driver's Licence by Proprietor**

- C1.7 The licensee shall retain the hackney driver's licence of any person employed to drive the licensed vehicle for such time as that driver is so employed and upon termination of that employment it shall be returned to him.

#### **Suspension of Licence**

- C1.8 The proprietor shall not permit the vehicle to be used as a hackney carriage at any time whilst the licence is suspended or at any time whilst the vehicle's hackney licence plate is not displayed on the vehicle.

### **Demanding more than the Agreed Fare**

- C1.9 A proprietor who by prior arrangement with the hirer agrees to carry out any hiring for less than the rate of fare prescribed by the Council shall not demand more than the agreed fare.

### **Agreements to Carry Passengers a Discretionary Distance for a Fixed Sum**

- C1.10 If the proprietor agrees to carry a hirer a distance at the discretion of the proprietor, for a fixed sum, the proprietor is not permitted to carry the hirer for a distance less than the hirer should have been entitled to travel according to the rates prescribed by the Council, for the sum agreed.

### **Penalty for Overcharging**

- C1.11 Any proprietor convicted of taking from a hirer more than the rate of fare prescribed by the Council shall be liable to a penalty not exceeding level 3 on the standard scale.

### **Persons Riding with the Consent of the Hirer**

- C1.12 The proprietor may not allow any person to ride in the carriage without the consent of the hirer.

### **Requirements of the Local Government (Miscellaneous Provisions) Act 1976**

#### **Transfer of Vehicle**

- C1.13 If the licensee transfers his interest in a licensed vehicle to another person he shall within 14 days give notice in writing of the transfer to the Council, specifying the name and address of the person to whom the vehicle has been transferred.

#### **Testing of the Vehicle**

- C1.14 The licensee shall present the licensed vehicle for testing at such time and place as may be reasonably required on up to three occasions during any period of 12 months.

#### **Return of Vehicle Identity Plate**

- C1.15 On the revocation, expiry or suspension of the vehicle licence, the licence and identification plates provided by the Council shall be returned to the Council within 7 days of the receipt of the request for such return.

### **Conditions of Licence made under Section 47 Local Government (Miscellaneous Provisions) Act 1976**

#### **Vehicle Insurance**

- C1.16 The licensee shall notify the Council of any change of details of insurance cover for the vehicle during the currency of the licence.

C1.17 The licensee shall produce to the Council evidence of renewal and continuity of insurance cover throughout the term of the licence.

### **Accidents**

C1.18 All accidents in which the vehicle is involved of any nature, whether resulting in personal injury or damage to the licensed vehicle or not, shall be notified to the Council, on the accident report form provided on request by the Council, within 72 hours of such accident.

### **Licence Plates**

C1.19 The licensed vehicle shall be fitted with the Council licence plate which is to be affixed to the rear of the vehicle at or above bumper height in a vertical plane at or as close to as is practicable the centre line of the vehicle. The plate shall not be in any way obscured by the fitting of a towing bracket, tow ball or any other equipment.

### **Cleanliness and Safety of the Vehicle**

C1.20 The vehicle proprietor shall

- a) Ensure that the external coachwork of the vehicle is maintained at all times in a clean condition and in good repair and free from rust.
- b) Ensure that all fire extinguishers provided in accordance with the byelaws shall be of the general purpose dry powder type with a minimum capacity of 0.9kg to BS EN3 2009.

(Note: Existing extinguishers provided on vehicles currently licensed may be continued to be carried until used or considered no longer serviceable when they must be replaced with one in accordance with the above specification).

- c) Provide and maintain in the vehicle a suitable first aid box the contents of which must be as follows:

<b>CONTENTS</b>	
Guidance Leaflet on First Aid	1
Sterile Elastoplast Dressings Assorted	20
Sterile Triangular Bandage - 90cm x 127 cm	2
Safety Pins	6
Sterile Lint Dressings - BPC No 8 Medium	1
Sterile Lint Dressings - BPC No 9 Large	1
Moist Cleansing Wipes	10
Scissors, Blunt Ended	1
Elastoplast Dressing Strip - 6.3cm x 15cm	1
First Aid Windscreen Sticker	1

The box must be carried in such a position as to be readily visible and available for immediate use.

### **Interior Identification Sign**

C1.21 The licensee shall ensure that the interior notice provided by the Council on which is shown the licence number and seating capacity of the vehicle is at all times displayed in a conspicuous position inside the vehicle.

### **Citizens Band Radios etc**

C1.22 The proprietor shall not permit any radio communications equipment to be fitted in the vehicle other than the apparatus which may be fitted so as to enable the vehicle driver to communicate with the vehicle operating base. In particular the vehicle may not be fitted with a Citizens Band radio and no driver may use such a radio in the licensed vehicle.

### **Vehicle Specification**

C1.23 The licensee shall not during the currency of the licence alter the specification, design or appearance of the vehicle without the prior consent of the Council's authorised officer.

### **Convictions to Licensees**

C1.24 The licensee shall notify the Council of any convictions under the Town Police Clauses Act 1847, The Local Government (Miscellaneous Provisions) Act 1976 or the Road Traffic Acts in relation to Hackney Carriages or involving dishonesty.

The notification which shall be in writing shall include:

- a. Date of Conviction
- b. Court where case heard
- c. Nature of Offence
- d. Penalty imposed

and shall be given to the Council within 7 days of such conviction.

### **Notices**

C1.25 Any notices or notifications required to be given to the Council in accordance with these conditions of licence or required by the Local (Government) Miscellaneous Provisions Act 1976 shall be in writing and handed personally to an officer of the Council at the Ground Floor Reception, Marmion House, Lichfield Street, Tamworth B79 7BZ or left deposited in the Council's official letterbox at that address within the time stated.

## **Exceptional Age Policy**

C1.26 Hackney Carriages vehicles licensed by Tamworth Borough Council can continue to have their licenses renewed until they reach 12 years of age from the date of registration.

C1.27 Private Hire vehicles licensed by Tamworth Borough Council can continue to have their licenses renewed until they reach 8 years of age from the date of registration

C1.28 If the licence holder wishes to continue to renew the vehicle licence after its standard working life then application can be made for an annual extension to the licence as follows:

- a. The owner of a hackney carriage or private hire vehicle whose vehicle is approaching 12 years or 8 years of age respectively will be required to notify the Licensing Authority in writing at the time of making an application for the grant of a licence that they wish to extend the operating life of their existing vehicle by twelve months in accordance with the Exceptional Vehicle Age Policy.
- b. In subsequent years the owner of a hackney carriage or private hire vehicle, who has been granted a licence in accordance with the Exceptional Vehicle Age Policy at the last date of licensing, shall notify the Licensing Authority at least six months prior to submitting a renewal application, that he intends to seek a further extension to the operating life of the vehicle. Any failure to provide such notification to the Licensing Authority will exclude the vehicle from being considered under this policy.
- c. The examination and inspection of any vehicle in accordance with this policy shall take place on the second scheduled test date preceding the renewal date for the vehicle's licence. This applies to initial requests for consideration under this policy and all subsequent requests.
- d. The criteria detailed below are in addition to all current vehicle test criteria requirements.
- e. The Licensing Authority's test station shall be authorised to examine and approve the vehicle's mechanical condition in accordance with this policy.
- f. A duly authorised officer of the Licensing Authority or its nominee will undertake an inspection of the vehicle to assess its general condition and appearance in accordance with the criteria detailed below: -

### **C1.29 Criteria**

- a) The vehicle must have a full, unbroken, continuous history of testing for its Certificate of Fitness
- b) In order for a vehicle to be considered suitable for an operating extension under this policy it must have successfully passed two of its last three fitness tests on first submission in the twelve months preceding the second scheduled test date.

- c) The bodywork of the vehicle must be in near perfect condition with no substantial dents, damage or corrosion being evident.
- d) Paintwork should be unblemished and have a good overall colour match.
- e) The interior and exterior trim must be complete.
- f) All interior fittings must be in place and working.
- g) No excessive loose wiring should be evident hanging from the dashboard.
- h) All carpets, where provided, must be in a clean well-fitted and secure state with no unduly worn areas.
- i) The boot and luggage compartment must be clean, uncluttered and watertight.
- j) There shall be no evidence of leakage of fuel from the vehicles fuel filler cap.

## PRIVATE HIRE VEHICLE LICENCE - CONDITIONS OF LICENCE

### General

- D1.0 The list of conditions set out below is not finite. Additional information regarding all aspects of private hire licensing is available in the Council's Hackney Carriage and Private Hire Licensing Policy and this must be read in conjunction with the specific conditions set out below. Any legal requirements that apply to the operation of a private hire licence are regarded as if they are conditions of the licence, whether specifically listed below or in the policy or not. Where reference is made to legal requirements either in the conditions below or in the Council's policy, proprietors are advised that such references are not exhaustive and it is the proprietor's responsibility to ensure they are fully aware of all relevant legal requirements with which they must comply.

### Test requirements

- D1.2 All vehicles must meet the Council's safety and fitness test requirements. Where a vehicle is the subject of any test during the application process or during the currency of any licence and it is determined that the vehicle is not fit for the purpose of conveying passengers the proprietor must notify the Council as soon as is reasonably practicable, and in any case within 72 hours of the occurrence.

### LPG converted vehicles

- D1.3 The proprietor must notify the Council, within 7 days, of any LPG conversion and provide the LPG Association Conversion certificate.

### External vehicle licence plates

- D1.4 The external plates (front and rear) identifying the vehicle as a private hire vehicle as issued by the Council and required to be exhibited on the vehicle pursuant to Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 shall be:

- securely fixed to the outside front and rear of the vehicle in a conspicuous position;
- maintained, kept clean and in such a condition that the information on the plates is clearly visible to the public at all times;
- displayed at all times and in such a manner as to be easily removable by an authorised officer of the Council or a police officer;
- returned to the Council within 7 days of revocation or expiry (if not renewed) of the vehicle's licence; where the licence is suspended, be returned if required.

- D1.5 **AND** at no time, during the currency of the vehicle licence, is it permitted for the licence plates to be removed from the licensed vehicle.

- D1.6 Any existing licence plates must be returned to the Council before new licence plates for a vehicle will be issued, including in cases of transfers.

## **Internal signage**

### **D1.7 Tariff Card**

The tariff card must be displayed in a prominent position so that it can be easily viewed by passengers.

### **D1.8 Interior markings**

The proprietor must clearly mark and maintain inside the vehicle, in such a position as to be clearly visible at all times a no smoking sign.

D1.9 In addition a drivers badge must displayed in a prominent position so that it can be easily viewed by passengers.

## **Advertising**

D1.10 Proprietors must obtain approval from the Council prior to carrying advertisements on their private hire vehicle.

D1.11 Materials that are used for advertisements must be of a quality not easily defaced, soiled or detached.

D1.12 Reflective material must not be used.

D1.13 Advertising signs must not be illuminated.

D1.14 Advertisements may be affixed directly onto the exterior and/or internal body of the vehicle in such a position as not to obscure Council issued plates and all other required signs.

D1.15 Advertisements must comply with the relevant conditions set out in the Council's Policy.

D1.16 Private hire vehicles are prohibited from displaying the words 'taxi' or 'cab' in the singular or plural or the word 'hire' unless the word 'hire' forms part of the relevant company name or any word or similar meaning or appearance to any of these words, whether alone or as part of another word.

## **Closed circuit television (CCTV)**

D1.17 Proprietors wishing to install closed circuit television (CCTV) in their private hire vehicle, must notify the Council, in writing, of their intention to do so.

D1.18 The CCTV system must be installed in accordance with the appropriate legal framework.

## **Trailers**

D1.19 Proprietors must ensure any trailer:

- is inspected annually with the vehicle to which it relates;
- has a plate that relates to the towing vehicle(s); and
- complies with the relevant conditions set out in the Council's Policy.

## **Meters**

D1.20 Whilst the fitting of meters is not mandatory in private hire vehicles, if meters are fitted, then the following conditions apply:

- When the machinery of the meter is in action there must be recorded on the face of the meter in figures clearly legible and free from ambiguity, a fare not exceeding the rate of fare which the proprietor or driver is entitled to demand and take for the hire of the vehicle by distance.
- The meter must be so placed that all the letters and figures on the face thereof shall be at all times plainly visible to any person being conveyed in the vehicle and for that purpose the letters and figures must be capable of being illuminated during any period of hiring.
- The meter must be set to reflect the current table of fares approved by the Council, or to an alternative table of fares that is in all cases lower than the Council approved table. Where the meter is set to an alternative table that table must be prominently displayed in addition to the approved table. A lesser fare than that shown on the taximeter at the end of a journey may be charged.
- When hired, a meter must be used for the whole of any journey.

## **Signs**

D1.21 Private hire vehicles must not display a roof sign.

D1.22 All vehicles must display Council issued signs (side plates) on the upper portion of the front driver door and the front passenger door of the vehicle using the adhesive backed signs provided. These signs will carry the Council logo, PHV licence number and the words 'Prebooked Only'. The signs must be kept intact, clean and firmly attached to the vehicle doors as described above. The use of magnetic panels is prohibited. The removal of the signs is prohibited whilst the vehicle is licensed by Tamworth Borough Council. In the event that a side plate is lost it is the responsibility of the proprietor of the vehicle to notify the Council within 72 hours and to obtain a replacement sign.

## **Change of proprietor/address**

D1.23 Any change in the proprietor of a private hire vehicle or the proprietor's address must be notified to the Council, in writing, during the period of the licence within 7 days of such change taking place by the proprietor.

## **MOT**

D1.24 The vehicle must have a valid MOT throughout the licence period.

## **Insurance**

D1.25 Satisfactory evidence must be produced that there is in force, for the use of the vehicle, a policy of insurance covering the carriage of passengers for hire or reward or such security as complies with the requirements of Part VI of the Road Traffic Act 1988.

D1.26 The proprietor must ensure that at all times a list is maintained of all licensed drivers authorised under the policy to drive the vehicle and must make such a list available to an authorised officer of the Council or a police officer at all reasonable times, when so required.

## **Vehicle Excise Duty (Road Tax)**

D1.27 The vehicle must have valid Road Tax throughout the licence period.

## **Alterations to vehicles**

D1.28 No material alteration or change in the mechanical or structural specification, design, condition or appearance of the vehicle is permitted without the written approval of the Council.

## **Damage to vehicles**

D1.29 Notification must be given by the proprietor to the Council as soon as reasonably practicable and in any case within 72 hours of the occurrence of any accident/damage to the vehicle that materially affects the safety, performance or appearance of the vehicle, or the comfort or convenience of persons carried therein.

## **Inspection/examination**

D1.30 The proprietor must permit any authorised officer of the Council or any police officer, at all reasonable times, to inspect and examine the vehicle and to request driver identification and insurance details. A drivers badge, certificate of insurance and MOT must be produced either during the inspection/examination or to an officer of the Council or police officer within 5 days.

## **Convictions**

D1.31 The proprietor or where the proprietor is a partnership or a company, all partners or directors/company secretaries, as appropriate, during the period of the licence must, within 72 hours, disclose to the Council, in writing, if:

- They receive any warnings, cautions, fixed penalties or driving endorsements;
- Are arrested (whether or not charged with an offence);
- Are charged with any criminal offence;
- Are convicted of any criminal offence; or
- Allegations are made of their involvement in criminal activity.

## **Private Hire Vehicle – Executive Vehicle Supplementary conditions of Licence**

### **Introduction**

- E1.1 The Private Hire Vehicle Executive Licence, is granted subject to complying with the following conditions of licence in addition to the standard private hire vehicle conditions.
- E1.2 The 'Licence Holder' is the proprietor of the vehicle.
- E1.3 All references to the "Council" in these conditions mean Tamworth Borough Council, Marmion House, Lichfield Street, Tamworth, Staffordshire, B79 7BZ.

### **Type of Work**

- E1.4 Once a vehicle has been licenced as a Private Hire Executive Licence the vehicle can only be used for work of an Executive nature and not for day to day local usage. The proprietor must be able to produce, when requested by the Licensing Office, information on bookings taken. The Licensing Officer will have the right to remove the Executive Licence and revert it to a normal Private Hire Licence if booking information is supplied on request or it is not felt that at least 90% of work undertaken is of an executive nature.

### **Vehicle Type**

- E1.5 Only vehicles pre-approved by the Licensing Officer will be accepted as executive vehicles.
- E1.6 Executive Vehicles must be, in the opinion of the licensing officer, of such quality and character as to be considered as an executive vehicle.

### **Seating**

- E1.7 Vehicles will be licensed for a maximum of 8 passengers only, regardless of the number of seats available within the vehicle. Proprietors of such vehicles must sign a declaration that they are aware that their vehicle is only licensed for 8 passengers and agree to ensure that no more than 8 people are carried under any circumstances.
- E1.8 Seating must have adequate dimensions and leg room in the opinion of the licensing officer.
- E1.9 On L-shaped seats, only one seat on the right angled corner will be accepted.

### **Vehicle Testing**

- E1.10 All Executive Vehicles under the age of 4 years will attend two vehicle compliance checks per year and one licensing officer check.
- E1.11 All Executive Vehicles over the age of 4 years will attend three vehicle compliance checks per year and one licensing officer check.
- E1.12 Vehicle compliance checks will take place at Tamworth Borough Council's approved garage.

- E1.13 Failure of any of these checks will mean an immediate suspension of the private hire executive vehicles licence, until repairs can be made, the test has been re-taken and the vehicle has been found to be satisfactory.
- E1.14 In addition to this, all proprietors should undertake their own documented monthly checks to the council's specification.
- E1.15 Stretched limousines must have Individual Vehicle Approval (IVA) (<https://www.gov.uk/vehicle-approval/individual-vehicle-approval>) to be registered and licensed. For those built before 29 July 2011 a Certificate of Fitness (COIF) is accepted.
- E1.16 Stretched limousines are still required to undertake the Councils fitness tests. In the event that a stretched limousine cannot be tested at the Council's appointed vehicle testing station then they may be tested at a suitable testing station authorised beforehand by Tamworth Borough Council. A separate inspection form provided by Tamworth Borough Council must be completed by the testing station completing the test.

### **Electrical Equipment**

- E1.17 If applicable, the controls for any driver screen and/or sunroof should be isolated, so the driver alone may operate them

### **Provisions of Alcohol**

- E1.18 Alcoholic drinks provided in the vehicle shall be under the terms of any legislative requirements relating to the sale and supply of alcohol. No persons under 18 years of age shall be permitted to drink alcohol within the vehicle

### **Spares and Repairs**

- E1.19 A spare tyre, of an approved type only, and the appropriate tools to make the repair (or an approved repair kit) must be carried, or a contract be in place with a repairer / recovery company who can supply such parts immediately in the event of a flat tyre.

### **Licence Plates**

- E1.20 All Private hire Executive Vehicles must at all times display the square licence badge in the internal left corner of the vehicles front windscreen. The rectangular licence plate shall be attached to the backing plate supplied by the Council and position either above or below the rear vehicle registration number plate, or as determined by an authorised officer.
- E1.21 The licence plates must not be obstructed from view, inside or outside the vehicle, at any time.
- E1.22 The interior licence plate should be produced on demand by an authorised officer

### **Revocation and Modification of Conditions**

- E1.22 The Council reserves the right (as its own behest and at any time) to revoke, vary, or modify any of these conditions and/or to make sure additional conditions as it may deem requisite, either generally or in respect of any particular licence or occasion.

E1.24 The following sections of the general private hire vehicle conditions ONLY are suspended for Executive Vehicles:

- Type size and Design
- Testing of Vehicles
- Minibus Type Vehicles
- Advertising Signs
- Licence Plates and Identification Signs
- Exception Vehicle Age Policy

## PRIVATE HIRE OPERATOR LICENCE - CONDITIONS OF LICENCE

### Guidance for Applicants

- F1.0 The proprietor must ensure that at all times a list is maintained of all licensed drivers on 55 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the Local Authority shall not issue an operators licence unless satisfied that the applicant is a fit and proper person to hold a licence.

### Submission of Police Record

- F1.1 The applicant is required to submit with any application for grant or renewal of the licence the record of convictions, if any, obtained from the Police under the Subject Access provisions of Data Protection Act 1998.
- F1.2 The envelope containing the reply from the Police must be brought, unopened to the Tamworth Borough Council Offices at Marmion House, Lichfield Street, Tamworth and opened in the presence of a member of the licensing staff.
- F1.3 Should any record reveal unspent convictions involving drug offences, dishonesty, sexual offences or violence, and should the applicant wish the application to proceed, the circumstances will be reported to the Council's Licensing Committee for a decision on the application to be made. The applicant or personal representative of the applicant will be entitled to appear before the Committee and speak in support of the application.

### Knowledge of Legislation

- F1.4 New applicants for operator's licences should, on interview, be able to demonstrate a knowledge of the legislation and the restrictions under which private hire vehicles must be operated.

### Consent Requirements

- F1.5 The applicant should be able to show that either:
- a. Planning permission has been granted for the operating base
  - or
  - b. That having regard to the premises and the mode of operation that planning permission is not required
  - or
  - c. That a formal application has been submitted for planning permission. If a business is operated without the appropriate planning permission in defiance of any planning enforcement notice, then this would be regarded as evidence that the licensee should not be considered a fit and proper person to hold a licence for those premises, and refusal or revocation would ensue.
  - d. If the operating premises specified in the application are owned by the Council, the permission of the department responsible for the letting or

leasing of the property should be obtained prior to submission of the application

### **Duration of Licence**

F1.16 Licences are issued for a period of five years.

### **Conditions to Private Hire Operators Licences**

#### **Change of Address**

F1.17 The licensee shall notify the Council of any change of home or business address, within 7 days of any such change.

#### **F1.18 Record of Bookings**

F1.19 The licensee shall ensure that the following details of bookings shall be entered in a record book, or loose leaf file system or electronic system) prior to the commencement of the journey in respect of which the booking was made.

- a) Name of the hirer
- b) Time and date of hiring
- c) Pick up point
- d) Destination of passenger(s)
- e) Councils' licence plate number of the vehicle used for the booking.
- f) Council's identification badge number of driver undertaking the booking
- g) If at the time of booking a quotation has been given for the fare to be charged, the amount of that quotation.

#### **Record of Vehicles**

F1.20 The licensee shall ensure that the following details be recorded for each vehicle operated:

- a) Vehicle registration mark
- b) Council's licence plate number
- c) Name and address of proprietor of the vehicle.
- d) Date of expiry of the Private Hire or Hackney Carriage licence.
- e) Expiry date of the insurance certificate or cover note for the vehicle together with details of the type of cover provided ie for public or private hire.

## **Record of Drivers**

F1.21 The licensee shall ensure that the following details be recorded for each driver used in connection with the business:

- a) The driver's name
- b) The driver's Council identification badge number
- c) The date of expiry of the driver's Hackney Carriage or Private Hire driver's licence issued by the Council.

## **Complaints Register**

F1.22 The licensee shall ensure that a complaints record book be kept in which are recorded the following details:

- a) Date of complaint
- b) Date and time of incident complained of
- c) Name and, if known, address of complainant
- d) Nature of complaint
- e) Licence number of vehicle if subject of complaint
- f) Licence number of driver if subject of complaint
- g) Any action taken by the operator in respect of the complaint

F1.23 All records required to be kept by conditions 2,3,4 and 5 above shall be made available for inspection by any authorised officer of the Council or any police constable and, if not immediately available for inspection at the operator's premises must, within 72 hours of the making of such a request, be produced for inspection.

F1.24 The licensee must ensure, that when bookings are accepted and a pick-up or response time given to a hirer, that the appropriate vehicle be despatched to fulfil that booking so as to arrive punctually unless such vehicle is delayed due to unforeseen circumstances beyond the control of the operator.

F1.25 Any lost property returned to the operator shall, if it cannot be returned to it's rightful owner within 48 hours, be handed over to the Tamworth Police at Tamworth Police Station, Spinning School Lane, Tamworth.

F1.26 The licensee shall ensure that any waiting/booking rooms provided for customers are kept clean and in good repair.

F1.27 The licensee, if convicted of any offence during the currency of the licence, must disclose any such conviction to the Council within 7 days of conviction. The disclosure must include the date of conviction, the Court where the hearing took place, details of the offence and the penalty imposed.

- F1.28 The licensee shall ensure that any records required to be kept in accordance with these conditions of licence are kept and made available for inspection for a minimum period of 6 months from the date of the last entry in the record book or file.
- F1.29 The licensee shall retain a certified copy of the private hire driver's licence of any driver used about his business, for as long as that driver is so used and shall make such licences available for inspection at all reasonable times at the request of any authorised officer of the Council or any police constable.

**PLYING FOR HIRE**

G1.0 Only licensed hackney carriages are permitted to ply for hire. It is ILLEGAL for a private hire vehicle to ply for hire. This means:

- a) Private hire vehicles **MUST NOT** carry passengers if the journey has not been pre-booked with a private hire operator by the passenger.
- b) All private hire vehicle journeys **MUST** be pre-booked through a licensed private hire operator.
- c) All bookings **MUST** be made by prospective passengers themselves directly with a private hire operator who will despatch the vehicle. Prospective passengers may instruct a third party, e.g. a restaurant manager, to make a booking on their behalf but this third party **MUST NOT** be the private hire vehicle driver.
- d) A driver of a private hire vehicle is **NOT** permitted to make the booking on behalf of a prospective passenger.
- e) Private hire operators **MUST NOT** accept any booking made by a driver on behalf of a passenger.
- f) Private hire vehicle drivers are **NOT** permitted to make their vehicles available for immediate hire. This means that private hire vehicle drivers **MUST NOT** physically position their vehicles in such a way as to be waiting in any area that is on view to the public to invite custom, e.g. allowing prospective customers to approach the vehicle and ask, 'Are you free?'
- g) In most cases, the vehicle will not be insured during a journey that has not been correctly pre-booked.
- h) Private hire vehicles **MUST NOT** wait at any taxi rank/stand.
- i) Private hire vehicle **MUST NOT** be hailed in the street.

G1.1 Further information about the relevant legislation is available in the Town Police Clauses Act 1847, in particular Section 45, and in Part II of the Local Government (Miscellaneous Provisions) Act 1976, in particular Section 64.

## RELEVANCE OF CRIMINAL CONVICTIONS AND CAUTIONS

### Introduction

- H1.1 The purpose of this appendix is to provide additional guidance to assist determine whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire vehicle drivers and/or an operator licence as it relates specifically to convictions and cautions.
- H1.2 The guidance has been produced to assist the Council in its decision-making and to maintain the consistency of the decisions made. It has also been formulated to provide clearer information to current and potential applicants, with a view to minimising the cost and time spent on the licensing process by both the Council and the applicant.
- H1.3 The aim of the guidance is not to punish the applicant twice for a conviction or caution but to ensure that public safety is not compromised. The Council cannot review the merits of any conviction.
- H1.4 Each case is to be decided on its own individual merits and, where the circumstances demand, the decision making body may depart from the guidance in which case the reasons for this will be made clear.

### Legislation

- H1.5 Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 sets out that the Council must not grant a driver's licence or an operator's licence unless they are satisfied that the person is a **fit and proper person** to hold such a licence.
- H1.6 Sections 61 of the Local Government (Miscellaneous Provisions) Act 1976 allows the Council to suspend, revoke or refuse to renew a driver's licence if they have, since the grant of the licence, been convicted of an offence involving dishonesty, indecency or violence; or been convicted of an offence under or failed to comply with the provisions of the Town Police Clauses Act 1847 or Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- H1.7 Sections 62 of the Local Government (Miscellaneous Provisions) Act 1976 allows the Council to suspend, revoke or refuse to renew an operator's licence if they have committed any offence under, or failed to comply with, the provisions of Part II of the Act; where any conduct appears to render the operator unfit to hold a licence; any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or any other reasonable cause.
- H1.8 Therefore, the wording of the legislation makes it clear that the Council may grant a licence **ONLY** if it is satisfied that the person is fit and proper; the onus is on the applicant to prove this, **NOT** the Council to demonstrate that they are not.

## **Defining a ‘fit and proper person’**

H1.9 There is no legal definition as to what definitively constitutes a ‘fit and proper person’. However, because of the potentially vulnerability of the passengers that drivers and operators may come into contact with, e.g. elderly people, unaccompanied children, the disabled, those who may have consumed excessive quantities of alcohol, lone females and foreign visitors, it is incumbent on the Council to take a very robust stance when deciding whether or not a person is fit and proper to hold a licence granted by the Council.

H1.10 In essence, a fit and proper person will be:

- Honest and trustworthy - drivers and operators have, for example, access to a large amount of personal information that could be misused and significant opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars.
- Not abusive, violent or threatening – abusive, violent or threatening behaviour is not acceptable conduct on the part of a driver/operator even when they are subjected to unpleasant or dishonest passenger behaviour.
- A competent and safe driver - they are expected to be professional drivers and must be fully aware of all road traffic legislation, conditions attached to their driving licence, the safety of their passengers and the safety of their vehicles at all times; passengers rely on their driver to get them to their destination safely and using the most direct route, therefore, a good knowledge of the area that they are working in is also appropriate.
- Able to communicate effectively with passengers – in the main this means able to read, speak, write and understand English.
- In good physical and mental health – to ensure they do not put passengers at risk through, for example, suffering a heart attack whilst conveying passengers.

## **The Council’s approach when considering convictions**

H1.11 The disclosure of any convictions or cautions will not necessarily mean an applicant is not a fit and proper person and, therefore, automatically prevented from being issued a licence. However, the Council will have regard to all convictions, spent or live, and they will be assessed accordingly. Consideration will be given, but not restricted to, the following:

- How relevant the offence(s) are to the licence being applied for.
- How serious the offence (s) were.
- When the offence(s) were committed.
- The date of conviction.
- Circumstances of the individual concerned.
- The extent of any mitigating factors.
- Sentence imposed by the court.
- Whether the offence(s) form part of a pattern of offending or indicate a pattern of unacceptable behaviour.
- Any other character check considered reasonable, e.g. personal references.

- Any other factor that may be relevant.

H1.12 **AND** to guide the Council's consideration, the implications of the answer to the following question will also be applied:

- Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?

H1.13 If the Council has any doubts as to the fitness of an applicant/existing licenced driver, then an application must be refused or licence suspended/revoked until those doubts can be effectively allayed through the provision of further adequate evidence.

H1.14 If the applicant or holder of a licence has notified the Council of a conviction but is appealing against it to a higher court the matter will be referred to the Licensing Panel or the Licensing & Safety Sub-committee for a decision as to whether the licence ought to be suspended until such an appeal is heard.

### **Patterns of behaviour**

H1.15 A series of offences or a pattern of behaviour/conduct over a period of time is more likely to give cause for concern than an isolated conviction/incident. However, that is not to say that an isolated conviction/incident cannot give cause for concern in its own right, particularly where it relates to a serious matter. In such circumstances, the Council will give significant consideration to refusing to grant a licence or to suspending and/or revoking an existing licence.

H1.16 A serious view will always be taken where an applicant shows any tendency towards criminal and/or unacceptable/inappropriate behaviour patterns. In such instances, the Council is unlikely to consider such an applicant/existing licence holder to be a fit and proper person to hold a licence and will give significant consideration to refusing to grant a licence or to suspending/revoking an existing licence.

### **Rehabilitation periods**

H1.17 Detailed guidance (effective March 2014) on the Rehabilitation of Offenders Act 1974 is available on the GOV.UK website at <https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

H1.18 A person with a conviction for an offence need not be automatically barred from obtaining a licence. However, they would be expected to remain free of conviction for an appropriate period of time (as set out in Tables A and B below) and demonstrate adequate evidence that they are a fit and proper person to hold a licence. The onus is on the person to produce such evidence.

**NB** Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person.

**Table A**

<b>Sentence</b>	<b>Rehabilitation period</b> (applies from the end date of the sentence, including any licence period)
Custodial sentence* of over 48 months, or a public protection sentence**	Never spent
Custodial sentence* of over 30 months and up to and including 48 months	7 years
Custodial sentence* of over 6 months and up to and including 30 months	4 years
Custodial sentence of 6 months or less	2 years
Community order	1 year

\*Custodial sentence includes both an immediate custodial sentence and a suspended sentence.

\*\*Public protection sentence means a sentence of imprisonment imposed for specified sexual and violent offences as set out in Schedule 15 of the Criminal Justice Act 2003. (Equivalent provisions of the Armed Forces Act 2006 are also applicable.)

**Table B**

<b>Sentence</b>	<b>Rehabilitation period</b> (applies from the date of conviction)
Endorsement for a road traffic offence imposed by the court or a FPN; or if a driving licence is revoked or refused on medical grounds by the DVLA (or other body responsible for issuing the driving licence)	5 years*
Penalty points for a road traffic offence	3 years
Driving disqualification**	when the disqualification ceases to have effect
Community order with no specified end date	2 years
Fine	1 year
Conditional discharge	Period of the order
Absolute discharge	None
Conditional caution	3 months or when the caution ceases to have effect if earlier
Simple caution	Spent immediately
Compensation order	On the discharge of the order (i.e. when it is paid in full); individuals must obtain and retain proof of payment from the court
Binding over order; Attendance centre order; Hospital order (with or without a restriction order)	Period of the order

\* Where a driving licence is revoked/refused on medical grounds by the DVLA (or other body), the Council will not grant a licence until medical proof of acceptable physical and mental fitness is provided.

\*\*'Disqualified' – refers to the period of disqualification actually served in order to take account of the fact that a court may reduce the period of disqualification; an applicant must provide evidence to prove that the court agreed a reduction in the period of disqualification.

H1.19 Where a person does not satisfy the rehabilitation periods referred to in the tables above, then the Council will refuse to grant a new licence or revoke or suspend an existing licence until the applicant is in a position to satisfy them.

H1.20 The specific periods of rehabilitation are not intended to be taken as definitive time periods by which an applicant/licence holder is automatically granted a licence simply on the basis that the rehabilitation period has elapsed. Rather they are intended to give parameters for consideration when taken with the overall history of an applicant/licence holder in order to assist the Council to determine whether an applicant/existing licence holder is a fit and proper person or not. The rehabilitation periods will not be considered in isolation.

H1.21 The Council will not grant a licence to an applicant who has been convicted of a specified sexual or violent offence unless significant and exceptional circumstances apply.

### **Licensing offences**

H1.22 In addition to the consideration of rehabilitation periods, where an existing licence holder is found guilty of hackney carriage or private hire related offences such as, but not restricted to, plying for hire, over-charging, refusing to carry disabled persons or multiple breaches of licence conditions, licence holders will be referred to the Licensing Panel and/or the Licensing and Safety Sub-committee with a view to determining whether the licence ought to be suspended and/or revoked.

### **Right of appeal**

H1.23 Any applicant refused a driver's or operator's licence on the grounds that they are not a fit and proper person to hold such a licence, or who has had their licence suspended or revoked or had a condition attached with which they disagree has a right of appeal by way of written complaint, to the magistrates' court within 21 days of the notice of decision.

### **Conclusion**

H1.24 Any applicant having a previous or current conviction should not, in principle, debar them from obtaining a hackney carriage or private hire driver's licence. However, previous convictions are a significant factor in the decision making process and it will inevitably be more difficult for such applicants to obtain a licence. It is this Council's policy to consider the protection of the public above all else by ensuring all licensed drivers are honest, will not be a threat to the public, in good health, are safe and competent drivers and are able to maintain their vehicles to a safe standard. In doing so, the Council will focus on the background of an applicant as a whole and will not consider individual offences and their rehabilitation periods identified above in isolation from other factors, in particular patterns of unacceptable or inappropriate behaviour and conduct that may not necessarily be linked to proven convictions.

## ADDITIONAL MEDICAL FITNESS GUIDANCE

11.0 The following conditions are a bar to the grant of a licence:

### A. Epileptic Attack

Applicants must have been free of epileptic seizures for at least ten years and not have taken anti-epileptic medication during this ten year period.

### B. Insulin Treated Diabetes

Applicants for a private hire or hackney carriage driver licence will be required to satisfy the Council that they meet the medical requirements which would allow a C1 (small lorry) Group 2 licence to be issued. If found to be suffering from Diabetes Mellitus, the applicant must provide a medical report from a hospital consultant specialising in diabetes confirming:

the applicant has been undergoing insulin treatment for over four (4) weeks;

during the 12 months prior to the date of the licence application, the applicant has not suffered a hypoglycaemic episode requiring the assistance of another whilst driving; and,

the applicant has a history of responsible diabetic control and is at minimal risk of a hypoglycaemic attack resulting in incapacity.

The applicant will also be required to submit a signed declaration that:

they will comply with the directions for treatment given to him/her by the doctor supervising that treatment;

immediately report to the Council in writing, any change in diabetic condition; and

provide to the Council as and when necessary, evidence that blood glucose monitoring is being undertaken at least twice daily and at times relevant to driving a hackney carriage or private hire vehicle during employment.

### C. Eyesight

- I. Applicants must be able to read in good daylight a number plate at 20.5 metres, (67 feet), and if glasses or corrective lenses are required to do so, these must be worn while driving. In addition applicants must have a visual acuity of at least 6/9 in the better eye; and visual acuity of a least 6/12 in the worst eye; and if these are achieved by correction the uncorrected visual acuity in each eye must be no less than 3/60.
- II. A licence will also be refused or revoked if an applicant has uncontrolled diplopia, (double vision), or does not have a normal binocular field of vision.

#### D. Other Medical Conditions

In addition to those medical conditions covered by legislation, applicants (or licence holders) are likely to be refused if they are unable to meet the national recommended guidelines in the following cases:

- Within 3 months of myocardial infarction, any episode of unstable angina, CABG or coronary angioplasty;
- A significant disturbance of cardiac rhythm occurring within the past 5 years unless special criteria are met;
- Suffering from or receiving medication for angina or heart failure;
- Hypertension where the BP is persistently 180 systolic or over, or 100 diastolic or over;
- A stroke or TIA within the last 12 months;
- Unexplained loss of consciousness within the past 5 years;
- Meniere's or other conditions causing disabling vertigo, within the past 1 year, and with a liability to reoccur;
- Recent severe head injury with serious continuing after effects, or major brain surgery;
- Parkinson's disease, multiple sclerosis or other 'chronic' neurological disorders likely to affect limb power or co-ordination;
- Suffering from psychotic illness in the past 3 years, or suffering from dementia;
- Alcohol dependency or misuse, or persistent drug or substance misuse or dependency in the past 3 years;
- Insuperable difficulty in communicating by telephone in an emergency;
- Any other serious medical condition which may cause problems for road safety when driving a Hackney Carriage or Private Hire Vehicle;
- If major psycho tropic or neuroleptic is being taken;
- Any malignant condition within the last 2 years likely to metastasise to brain or lung or malignant melanoma

## INTENDED USE AND LICENSING OF HACKNEY CARRIAGES

### Reasons for Policy

- J1.0 The Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgment, and the declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].

### Applications for the grant of a new hackney carriage licence

- J1.2 Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within the administrative area of Tamworth Borough Council under the terms of the licence for which application is being made.
- J1.3 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of Tamworth Borough Council will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its individual merits.
- J1.4 Even where the applicant intends to ply for hire to a material extent in the administrative area of Tamworth Borough Council, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

### Applications for the renewal of a hackney carriage licence

- J1.5 Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to ply for hire within the administrative area of Tamworth Borough Council under the terms of the licence for which application is being made.
- J1.6 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of Tamworth Borough Council will not be granted a hackney carriage licence authorising them to do so. Section 60 of Local Government Miscellaneous Provisions Act 1976 gives the Council a broad discretion to refuse to renew a licence for any reasonable cause. Each application will be decided on its merits.
- J1.7 Even where the applicant intends to ply for hire to a material extent in the administrative area of Tamworth Borough Council, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

## **Transfer of ownership – when a licensed vehicle is transferred from one person to another**

- J1.8 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who transfers his interest to another must, within 14 days of the transfer, give written notice to the Council of the name and address of the transferee of the hackney carriage. The Council has no power to refuse to register the new proprietor: see *R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd* [1947] KB 583.
- J1.9 Provided requisite notice has been given in accordance with section 49 of the Local Government (Miscellaneous Provisions) Act 1976 the Council will register the transferee of a licensed hackney carriage as the new proprietor. This is a legal requirement.
- J1.10 The transferee of a licensed hackney carriage will be asked to inform the Council whether he has a bona fide intention to use the vehicle to ply for hire within the administrative area of Tamworth Borough Council. In addition, where the transferee resides outside the administrative area of Tamworth Borough Council, the transferee will be required to keep records of all pickups on the Tamworth Borough Council approved record sheets and these records shall be made available for inspection upon request. Transferees should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information or to keep the records, the Council will give serious consideration to exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming, in addition to its powers under section 73.
- J1.11 Transferees of existing licences will be expected to have a bona fide intention to ply for hire within the administrative area of Tamworth Borough Council under the terms of the licence in respect of the vehicle being transferred.
- J1.12 Where the transferee of a licensed hackney carriage is found to have no intention to ply for hire to a material extent within the administrative area of Tamworth Borough Council and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under section 60 of the 1976 Act. Where the transferee proposes to operate remotely from the administrative area of Tamworth Borough Council there will be a presumption that his licence will be revoked. Each case will be decided on its merits.
- J1.13 The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court referred to in paragraph 1.0 above, unless precautionary steps are taken. The paragraphs in this section are intended to put the Council in a position to respond responsibly to the transfer of a Tamworth hackney carriage into the name of someone who operates outside the administrative area of Tamworth Borough Council or remotely from it.
- J1.14 Unless there has been a change in the proprietor's intentions with regard to plying for hire within the administrative area of Tamworth Borough Council, there should be no reason why he should not be granted a licence for a replacement vehicle. On the other hand, as an applicant who obtained his first licence on the expressed intention of plying for hire to a material extent within the administrative

area of Tamworth Borough Council, and who on application to replace that vehicle with another discloses that he no longer so intends, effectively engages the presumption against grant that is mentioned earlier.

### **Change of vehicle – when a proprietor replaces a licensed vehicle**

J1.15 Applicants seeking the grant of hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire to a material extent within the administrative area of Tamworth Borough Council will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire to a material extent in the administrative area of Tamworth, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.

### **Revocation of licence**

J1.16 Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within the administrative area of Tamworth Borough Council but is subsequently found not to be plying for hire to a material extent in the administrative area of Tamworth Borough Council and/or to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) there will be a presumption that the licence will be revoked.

### **Exceptional circumstances**

J1.17 Each application will be decided on its merits. However the presumptions that intended use is to ply for hire to a material extent within the administrative area of Tamworth Borough Council will be rebuttable in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed or if were not suspended or revoked as the case may be.

## ADVERTISING ON HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

- K1.0 Advertisements will not be permitted by Tamworth Borough Council if, in Tamworth Borough Council's reasonable opinion, the advertisement falls within any of the following categories:
- a. does not comply with the law or incites someone to break the law;
  - b. does not comply with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing;
  - c. is likely to cause widespread or serious offence to members of the public on account of the nature of the product or service being advertised the wording or design of the advertisement or by way of inference;
  - d. depicts men, women or children in a sexual manner or displays nude or semi-nude figures in an overtly sexual context (**NB** whilst the use of underdressed people in most underwear advertising may be seen as an appropriate context, gratuitous use of an overtly sexual nature will be unacceptable);
  - e. depicts or refers to indecency or obscenity or uses obscene or distasteful language including that set out in a foreign language;
  - f. relates to lap-dancing, 'gentlemen's clubs', escort agencies or massage parlours;
  - g. depicts direct or immediate violence to anyone shown in the advertisement;
  - h. condones or provokes anti-social behaviour;
  - i. contains images or messages, which relate to matters of public controversy and sensitivity;
  - j. refers to or portrays (or gives the impression of portraying) a living person unless the written consent of that person is obtained and is produced to Tamworth Borough Council;
  - k. contains negative references to Tamworth Borough Council's services or those services provided or regulated by other local authorities;
  - l. relates to a political party or parties or a political cause;
  - m. relates to or advertises alcohol or tobacco;
  - n. in the case of digital media, poses a health and safety risk as a result of flickering or other visual imagery

**CONDITIONS APPLICABLE TO THE USE OF TRAILERS**

- L1.1 The use of trailers is only permitted for vehicles of the multi-passenger type (more than 4 passenger seats) and on pre-arranged journeys where passenger's luggage cannot be safely accommodated within the vehicle.
- L1.2 The licensed towing vehicle's insurance must cover the towing of a trailer.
- L1.3 Trailers must not be left unattended anywhere on the highway.
- L1.4 The speed restrictions applicable to trailers must be observed at all times.
- L1.5 A spare wheel for the trailer and adequate tools to change a wheel must be carried at all times by a licensed vehicle whilst towing a trailer.
- L1.6 The towing of a trailer by a licensed vehicle shall only permit the conveyance of luggage and belongings owned by a passenger whilst the vehicle is hired by a passenger within the vehicle.
- L1.7 The tow bar must comply with the type approval regulations in respect of all tow bars fitted to cars after August 1998.
- L1.8 Drivers of vehicles towing trailers must ensure that they have the correct driving licence group to permit them to tow the relevant trailer, as per the DVLA guidance (info 30) Driving Licensing Requirements for Towing Trailers in Great Britain.
- L1.9 Trailers must be inspected at initial licensing and annually thereafter by a garage approved by the Council for that purpose.
- L1.10 An additional plate will be issued by the Council for each vehicle licensed to tow trailers and the relevant plate must be affixed to the rear of the trailer near the vehicle number plate.
- L1.11 Un-braked trailers shall be less than 750 KGs gross weight.
- L1.12 Trailers over 750 KGs gross weight shall be braked acting on at least two road wheels.
- L1.13 The towing vehicle must have a kerb weight of at least twice the gross weight of the trailer.
- L1.14 A suitable lid or other approved means of enclosure shall be fitted to secure the contents within the trailer when in use and to keep it watertight.
- L1.15 The maximum permissible length of the trailer shall be 7 metres including the drawbar and coupling.
- L1.16 The width of the trailer shall not be greater than the towing vehicle subject to no trailer being wider than 2.3 metres.
- L1.17 The maximum length for braked trailers is 5.54 metres.

- L1.18 The trailer must at all times comply with all Road Traffic legislation requirements, in particular those as laid down in the Road Vehicles (Construction and Use) Regulations 1986.
- L1.19 The trailer shall not display any form of sign or advertisement not required or approved by the Council or Road Traffic legislation.

**AMENDMENTS TO TAMWORTH BC  
Hackney Carriage and Private Hire Licensing Guidance 2017-2022**

<b>Page</b>	<b>Subject and Comment</b>
41	<b>Appendix A – Child Sexual Exploitation and Trafficking of Children and Young People</b> Includes information on Tamworth Borough Council's approach to safeguarding in relation to taxi driver licensing within the guidance;
61	<b>Appendix E Private Hire Executive Vehicle Licence - Conditions of Licence</b> Previous policy silent on above matter, included to reflect changing nature of business need whilst maintaining safeguards and protection, discussed at Licensing Committee 2 March 2017.

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16 MAY 2017

**REPORT OF THE SOLICITOR TO THE COUNCIL AND MONITORING OFFICER****REVIEW OF ANTI-MONEY LAUNDERING POLICY****EXEMPT INFORMATION**

None

**PURPOSE**

This report provides the Council with a copy of the reviewed Anti-Money Laundering Policy for adoption.

**RECOMMENDATIONS**

**To adopt the revised Anti-Money Laundering Policy in the Council's Policy Framework.**

**EXECUTIVE SUMMARY****Review of Anti-Money Laundering Policy**

The Council is committed to high standards of Ethical and Corporate Governance which give a high organisational commitment to zero tolerance to fraud, corruption and bribery. The Anti-Money Laundering Policy and protocol was considered by Audit and Governance Committee on 27 October 2016, the Committee considered the changes to the policy, was satisfied that the changes met the requirements imposed on the Council in terms of the legislation and Codes of Practice, and recommended approval to Council.

The Anti-Fraud and Corruption Policy and Whistleblowing Policy were reviewed last year as part of an internal audit on fraud awareness and reports on updating these policies were submitted to Audit and Governance Committee for approval and full Council. As a result of this review all of the policies will be fit for purpose and ensure high standards of corporate governance of the Council's affairs.

Training sessions have also been carried out for all staff on Anti-Money Laundering requirements through the internal on-line Net-consent facility.

**RESOURCE IMPLICATIONS**

There are no resource implications. Any amendments to the Council's policies will be placed on the Council's website and included as required in the Constitution.

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

There are no Financial, Equality, Diversity and Human Rights, Consultation, Community Safety, Health and Safety and Risk Management Implications.

## **SUSTAINABILITY IMPLICATIONS**

None.

## **BACKGROUND INFORMATION**

### **Background**

Governance is about how the Council ensures that it is doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner. It comprises the systems and processes, and cultures and values, by which such bodies are directed and controlled and through which they account to, engage with and, where appropriate, lead their communities.

The Council strives to meet the highest standards of corporate governance to help ensure it meets its objectives. Members and Officers are responsible for putting in place proper arrangements for the governance of the Council's affairs and the stewardship of the resources at its disposal.

The Council's Ethical Governance arrangements are a key part of good Corporate Governance and important component parts of this are the Council's Anti-Money Laundering Policy as well as the Anti-Fraud and Corruption Policy and the Whistleblowing Policy. The policies are subject to regular review to ensure that they remain fit for purpose. The Committee reviewed the Anti-Fraud and Corruption Policy and the Whistleblowing Policy last year. The Committee is now asked to review its Anti-Money Laundering Policy.

Governance forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan and vision.

## **REPORT AUTHOR**

Jane M Hackett Solicitor to the Council and Monitoring Officer Tel: 709258 if you would like further information or clarification prior to the meeting.

## **LIST OF BACKGROUND PAPERS**

None

## **APPENDICES**

Anti-Money Laundering Policy



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**ANTI-MONEY LAUNDERING POLICY STATEMENT,  
STRATEGY & GUIDANCE NOTES**

Document Status: Final

Originator: J M Hackett

Updated: J M Hackett

Owner: Solicitor to the Council – Corporate Services

Version: 01.01.03

Date: 27/10/16

**Approved by Audit & Governance Committee**

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## Document Location

This document is held by Tamworth Borough Council, and the document owner is Jane Marie Hackett, Solicitor to the Council – Corporate Services.

Printed documents may be obsolete. An electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

## Revision History

Revision Date	Version Control	Summary of changes
	1.01.01	Scheduled review
30/07/13	1.01.02	Scheduled review
28/09/16	1.01.03	Scheduled review

## Approvals

Name	Title	Approved
Audit & Governance Committee	Committee Approval	Yes
Council	Council Approval	Yes
CMT	Group Approval	Yes
John Wheatley	Executive Director – Corporate Services	Yes
Jane M Hackett	Solicitor to the Council and Monitoring Officer	Yes

## Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

## Distribution

The document will be available on the Intranet and the website.

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## TAMWORTH BOROUGH COUNCIL

### ANTI-MONEY LAUNDERING POLICY STATEMENT

- 1.0 Tamworth Borough Council fully recognises its responsibility in relation to the spending of public money (Protecting the Public Purse) and is committed to the fullest support for Councillors and Employees in upholding the reputation of the Council and maintaining public confidence in its integrity. It also recognises its responsibilities under the Proceeds of Crime Act 2002, Money Laundering Regulations 2007 and the Bribery Act 2010.
- 2.0 The Council acknowledges the threat of money laundering and the harm that it can cause. The Council is committed to maintaining an ethical culture which does not and will not tolerate any form of fraud and corruption. Any such issues will be thoroughly investigated and, if confirmed, dealt with rapidly in the strongest possible way. We will seek the strongest possible sanctions against those who seek to defraud the Council. This includes taking appropriate action against employees, Councillors, contractors, external individuals and organisations.
- 3.0 To deliver the Council's corporate priorities, aims and strategic objectives we need to maximise the financial resources available to us. In order to do this we must reduce the risk of fraud to an absolute minimum.
- 4.0 This Policy Statement, together with the Anti-Money Laundering Strategy, is intended to provide advice and information to Employees and Councillors but suppliers, contractors and the general public are also encouraged to use this advice and guidance.



Chief Executive



Leader of the Council

# TAMWORTH BOROUGH COUNCIL ANTI-MONEY LAUNDERING POLICY

## 1. Introduction

Although local authorities are not directly covered by the requirements of the Money Laundering Regulations 2007, guidance from CIPFA indicates that they should comply with the underlying spirit of the legislation and regulations.

Tamworth Borough Council is committed to the highest possible standards of conduct and governance, therefore, it has put in place appropriate and proportionate anti-money laundering safeguards and reporting arrangements.

All organisations, including the Council, must report any money laundering suspicions for cash transactions over 15,000 Euros. **To help prevent money laundering, the Council has set a cash payment limit of £5,000. No cash payments above £5,000 are to be accepted by any Council service unless prior approval is obtained from the Money Laundering Reporting Officer or the Executive Director - Corporate Services in her absence..**

This is not designed to prevent customers making payments for Council services but to minimise the risk to the Council of high value cash transactions.

## 2. Scope of the Policy

This policy applies to all employees, whether permanent or temporary, and Members of the Council.

Its aim is to enable employees and Members to respond to a concern they have in the course of their dealings for the Council. Individuals who have a concern relating to a matter outside work should contact the Police.

## 3. Definition of Money Laundering

Money laundering is a general term for any method of disguising the origin of “dirty” or criminal money. This money may be the proceeds of any criminal activity including terrorism, drugs trafficking, corruption, tax evasion and theft. The purpose of money laundering is to hide the origin of the dirty money so that it appears to have come from a legitimate source. Unfortunately, no organisation is safe from the threat of money laundering, particularly where it is receiving funds from sources where the identity of the payer is unknown. It is, therefore, possible that Council may be targeted by criminals wishing to launder the proceeds of crime.

In addition, it is possible that the proceeds of crime may be received from individuals or organisations who do not realise that they are committing an offence. It is no defence for the payer or the recipient to claim that they did not know that they were committing an offence if they should have been aware of the origin of the funds. All staff therefore dealing with the receipt of

funds or having contact with third parties from whom funds may be received need to be aware of the possibility of money laundering taking place. Money laundering describes offences involving the integration of the proceeds of crime or terrorist funds into the mainstream economy. Such offences are defined under the Proceeds of Crime Act 2002 (“the Act”); the following are ‘prohibited acts’:

- Concealing, disguising, converting, transferring or removing criminal property from the UK
- Becoming involved in an arrangement which an individual knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- Acquiring, using or possessing criminal property
- Failure to disclose one of the offences listed above, where there are reasonable grounds for knowledge or suspicion
- Doing something that might prejudice an investigation e.g. falsifying a document
- Tipping off a person(s) who is or is suspected of being involved in money laundering in such a way as to reduce the likelihood of or prejudice an investigation

Provided the Council does not undertake activities regulated under the Financial Services and Markets Act 2000, the offences of failure to disclose and tipping off do not apply. However, the Council and its employees and Members remain subject to the remainder of the offences and the full provisions of the Terrorism Act 2000.

The Terrorism Act 2000 made it an offence of money laundering to become concerned in an arrangement relating to the retention or control of property likely to be used for the purposes of terrorism, or resulting from acts of terrorism.

Although the term ‘money laundering’ is generally used to describe the activities of organised crime, for most people it will involve a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.

Potentially very heavy penalties (unlimited fines and imprisonment up to fourteen years) can be handed down to those who are convicted of one of the offences above.

It is important therefore that staff are aware of the rules and procedures that the Council has in place to ensure that they comply with the relevant legislation and approach taken by the Council as set out in this policy.

#### **4. Requirements of the Money Laundering Legislation**

The main requirements of the legislation are:

- To appoint a money laundering reporting officer

- Maintain client identification procedures in certain circumstances
- Implement a procedure to enable the reporting of suspicions of money laundering
- Maintain record keeping procedures

## **5. The Money Laundering Reporting Officer (MLRO)**

The Council has designated the Monitoring Officer as the Money Laundering Reporting Officer (MLRO). She can be contacted on 01827 709258 or by email [jane-hackett@tamworth.gov.uk](mailto:jane-hackett@tamworth.gov.uk).

In the absence of the MLRO or in instances where it is suspected that the MLRO could be involved in suspicious transactions, concerns should be raised with the Section 151 Officer – Executive Director (Corporate Services). He can be contacted on 01827 709252 or by email [john-wheatley@tamworth.gov.uk](mailto:john-wheatley@tamworth.gov.uk).

## **6. Due Diligence Procedures**

The Money Laundering Regulations require us to carry out “Customer Due Diligence”. Staff should therefore be alert to where Tamworth Borough Council (TBC) may be targeted by individuals trying to launder the proceeds of crime; avoid alerting anyone dealing with TBC that they have a suspicion that they may be attempting to launder, or have laundered, the proceeds of crime; and to report any suspicions of money laundering. Any suspicions must be reported to the Money Laundering Reporting Officer.

Training will be provided to all relevant staff regarding money laundering to assist them in their awareness of how money laundering could take place and the appropriate method of dealing with this. In effect, any areas where money changes hands could therefore be at risk of money laundering attempts, i.e. Application fees for taxi licences, planning applications, payment of housing benefits etc.

The Council already has procedures in place to limit the amount of cash that it receives, with other payment methods being made available. To ensure however that the system is manageable, if a cash payment of less than £5,000 is received; no identification checks will be needed.

Where the £5,000 limit is exceeded, officers dealing with the matter will need to establish the identity of the individual/company involved to seek to ensure that the risk of receiving the proceeds of crime can be minimised.

For individuals, their passport or photo driving licence should be provided, together with one of the following:

- Utility bills i.e. electricity, water etc. however mobile phone bills are not acceptable
- Mortgage/building society/bank statements
- Credit card statements

- Pension or benefit books

If passport or photo driving licence is not available, then two of the other items listed above will need to be produced.

For companies, a Companies House Search should be undertaken to confirm the existence of the company and identify who the directors are. Personal identification should then be obtained for the representatives of the company together with proof of their authority to act on behalf of the company. Care should be taken if it becomes clear that the individual has only recently become a director of the company or if there has been a recent change in the registered office.

For any other type of organisation, for example a sole trader or partnership, personal identification should be obtained for the individuals together with documents indicating their relationship to the organisation.

Copies of any evidence provided in support of the identification of an individual or organisation should be kept on a central file so that it can be referred to later if necessary. Records should be kept for 5 years after the end of the transaction.

## **7. Procedure for Reporting Suspicious Transactions**

Any suspicious transactions which staff may become aware of in the course of their work must be reported to the MLRO immediately using the Council's Internal Disclosure Form (see Appendix 2). Failure to make the appropriate report immediately will be regarded as gross misconduct and may result in dismissal without notice or pay in lieu of notice.

The report must include as much detail as possible including:

- Full details of the people involved
- Full details of the nature of their/your involvement.
- The types of money laundering activity involved
- The date(s) of such activity/ies
- Whether the transactions have happened, are ongoing or are imminent;
- Where they took place (if applicable);
- How they were undertaken (if applicable);
- The (likely) amount of money/assets involved;
- Why, exactly, you are suspicious.

Along with any other available information to enable the MLRO to make a sound judgement as to whether there are reasonable grounds for knowledge or suspicion of money laundering and to enable her to prepare a report to the National Crime Agency (NCA), where appropriate. You should also enclose copies of any relevant supporting documentation.

It is imperative that, if staff have a suspicion concerning an individual or organisation with which they are dealing that they do not alert them to that suspicion i.e. that no "tipping off" is done. Staff must, therefore, **not** make

them aware that an internal disclosure report may be made. Once the report is made, the cash/cheques/other form of payment from this source should not be banked until clearance has been received from the MLRO. Such clearance may take up to seven days from the time when the initial report to the MLRO is made.

If the funds are banked in this period without getting clearance from the MLRO that staff members runs the risk of a fine and/or imprisonment for up to 14 years.

## **8. Additional Guidance**

If you require any additional information or guidance in relation to the contents of this policy and your responsibilities please contact either the MLRO or his deputy. An Aide Memoir has been prepared – Appendix 3, which can be used as a brief reminder to staff of their responsibilities.

## **9. Consideration of the disclosure by the Money Laundering Reporting Officer**

Upon receipt of a report, the MLRO must note the date thereof and acknowledge receipt. She should also advise you of the timescale within which she expects to respond to you.

The MLRO will consider the report and any other available internal information she thinks relevant e.g.

- reviewing other transaction patterns and volumes;
- the length of any business relationship involved;
- the number of any one-off transactions and linked one-off transactions;
- any identification evidence held;

She will also undertake such other reasonable inquiries that are appropriate in order to ensure that all available information is taken into account in deciding whether a report to the NCA is required (such enquiries being made in such a way as to avoid any appearance of tipping off those involved). The MLRO may also need to discuss the report with you.

Once the MLRO has evaluated the report and any other relevant information, she must make a timely determination as to whether:

- there is actual or suspected money laundering taking place; or
- there are reasonable grounds to know or suspect that is the case; and
- there is a requirement to seek consent from the NCA for a particular transaction to proceed.

Where the MLRO does so conclude, then she must disclose the matter as soon as practicable to the NCA on their standard report form and in the prescribed manner, unless she has a reasonable excuse for non-disclosure to

the NCA (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information). Where the MLRO suspects money laundering but has a reasonable excuse for non-disclosure, then she must note this accordingly; she can then immediately give her consent for any ongoing or imminent transactions to proceed.

In cases where legal professional privilege may apply, the MLRO must liaise with the Section 151 Officer to decide whether there is a reasonable excuse for not reporting the matter to the NCA.

Where consent is required from the NCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until the NCA has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the NCA.

Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then she shall note this accordingly and give consent for any ongoing or imminent transaction(s) to proceed.

All reports referred to the MLRO and reports made by her to the NCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.

The MLRO commits a criminal offence if she knows or suspects, or has reasonable grounds to do so, through a disclosure being made to her, that another person is engaged in money laundering and she does not disclose this as soon as practicable to the NCA.

## **10. Training**

Officers considered likely to be exposed to suspicious situations, will be made aware of these by their senior officer and provided with appropriate training. In effect, any areas where money changes hands could therefore be at risk of money laundering attempts ie. application fees for taxi licences, planning applications, payment of housing benefits etc.

Additionally, all employees and Members will be familiarised with the legal and regulatory requirements relating to money laundering and how they affect both the Council and themselves.

Notwithstanding the paragraphs above, it is the duty of officers and Members to report all suspicious transactions whether they have received their training or not.

## **11. Conclusions**

The Council has put into place a number of arrangements to protect itself from the risk of money laundering. However in the current climate of change there are issues that will increase this risk. Changes in structure, changes in

systems and the turnover of staff all contribute to our exposure to the risk of money laundering. To mitigate against this risk the Council will regularly review arrangements.

The Money Laundering Policy provides a framework for preventing and tackling money laundering acts against the Authority. The approval of the Policy by the Audit and Governance Committee and the Council demonstrates the Council's commitment to protecting public funds. Having made this commitment, it is imperative that the MLRO puts in place arrangements for disseminating the Policy and promoting money laundering awareness, throughout the Council. The Council believes that this policy represents a proportionate response to the level of risk it faces from money laundering offences.

## **12. Review**

This policy and associated procedure will be subject to a review every 2 years unless any changes or updates to any of the relevant legislation require that it is undertaken sooner.

**Role of the Money Laundering Report Officer – “MLRO”**

The duties of the Money Laundering Reporting Officer are:

- To ensure that the Council complies with the requirements of the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002.
- To ensure that all relevant staff are aware of and comply with the Council’s Money Laundering Policy.
- To ensure that the Council properly identifies all third parties dealing with the Council where there is a higher risk of the Council receiving the proceeds of crime and to ensure that copies of any documents taken as proof of evidence are kept on a central file by the Council.
- To ensure that all relevant staff receives training on how to identify, deal with and prevent money laundering.
- To ensure that all necessary disclosures to the National Crime Agency (NCA) are made and that they are made as soon as practically possible after the suspicion has been raised.
- To decide whether a suspicious transaction report requires a disclosure to be made to NCA.
- To liaise with NCA regarding the outcome of the disclosure and update staff accordingly.



**MONEY LAUNDERING – INTERNAL REPORTING FORM**

Money laundering legislation requires all individuals within the Council to report any knowledge or suspicions that they might have of money laundering (as defined in the Proceeds of Crime Act 2002) to the Council’s Money Laundering Reporting Officer. To assist individuals the following pro forma has been developed. Particular circumstances may require different information to be disclosed and this should be fully explained, if applicable.

***Instructions for Completion***

*It is your legal duty and a requirement of your employment with Tamworth Borough Council that you report any suspicion concerning proceeds of crime to:*

**Money Laundering Reporting Officer  
 Tamworth Borough Council  
 Marmion House  
 Lichfield Street  
 Tamworth  
 Staffordshire  
 B79 7BZ**

This should be marked **URGENT – \*\*RESTRICTED\*\* TO THE ADDRESSEE ONLY.**

You are also reminded that **“Tipping-Off”** is a criminal offence. You should therefore avoid discussing the content of this report with anyone other than the Money Laundering Reporting Officer.

Date of Report:		Date suspicion first aroused:	
Prepared by: Name & Dept:			
Disclosure Type:	(ie. Connections to crime/drugs/terrorism)		

**Main Subject (Person)**

Surname:		Forename(s):		Title:	
Date of Birth:		Gender:			
Occupation:		Employer:			
Address: (in full)		Postcode:	Home/Business /Registered	Current/Previous	

**Or**

**Main Subject (Company)**

Company Name:		Company No:			
Type of Business:		VAT No:			
Country of Reg:					
Address: (in full)		Postcode:	Home/Business/Registered	Current/Previous	

**Bank Account Details**

Account Name:		Sort Code:	
Opened:		Account No:	
Closed:		Balance:	

**Other Information**

Any information/evidence held to confirm identification and/or address, ie. Passport/driving licence etc:

**Connected Subject Person (if any)**

Surname:		Forename(s):		Title:	
Date of Birth:		Gender:			
Occupation:		Employer:			
Address: (in full)		Postcode:	Home/Business /Registered	Current/Previous	



**Reason for the Suspicion**

<b>Please tick any or all of the following which might apply</b>		
Drugs	Personal Tax Fraud	Vat Fraud
Crime	Company Tax Fraud	
Immigration	Tobacco/Alcohol Excise Fraud	
<b>Following on from above, please set out the reason for the suspicion:</b>		
Please continue on separate sheet if required		
<b>Names of all other colleagues (principals and staff) who have been involved in the case</b>		

**Declaration**

The above is an accurate account of the facts that are available to me at the time of making the report. If I become aware of additional and/or changes in the information provided I will disclose these to the Money Laundering Reporting Officer in a timely manner. I am aware of the risks and penalties regarding “tipping-off” or frustrating in any way an investigation of the above or related matters by the authorities.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name in Full: \_\_\_\_\_ Position: \_\_\_\_\_

**MONEY LAUNDERING AVOIDANCE AIDE MEMOIR**

1. No member of staff must accept cash of more than £5,000 from any member of the public.
2. If you are offered cash of more than £5,000 you should advise the person offering it to you that it is not Council policy to accept large amounts of cash of more than £5,000 and that you need to obtain guidance from a senior member of staff. You should then contact the Money Laundering Reporting Officer to obtain authorisation to take cash, if appropriate.
3. Any large cash sums should not be banked in the first instance. The Money Laundering Reporting Officer should be contacted to seek guidance as to how to deal with the funds. Forms to report the matter are included in the policy document at Appendix 2.
4. Whilst it is not acceptable to be suspicious of all cash based businesses, anyone whom you know to be associated with such a business should be dealt with using a higher degree of scepticism. If you have any reason to suspect the source of their funds then you should contact the Money Laundering Reporting Officer to discuss your concerns, even if the payment is not received in cash.
5. If you receive a complaint from a member of the public in relation to possible criminal activity being carried out by someone who may be a customer of the Council (i.e. a Council Tax or Business Rates payer, rent payer, licensee etc) you must pass this on to the Money Laundering Reporting Officer.

## COUNCIL

16 MAY 2017

### REPORT OF THE SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

#### REGULATION OF MEMBERS CONDUCT

##### PURPOSE

To advise Members on the number of complaints received for the period 01 May 2016 until 30 April 2017 in relation to alleged breaches of the Code of Conduct arising from implementation of Part 1 Chapter 7 of the Localism Act 2011 which introduced provisions to assist with the regulation of standards of conduct for elected and co-opted Councillors.

##### RECOMMENDATIONS

**Members are requested to endorse the findings of the contents of the report.**

##### EXECUTIVE SUMMARY

Since the establishment of the new Code of Conduct in July 2012 the new Standards regime has been well received by members. In the year from 01 May 2016 until 30 April 2017 members have maintained high standards of conduct and abided with the rules regarding interests, declarations and predetermination. Accordingly I can advise that in the period from 01 May 2016 until to 30 April 2017 four complaints were received.

The complaints were received on 4 July 2016, 28 February 2017, 2 March 2017 and 28 March 2017.

The first complaint is under investigation and a report will be made to Audit and Governance Committee for consideration.

The second complaint was resolved informally. There was no deliberate attempt by the member to mislead or cause any distress to residents. The member recognised the error and apologised to the resident that raised the issue.

The third complaint has been closed. The Monitoring Officer consulted with one of the Independent Persons following receipt of the complaint. Additional information was required which would have enabled the matter to be considered. The information has not been forthcoming.

The fourth complaint was resolved informally. There was no deliberate attempt or intention by the member to cause the resident any distress. The member had dealt

with the concern raised by the resident appropriately. The member apologised to the resident for any offence caused.

## **RESOURCE IMPLICATIONS**

The operation of the arrangements relating to Standards of Conduct does not have any additional resource implications for the Authority, however the process of investigation would have financial implications as it would be necessary to utilise external support in such circumstances. In the year to 30 April 2017 the Council has only incurred expense for external support in relation to one of the complaints received, which was met from within existing budgets.

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

Effective arrangements to deal with complaints provides the mitigating action necessary to ensure that the Authority meets its statutory obligations under the Localism Act 2011.

## **SUSTAINABILITY IMPLICATIONS**

The arrangements ensure that the staff of the Council and the citizens of Tamworth benefit from a robust, open and transparent complaints process.

## **BACKGROUND INFORMATION**

The Localism Act 2011 repealed Section 55 of the Local Government Act 2000 which provided the previous Standards regime. There still remains a requirement to deal with conduct issues and associated case-work. Accordingly the Audit and Governance Committee membership was increased and its remit was extended to deal with regulation of Members Conduct. In addition an Independent Person was appointed to assist the process albeit such person is not a member of the Committee.

## **REPORT AUTHOR**

For further information please contact Jane M Hackett, Solicitor to the Council & Monitoring Officer on Extn: 258

## **LIST OF BACKGROUND PAPERS**

Localism Act 2011  
Code of Conduct for Members and arrangements for dealing with complaints

## **APPENDICES**

None



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## COUNCIL

16 MAY 2017

### REPORT OF THE SOLICITOR TO THE COUNCIL

#### REGULATION OF INVESTIGATORY POWERS ACT 2000 ADOPTION OF POLICY AND PROCEDURE

##### EXEMPT INFORMATION

None

##### PURPOSE

This report advises Members of the proposed amendments to the Corporate Policy governing the Regulation of Investigatory Powers Act 2000 in light of the new requirements introduced by recent legislative change and Home Office Guidance and seeks their consideration and recommendations in relation thereto.

##### RECOMMENDATIONS

**That the Council**

- 1. considers the changes to the RIPA policy on Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition of Communications Data,**
- 2. satisfies itself that the changes meet the requirements imposed on the Council in terms of the legislation and Codes of Practice, and**
- 3. approves the Policy.**

##### EXECUTIVE SUMMARY

The Council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. The Council has also been given powers under the Regulation of Investigatory Powers Act 2000 (RIPA) which enable it to carry out Directed Surveillance in certain strict circumstances. RIPA provides a legal framework for the control and regulation of surveillance and information gathering techniques which public bodies such as Tamworth Borough Council have to comply with. These powers have been amended and changed in accordance with various pieces of legislation. The last change resulted in a revised RIPA Policy being approved by the Council on 16 March 2016. The Protection of Freedoms Act 2012 now requires that local authority authorisations under RIPA for Directed Surveillance or CHIS can only become effective on the granting of an order approving the authorisation by a Justice of the Peace. Further a local authority can now only have an authorisation under RIPA for the use of Directed Surveillance where the local authority is investigating criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco under the Licensing Act 2003 of the Children

and Families Act 2014.

| No Directed Surveillance has been carried out by the Council since 2011 and it is not envisaged that there will be any appreciable change in the foreseeable future. By adhering to this proposed Policy the Council will ensure that the acquisition and disclosure of data is lawful, necessary and proportionate so that the Council is not held to be in breach of Article 8 (the right to respect for private family life, home and correspondence ) of the European Convention on Human Rights.

The current policy prepared in 2016 did not reflect recent changes to legislation and Home Office Codes of Practice.

The attached draft policy and protocol, the proposed changes are tracked in the document, will ensure that the acquisition and disclosure of data is lawful, necessary and proportionate, so that the Council is not held to be in breach of the Human Rights Act and that data obtained under such measures would be used to assist in the successful prosecution of relevant criminal offences. The draft policy and protocol was considered by Audit and Governance Committee on 9 February 2017 and Cabinet on 27 April 2017, they considered the changes to the RIPA policy on Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition of Communications Data, were satisfied that the changes met the requirements imposed on the Council in terms of the legislation and Codes of Practice, and recommended approval.

## **OPTIONS CONSIDERED**

The Policy is to a large extent defined by the requirements of RIPA and the most recent Home Office Codes of Practice. The recommended policy is consistent with the new policies and guidance; there is little scope if any to do otherwise.

## **RESOURCE IMPLICATIONS**

There are no direct resource implications arising from the adoption of the policy and procedure. Any applications and training costs will be met from existing budgets.

## **LEGAL/RISK IMPLICATIONS**

Failure to follow the policy and procedure could result in the Council being open to challenge, unnecessary legal risk and ultimately responsible in damages for any breach of the Codes of Practice and Human Rights legislation. The Office of Surveillance Commissioners would also severely criticise such failure and the adverse publicity arising therefrom could damage the Council's reputation and not serve in its best interests.

The policy and procedure will provide guidance to staff on the processing and procedure to obtain a RIPA authorisation, reducing the risk of legal challenge to the procedure itself and the evidence obtained.

Risk has been identified in the following areas: training of Officers, Collateral Intrusion and changes to legislation and procedures surrounding RIPA, However this has been addressed, regular training of Officers takes place, the Netconsent function and email is used to disseminate the policy and inform training events. The Solicitor

to the Council reviews the policy regularly to ensure legislative and Home Office compliance. Quarterly reports are made to Audit & Governance Committee and an annual report to full Council. Finally provision exists in the policy itself to mitigate any other associated risks.

## **SUSTAINABILITY IMPLICATIONS**

Under current arrangements the Policy and training requirements are currently sustainable and remain so for the foreseeable future.

## **REPORT AUTHOR**

Jane Marie Hackett, Solicitor to the Council and Monitoring Officer tel 01827 709258

## **LIST OF BACKGROUND PAPERS**

Regulation of Investigatory Powers Act 2000

Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012

The Protection of Freedoms Act 2012

Home Office – Covert Surveillance and Property Interference Code of Practice

Home Office – Covert Human Intelligence Sources Code of Practice

## **APPENDIX 1**

Proposed RIPA Policy and Procedure

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**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)  
POLICY STATEMENT, STRATEGY & GUIDANCE NOTES**

Document Status: Final

Originator: J M Hackett

Updated: J M Hackett

Owner: Solicitor to the Council – Corporate Services

Version: 01.01.03

Date: 17/01/2017

**Approved by Audit & Governance Committee**

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## Document Location

This document is held by Tamworth Borough Council, and the document owner is Jane Marie Hackett, Solicitor to the Council – Corporate Services.

Printed documents may be obsolete. An electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

## Revision History

Revision Date	Version Control	Summary of changes
	1.01.01	Scheduled review
December 2008	1.01.02	Scheduled review
September 2010	1.01.03	Scheduled review
September 2011	1.01.04	Scheduled review
December 2012	1.01.05	Scheduled review
November 2014	1.01.06	Scheduled review
April 2015	1.01.07	Scheduled review
February 2016	1.01.08	Scheduled review
January 2017	1.01.09	Scheduled review

## Approvals

Name	Title	Approved
Audit & Governance Committee	Committee Approval	Yes
Council	Council Approval	Yes
CMT	Group Approval	Yes
John Wheatley	Executive Director – Corporate Services	Yes
Jane Marie Hackett	Solicitor to the Council and Monitoring Officer	Yes

## Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

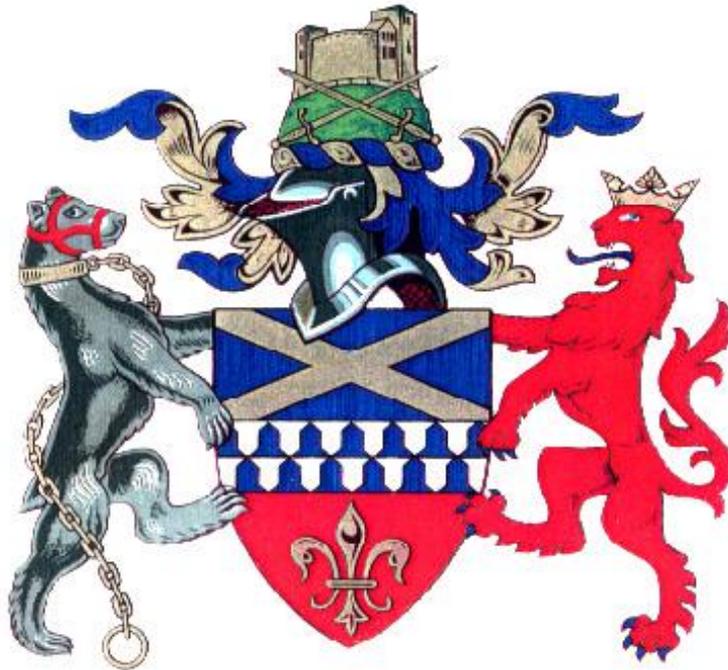
## Distribution

The document will be available on the Intranet and the website.

**TAMWORTH BOROUGH COUNCIL**

**POLICY & PROCEDURE**

**REGULATION OF INVESTIGATORY  
POWERS ACT 2000  
(RIPA)**



Jane Marie Hackett  
Solicitor to the Council  
Tamworth Borough Council

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## **Section A**

### **Introduction**

#### **1. OBJECTIVE: SUSTAINABLE COMMUNITIES; SAFER AND STRONGER COMMUNITIES**

Tamworth Borough Council is committed to improving the quality of life for the communities of Tamworth which includes benefiting from an attractive place to live, meeting the needs of local people and employers with opportunities for all to engage in community life. It also wishes to maintain its position as a low crime borough and a safe place to live, work and learn. Although most of the community comply with the law, it is necessary for Tamworth to carry out enforcement functions to take full action against those who flout the law. Tamworth Borough Council will carry out enforcement action in a fair, practical and consistent manner to help promote a thriving local economy.

#### **2. HUMAN RIGHTS ACT 1998 – ARTICLE 8 – RIGHT TO RESPECT FOR PRIVATE & FAMILY LIFE, HOME AND CORRESPONDENCE**

The Human Rights Act 1998 brought into UK domestic law much of the European Convention on Human Rights and Fundamental Freedoms 1950. Article 8 of the European Convention requires the Council to respect the private and family life of its citizens, their homes and their correspondence. Article 8 does, however, recognise that there may be circumstances in a democratic society where it is necessary for the state to interfere with this right.

#### **3. USE OF COVERT SURVEILLANCE TECHNIQUES AND HUMAN INTELLIGENCE SOURCES**

The Council has various functions which involve observing or investigating the conduct of others, for example, investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), fraud, licensing and food safety legislation. In most cases, Council officers carry out these functions openly and in a way which does not interfere with a person's right to a private life. However, there are cases where it is necessary for officers to use covert surveillance techniques to undertake a specific investigation. The use of covert surveillance techniques is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA), which seeks to ensure that the public interest and human rights of individuals are appropriately balanced. This document sets out the Council's policy and procedures on the use of covert surveillance techniques and the conduct and use of a Covert Human Intelligence Source. You should also refer to the two Codes of Practice published by the Government. These Codes are on the Home Office website and supplement the procedures in this document. The Codes are admissible as evidence in Criminal and Civil Proceedings. If a provision of these Codes appear relevant to any court or tribunal, it must be taken into account.

The Codes of Practice for both Covert Surveillance and Covert Human Intelligence Sources can be obtained by following the link below:

<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>

There are also two other guidance documents relating the procedural changes regarding the authorisation process requiring Justice of the Peace approval from the 1<sup>st</sup> November 2012. These have been issued by the Home Office to both Local Authorities and Magistrates.

<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/>

#### **4. ACQUISITION OF COMMUNICATIONS DATA**

RIPA also regulates the acquisition of communications data. Communications data is data held by telecommunications companies and internet service providers. Examples of communications data which may be acquired with authorisation include names, addresses, telephone numbers, internet provider addresses. Communications data surveillance does not monitor the content of telephone calls or emails. This document sets out the procedures for the acquisition of communications data. You should also refer to the Code of Practice which is available on the Home Office website.

Acquisition and Disclosure of Communications Data Revised Draft Code of Practice:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/426248/Acquisition\\_and\\_Disclosure\\_of\\_Communications\\_Data\\_Code\\_of\\_Practice\\_March\\_2015](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/Acquisition_and_Disclosure_of_Communications_Data_Code_of_Practice_March_2015)

## Section B

### EFFECTIVE DATE OF OPERATION AND AUTHORISING OFFICER RESPONSIBILITIES

1. The Policy and Procedures in this document have been amended to reflect the latest Codes of Practice which are in force and the legislative amendments which require Justice of the Peace (JP) approval for all Local Authority RIPA applications and renewals, which came in effect on 1 November 2012, changes in website addresses and application forms, as well as to reflect recommendations arising out of inspection by the Office of Surveillance Commissioners and their guidance documents. It is essential, therefore, that Authorising Officers, take personal responsibility for the effective and efficient observance of this document and the Office of Surveillance Commissioners (OSC) guidance documents.
2. It will be the responsibility of Authorising Officers to ensure that their relevant members of staff are suitably trained as 'Applicants'.
3. Authorising Officers will also ensure that staff who report to them follow this Policy and Procedures Document and do not undertake or carry out surveillance activity that meets the criteria as set out by RIPA without first obtaining the relevant authorisations in compliance with this document.
4. Authorising Officers must also pay particular attention to health and safety issues that may be raised by any proposed surveillance activity. Under no circumstances, should an Authorising Officer approve any RIPA form unless, and until they are satisfied that
  - the health and safety of Council employees/agents are suitably addressed
  - risks minimised so far as is possible, and
  - risks are proportionate to the surveillance being proposed.

If an Authorising Officer is in any doubt, prior guidance should be obtained from the Solicitor to the Council.

5. Authorising Officers must also ensure that, when sending copies of any Forms to the Solicitor to the Council (or any other relevant authority), that they are sent in **sealed** envelopes and marked '**Strictly Private & Confidential**'.
6. In Accordance with the Codes of Practice, the Senior Responsible Officer (SRO) who is the Solicitor to the Council is responsible for
  - the integrity of the process in place within the public authority to authorise directed and intrusive surveillance
  - compliance with Part II of the 2000 Act, and with this code;
  - engagement with the Commissioners and inspectors when they conduct their inspections, and
  - where necessary, overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner.

*The Solicitor to the Council is also the RIPA Co-ordinator. The key responsibilities of the RIPA Co-ordinator are set out in Section G of this document.*

7. The Chief Executive in consultation with Corporate Management Team has power to appoint Authorising Officers for the purposes of RIPA. Authorising Officers will only be appointed on the Chief Executive being satisfied that suitable training on RIPA has been undertaken.
8. The Solicitor to the Council will review the policy every six months and annual reports on performance of the policy will be presented to Council.
9. Quarterly reports on the use of RIPA will be considered by the Audit and Governance Committee.

## Section C

### GENERAL INFORMATION ON RIPA

1. The Human Rights Act 1998 requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, their homes and their correspondence.
2. The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council may interfere in the citizen's right mentioned above, if such interference is:-
  - (a) **in accordance with the Law;**
  - (b) **necessary** in the circumstances of the particular case; **and**
  - (c) **proportionate** to what it seeks to achieve.
3. The Regulation of Investigatory Powers Act 2000 ('RIPA') provides a statutory mechanism (ie. 'in accordance with the law') for authorising **covert surveillance** and the use of a '**covert human intelligence source**' ('CHIS') – eg. undercover agents. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA and this Policy and Procedure document seeks to ensure both the public interest and the human rights of individuals are suitably balanced.
4. Directly employed Council staff and external agencies working for the Council are covered by the Act for the time they are working for the Council. All external agencies must, therefore, comply with RIPA and the work carried out by agencies on the Council's behalf, must be properly authorised by one of the Council's designated Authorising Officers. They may also be inspected by the OSC in respect of that particular operation. This should be pointed out during the instruction and contract stage. It is also important that the Authorising Officer is aware of the abilities of the operatives to ensure they are capable of undertaking the surveillance. Please refer to Section H and to the paragraph on "Authorising Officers."
5. If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint of maladministration could be made to the Ombudsman and/or the Council could be ordered to pay compensation.

## **Section D**

### **WHAT RIPA DOES AND DOES NOT DO**

**1. RIPA:**

- requires prior authorisation of directed surveillance.
- prohibits the Council from carrying out intrusive surveillance.
- requires authorisation of the conduct and use of a CHIS.
- requires safeguards for the conduct and use of a CHIS.

**2. RIPA does not:**

- make lawful conduct which is otherwise unlawful.
- prejudice or affect any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under this Act. For example, the Council's current powers to obtain information from the DVLA or from the Land Registry as to the ownership of a property.

**3. If the Authorising Officer or any Applicant is in any doubt, s/he should ask the Solicitor to the Council BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.**

## Section E

### TYPES OF SURVEILLANCE

'Surveillance' includes:

- monitoring, observing and listening to persons, watching or following their movements, listening to their conversations and other such activities or communications. It may be conducted with or without the assistance of a surveillance device.
- recording anything mentioned above in the course of authorised surveillance.

**Surveillance can be overt or covert.**

#### Overt Surveillance

Most of the surveillance carried out by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. They will be going about Council business openly. Similarly, surveillance will be overt if the subject has been told it will happen (e.g. where a noisemaker is warned (preferably in writing) that noise will be recorded).

#### Covert Surveillance

Covert Surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. (Section 26(9)(a) of RIPA).

RIPA regulates two types of covert surveillance, (Directed Surveillance and Intrusive Surveillance) and the use of Covert Human Intelligence Sources (CHIS).

#### Directed Surveillance

Directed Surveillance is surveillance which:-

- is **covert**; and
- is **not intrusive surveillance** (see definition below – the Council cannot carry out any intrusive surveillance).
- is not carried out as an immediate response to events which would otherwise make seeking authorisation under the Act reasonable, eg. spotting something suspicious and continuing to observe it; and
- it is undertaken for the purpose of a **specific investigation** or operation in a manner **likely to obtain private information** about an individual (whether or not that person is specifically targeted for purposes of an investigation). (*Section 26(10) RIPA*).

*Private Information* in relation to a person includes any information relating to his private and family life, his home or his correspondence. The fact that covert

surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others with whom s/he comes into contact. Private information may include personal data such as names, addresses or telephone numbers. Where such information is acquired by means of covert surveillance of a person having a reasonable expectation of privacy, a directed surveillance authorisation is appropriate.

Similarly, although overt town centre CCTV cameras do not normally require authorisation, if the camera is tasked for a specific purpose, which involves prolonged surveillance on a particular person, authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. Privacy considerations are likely to arise if several records are examined together to establish a pattern of behaviour.

**For the avoidance of doubt, only those Officers appointed as ‘Authorising Officers’ for the purpose of RIPA can authorise ‘Directed Surveillance’ IF, AND ONLY IF, the RIPA authorisation procedures detailed in this Document, are followed.**

### **Intrusive Surveillance**

This is when it:-

- is covert;
- relates to residential premises and private vehicles, even if used on a temporary basis and
- involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.

**This form of surveillance can be carried out only by police and other law enforcement agencies. Intrusive surveillance relates to the location of the surveillance, and not any consideration of the information that is likely to be obtained. Council officers cannot carry out intrusive surveillance.**

### **“Proportionality”**

This term contains three concepts:-

- the surveillance should not be excessive in relation to the gravity of the matter being investigated;
- the least intrusive method of surveillance should be chosen; and
- collateral intrusion involving invasion of third parties’ privacy and should, so far as possible, be minimised.

**Proportionality** involves balancing the intrusiveness of the activity on the subject and others who might be affected by it against the need for the activity in operational

terms. The activity will not be proportionate if it is excessive in the circumstances of the case, or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair. The interference with the person's right should be no greater than that which is required to meet the aim and objectives.

The onus is on the Authorising Officer to ensure that the surveillance meets the tests of **necessity and proportionality**.

The codes provide guidance relating to proportionality which should be considered by both applicants and Authorising Officers :

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

When considering the intrusion, it is important that the Authorising Officer is fully aware of the technical capabilities of any proposed equipment to be used, and that any images are managed in line with the Data Protection Act and Home Office Guidance. These issues have a direct bearing on determining proportionality.

## Section F

### ***Covert Human Intelligence Source (CHIS)***

Staff will need to know when someone providing information may become a CHIS, and in these circumstances the Council is required to have procedures in place should this be necessary. However, if it appears that use of a CHIS may be required, Authorising Officers must seek legal advice from the Solicitor to the Council.

A CHIS could be an informant or an undercover officer carrying out covert enquiries on behalf of the council. However, the provisions of the 2000 Act are not intended to apply in circumstances where members of the public volunteer information to the Council as part of their normal civic duties, or to contact numbers set up to receive information such as the Fraud Hot Line. Members of the public acting in this way would not generally be regarded as sources.

Under section 26(8) of the 2000 Act a person is a source if:

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

By virtue of section 26(9)(b) of the 2000 Act a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

By virtue of section 26(9)(c) of the 2000 Act a relationship is used covertly, and information obtained as above is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

### **Conduct and Use of a Source**

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

The **conduct of a source** is any conduct falling within a), b), or c), mentioned above, or which is incidental to anything falling within those sections.

The **use of a source** is what the Authority does in connection with the source and the **conduct** is what a source does to fulfill whatever tasks are given to them or which is incidental to it. **The Use and Conduct require separate consideration before authorisation.**

When completing applications for the use of a CHIS, the applicant must state who the CHIS is, what they can do and for which purpose.

When determining whether a CHIS authorisation is required, consideration should be given to the covert relationship between the parties and the purposes mentioned in a, b, and c above.

### ***Management of Sources***

Within the provisions there has to be;

- (a) a person who has the day to day responsibility for dealing with the source and for the source's security and welfare (**Handler**)
- (b) at all times there will be another person who will have general oversight of the use made of the source (**Controller**)
- (c) at all times there will be a person who will have responsibility for maintaining a record of the use made of the source

The **Handler** will have day to day responsibility for:

- dealing with the source on behalf of the authority concerned;
- directing the day to day activities of the source;
- recording the information supplied by the source; and
- monitoring the source's security and welfare;

The Controller will be responsible for the general oversight of the use of the source.

### ***Tasking***

Tasking is the assignment given to the source by the Handler or Controller by asking him to obtain information, to provide access to information, or to otherwise act, incidentally, for the benefit of the relevant public authority. Authorisation for the use or conduct of a source is required prior to any tasking where such tasking requires the source to establish or maintain a personal or other relationship for a covert purpose.

In some instances, the tasking given to a person will not require the source to establish a personal or other relationship for a covert purpose. For example, a source may be tasked with finding out purely factual information about the layout of

commercial premises. Alternatively, a Council Officer may be involved in the test purchase of items which have been labelled misleadingly or are unfit for consumption. In such cases, it is for the Council to determine where, and in what circumstances, such activity may require authorisation.

**Should a CHIS authority be required, all of the staff involved in the process should make themselves fully aware of all of the aspects relating to tasking contained within the CHIS codes of Practice**

### ***Management Responsibility***

The Council will ensure that arrangements are in place for the proper oversight and management of sources including appointing a Handler and Controller for each source prior to a CHIS authorisation.

The Handler of the source will usually be of a rank or position below that of the Authorising Officer.

It is envisaged that the use of a CHIS will be infrequent. Should a CHIS application be necessary, the CHIS Codes of Practice should be consulted to ensure that the Council can meet its management responsibilities.

### ***Security and Welfare***

The Council has a responsibility for the safety and welfare of the source and for the consequences to others of any tasks given to the source. Before authorising the use or conduct of a source, the Authorising Officer should ensure that a risk assessment is carried out to determine the risk to the source of any tasking and the likely consequences should the role of the source become known. The ongoing security and welfare of the source, after the cancellation of the authorisation, should also be considered at the outset.

### ***Record Management for CHIS***

Proper records must be kept of the authorisation and use of a source. The particulars to be contained within the records are;

- a. the identity of the source;
- b. the identity, where known, used by the source;
- c. any relevant investigating authority other than the authority maintaining the records;
- d. the means by which the source is referred to within each relevant investigating authority;

- e. any other significant information connected with the security and welfare of the source;
- f. any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
- g. the date when, and the circumstances in which the source was recruited;
- h. the identities of the persons who, in relation to the source, are discharging or have discharged the functions mentioned in section 29(5)(a) to (c) of the 2000 Act or in any order made by the Secretary of State under section 29(2)(c);
- i. the periods during which those persons have discharged those responsibilities;
- j. the tasks given to the source and the demands made of him in relation to his activities as a source;
- k. all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- l. the information obtained by each relevant investigating authority by the conduct or use of the source;
- m. any dissemination by that authority of information obtained in that way; and
- n. in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

### ***Juvenile Sources***

Special safeguards apply to the use or conduct of juvenile sources (i.e. those under the age of 18). On no occasion can a child under 16 years of age be authorised to give information against his or her parents or any person with parental responsibility for him or her. Only the Chief Executive, or in his absence, the Deputy Chief Executive can authorise the use of a juvenile as a source.

### ***Vulnerable Individuals***

A Vulnerable Individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.

A Vulnerable Individual will only be authorised to act as a source in the most exceptional of circumstances. Only the Chief Executive, or in his absence, the Executive Director Corporate Services can authorise the use of a vulnerable individual as a source.

### ***Test Purchases***

Carrying out test purchases will not normally require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation as a CHIS would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).

By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product (e.g. illegally imported products) will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance. A combined authorisation can be given for a CHIS and also directed surveillance. However it will be necessary to complete the relevant separate application forms.

Authorising Officers should consider the likelihood that the test purchase will lead to a relationship being formed with a person in the shop. If the particular circumstances of a particular test purchase are likely to involve the development of a relationship Authorising Officers must seek legal advice from the Solicitor to the Council.

If several shop premises are included on one application for Directed Surveillance, each premises will be required to be assessed by the Authorising Officer individually on their own merits.

### ***Anti-Social Behaviour Activities (e.g. Noise, Violence, Race etc.)***

As from 1 November 2012 there is no provision for a Local Authority to use RIPA to conduct covert activities for disorder such as anti-social behaviour, unless there are criminal offences involved which attract a maximum custodial sentence of six months. Should it be necessary to conduct covert surveillance for disorder which does not meet the serious crime criteria of a custodial sentence of a maximum of six months, this surveillance would be classed as surveillance outside of RIPA, and would still have to meet the Human Rights Act provisions of Necessity and Proportionality

Persons who complain about anti-social behaviour, and are asked to keep a diary, will not normally be a CHIS, as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (eg. the decibel level) will not normally capture private information and, therefore, does not require authorisation.

## Section G

### THE ROLE OF THE RIPA CO-ORDINATOR

#### Key Responsibilities of the RIPA Co-ordinator

In this document the RIPA Co-ordinator is the Solicitor to the Council. The key responsibilities of the RIPA Co-ordinator are to:

- Retain all applications for authorisation (including those that have been refused), renewals and cancellations for a period of at least **three years** together with any supplementary documentation;
- Provide a unique reference number and maintain the central register of all applications for authorisations whether finally granted or refused (see section below);
- Create and maintain a spread sheet for the purpose of identifying and monitoring expiry dates and renewal dates although the responsibility for this is primarily that of the officer in charge and the Authorising Officer;
- Retain an oversight of the authorisation process
- Monitor types of activities being authorised to ensure consistency and quality throughout the Council;
- Ensure sections identify and fulfil training needs;
- Periodically review Council procedures to ensure that they are up to date;
- Assist Council employees to keep abreast of RIPA developments by organising training and raising RIPA awareness throughout the Council;
- Provide a link to the Surveillance Commissioner and disseminate information on changes on the law, good practice etc. Officers becoming aware of such information should, conversely, send it to the RIPA Co-ordinator for this purpose;
- Check that Authorising Officers carry out reviews and cancellations on a timely basis.

#### Central Record of Authorisations

A centrally retrievable record of all authorisations will be held by the RIPA Co-ordinator (Solicitor to the Council) which must be up-dated whenever an authorisation is granted, renewed or cancelled. These records will be retained for a period of **three years** from the ending of the authorisation and will contain the following information:

- The type of authorisation;
- The date the authorisation was given;

- The date approved by the Magistrate
- The name and title of the Authorising Officer;
- The unique reference number of the investigation (URN);
- The title of the investigation or operation, including a brief description and the names of the subjects, if known;
- Whether the investigation will obtain confidential information;
- Whether the authorisation was granted by an individual directly involved in the investigation;
- The dates the authorisation is reviewed and the name and title of the Authorising Officer;
- If the authorisation is renewed, when it was renewed and the name and title of the Authorising Officer;
- The date the authorisation was cancelled.
- Joint surveillance activity where Council staff have been authorised on another agencies authorisation will also be recorded.

Access to the data will be restricted to the RIPA Co-ordinator and Authorising Officers to maintain the confidentiality of the information.

## Section H

### AUTHORISATION PROCEDURES

1. Directed surveillance and the use of a CHIS can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation.

#### *Authorising Officers*

Forms can only be signed by Authorising Officers. The Authorising Officers are:

<b>Chief Executive</b>	Tony Goodwin
<b>Executive Director Corporate Services</b>	John Wheatley
<b>Corporate Director Growth Assets &amp; Environment</b>	Andrew Barratt

Appointment of the aforesaid officers is subject to the training requirements set out in the paragraph below.

Authorisations under RIPA are separate from delegated authority to act under the Council's Scheme of Delegation and any internal departmental Schemes of Management.

RIPA authorisations are for specific investigations only, and must be renewed or cancelled at the earliest opportunity once the specific surveillance is complete. **The authorisations do not lapse with time.**

Authorising officers should not normally be responsible for authorising operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially in the case of small organisations, or where it is necessary to act urgently or for security reasons. Where an authorising officer authorises such an investigation or operation the centrally retrievable record of authorisations should highlight this and the attention of a Commissioner or Inspector should be invited to it during the next inspection.

#### *Training*

Authorising Officers will only be appointed if the Chief Executive is satisfied that they have undertaken suitable training on RIPA. Evidence of suitable training is to be supplied in the form of a certificate/confirmation from the trainer to the effect that the Authorising Officer has completed a suitable course of instruction.

The Solicitor to the Council will maintain a Register of Authorising Officers and details of training undertaken by them.

If the Chief Executive is of the view that an Authorising Officer has not complied fully with the requirements of this document, or the training requirements then that Officer's authorisation can be withdrawn until they have undertaken further approved training or has attended a one-to-one meeting with the Chief Executive.

## **Grounds for Authorisation**

On 1 November 2012 two significant changes came into force that effects how local authorities use RIPA.

- **Approval of Local Authority Authorisations under RIPA by a Justice of the Peace:** The amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations under RIPA for the use of Directed Surveillance or use of Covert Human Intelligence sources (CHIS) can only be given effect once an order approving the authorisation has been granted by a Justice of the Peace (JP). **This applies to applications and renewals only, not reviews and cancellations.**
- **Directed surveillance crime threshold:** The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (“the 2012 Order”) states that a local authority can now only grant an authorisation under RIPA for the use of **Directed Surveillance** where the local authority is investigating (1) criminal offences which attract a maximum custodial sentence of six months or more or (2) criminal offences under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933 relating to the sale of alcohol or tobacco products to children.

**The crime threshold, as mentioned is only for Directed Surveillance.**

Therefore the only lawful reason is **prevention and detection of crime** in respect of its Core Functions. As from 1 November 2012 there is no provision for a Local Authority to use RIPA to conduct covert activities for disorder such as anti-social behaviour unless there are criminal offences involved which attract a maximum custodial sentence of six months.

## **APPLICATION PROCESS**

No covert activity covered by RIPA or the use of a CHIS should be undertaken at any time unless it meets the legal criteria (see above) and has been authorised by an Authorising Officer and approved by a JP/Magistrate as mentioned above. The activity conducted must be in strict accordance with the terms of the authorisation.

The effect of the above legislation means that all applications and renewals for covert RIPA activity will have to have a JP’s approval. It does not apply to Reviews and Cancellations which will still be carried out internally.

The procedure is as follows;

All applications and renewals for Directed Surveillance and use of a CHIS will be required to have a JP’s approval.

The applicant will complete the relevant application form ensuring compliance with the statutory provisions shown above. The application form will be submitted to an Authorising Officer for consideration. If authorised, the applicant will also complete

the required section of the judicial application/order form. Although this form requires the applicant to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.

It will then be necessary within Office hours to arrange with Her Majesty's Courts & Tribunals Service (HMCTS) administration at the magistrates' court to arrange a hearing. The hearing will be in private and heard by a single JP.

The Authorising Officer will be expected to attend the hearing along with the applicant officer. Officers who may present the application at these proceedings will need to be formally designated by the Council under section 223 of the Local Government Act 1972 to appear, be sworn in and present evidence or provide information as required by the JP. If in doubt as to whether you are able to present the application seek advice from the Solicitor to the Council.

Upon attending the hearing, the officer must present to the JP the partially completed judicial application/order form, a copy of the RIPA application/authorisation form, together with any supporting documents setting out the case, and the original application/authorisation form.

The original RIPA application/authorisation should be shown to the JP but will be retained by the local authority so that it is available for inspection by the Commissioners' offices and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT).

The JP will read and consider the RIPA application/ authorisation and the judicial application/order form. They may have questions to clarify points or require additional reassurance on particular matters. These questions are supplementary to the content of the application form. **However the forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.**

The JP will consider whether he or she is satisfied that at the time the authorisation was granted or renewed, there were reasonable grounds for believing that the authorisation was necessary and proportionate. They will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that the person who granted the authorisation or gave the notice was an appropriate designated person within the local authority and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met.

The JP may decide to:

**Approve the Grant or renewal of an authorisation**

The grant or renewal of the RIPA authorisation will then take effect and the local authority may proceed to use the technique in that particular case. The duration of the authorisation commences with the magistrate's approval.

**Refuse to approve the grant or renewal of an authorisation**

The RIPA authorisation will not take effect and the local authority may **not** use the technique in that case.

Where an application has been refused the applicant may wish to consider the reasons for that refusal. If more information was required by the JP to determine whether the application/authorisation has met the tests, and this is the reason for refusal the officer should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.

For, a technical error, the form may be remedied without going through the internal authorisation process again. The officer may then wish to reapply for judicial approval once those steps have been taken.

**Refuse to approve the grant or renewal and quash the authorisation or notice**

This applies where the JP refuses to approve the application/authorisation or renew the application/authorisation and decides to quash the original authorisation or notice. However the court must not exercise its power to quash the application/authorisation unless the applicant has had at least 2 business days from the date of the refusal in which to make representations. If this is the case the officer will inform the Legal section who will consider whether to make any representations.

Whatever the decision the JP will record their decision on the order section of the judicial application/order form. The court administration will retain a copy of the local authority RIPA application and authorisation form and the judicial application/order form. The officer will retain the original application/authorisation and a copy of the judicial application/order form.

If approved by the JP, the date of the approval becomes the commencement date and the three months duration will commence on this date, The officers are now allowed to undertake the activity.

The original application and the copy of the judicial application/order form should be forwarded to the Central Register and a copy retained by the applicant and if necessary by the Authorising Officer.

A local authority may only appeal a JP decision on a point of law by judicial review. If such a concern arises, the Legal team will decide what action if any should be taken.

If it is intended to undertake both directed surveillance and the use of a CHIS on the same surveillance subject, the respective applications forms and procedures should be followed and both activities should be considered separately on their own merits. An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference. The Authorising Officer will take this into account, particularly when considering the proportionality of the directed surveillance or the use of a CHIS.

**Application, Review, Renewal and Cancellation Forms**

***Applications***

All the relevant sections on an application form must be completed with sufficient information for the Authorising Officer to consider Necessity, Proportionality and the Collateral Intrusion issues. Risk assessments should take place prior to the completion of the application form. Each application should be completed on its own merits of the case. **Cutting and pasting or using template entries should not take place as this would leave the process open to challenge.**

All applications will be submitted to the Authorising Officer via the Line Manager of the appropriate enforcement team in order that they are aware of the activities being undertaken by the staff. Applications whether authorised or refused will be issued with a unique number by the Authorising Officer, taken from the next available number in the Central Record of Authorisations.

If authorised the applicant will then complete the relevant section of the judicial application/order form and follow the procedure above by arranging and attending the Magistrates Court to seek a JP’s approval. The duration of the authorisation commences with the magistrate’s approval. (see procedure above RIPA application and authorisation process)

**Duration of Applications**

<b>Directed Surveillance</b>	3 Months
Renewal	3 Months
<b>Covert Human Intelligence Source</b>	12 Months
Juvenile Sources	1 Month
<b>Renewal</b>	<b>12 months</b>

**All Authorisations must be cancelled by completing a cancellation form. They must not be left to simply expire. (See cancellations page 16)**

## **Reviews**

The reviews are dealt with internally by submitting the review form to the authorising officer. In such circumstances seek advice from the RIPA Co-ordinator. There is no requirement for a review form to be submitted to a JP. However if a different surveillance techniques is required it is likely a new application will have to be completed and approved by a JP.

Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. The results of a review should be recorded on the central record of authorisations. Particular attention is drawn to the need to review authorisations frequently where the surveillance provides access to confidential information or involves collateral intrusion.

In each case the Authorising Officer should determine how often a review should take place. This should be as frequently as is considered necessary and practicable and they will record when they are to take place on the application form. This decision will be based on the circumstances of each application. However reviews will be conducted on a monthly or less basis to ensure that the activity is managed. It will be important for the Authorising Officer to be aware of when reviews are required following an authorisation to ensure that the applicants submit the review form on time.

Applicants should submit a review form by the review date set by the Authorising Officer. They should also use a review form for changes in circumstances to the original application so that the need to continue the activity can be reassessed. However if the circumstances or the objectives have changed considerably, or the techniques to be used are now different a new application form should be submitted and will be required to follow the process again and be approved by a JP. The applicant does not have to wait until the review date if it is being submitted for a change in circumstances.

Managers or Team Leaders of applicants should also make themselves aware of when the reviews are required to ensure that the relevant forms are completed on time.

## **Renewal**

Should it be necessary to renew a Directed Surveillance or CHIS application/authorisation, this must be approved by a JP.

Applications for renewals should not be made until shortly before the original authorisation period is due to expire but the applicant must take account of factors which may delay the renewal process (e.g. intervening weekends or the availability of the relevant authorising officer and a JP to consider the application).

The applicant should complete all the sections within the renewal form and submit the form to the authorising officer.

Authorising Officers should examine the circumstances with regard to Necessity, Proportionality and the Collateral Intrusion issues before making a decision to renew the activity. A CHIS application should not be renewed unless a thorough review has

been carried out covering the use made of the source, the tasks given to them and information obtained. The Authorising Officer must consider the results of the review when deciding whether to renew or not. The review and the consideration must be documented.

If the authorising officer refuses to renew the application the cancellation process should be completed. If the AO authorises the renewal of the activity the same process is to be followed as mentioned earlier for the initial application.

A renewal takes effect on the day on which the authorisation would have ceased and lasts for a further period of three months.

## **Cancellation**

Cancellation should take place at the earliest opportunity.

The cancellation form is to be submitted by the applicant or another investigator in their absence. The Authorising Officer who granted or last renewed the authorisation must cancel it if they are satisfied that the directed surveillance no longer meets the criteria upon which it was authorised. Where the Authorising Officer is no longer available, this duty will fall on the person who has taken over the role of Authorising Officer or the person who is acting as Authorising Officer.

As soon as the decision is taken that directed surveillance should be discontinued, the applicant or other investigating officer involved in the investigation should inform the Authorising Officer. The Authorising Officer will formally instruct the investigating officer to cease the surveillance, noting the time and date of their decision. This will be required for the cancellation form. The date and time when such an instruction was given should also be recorded in the central record of authorisations (see paragraph 5.18 in the Codes of Practice). **It will also be necessary to detail the amount of time spent on the surveillance as this is required to be retained by the Senior Responsible Officer.**

The officer submitting the cancellation should complete in detail the relevant sections of the form and include the period of surveillance and what if any images were obtained and any images containing third parties. The Authorising Officer should then take this into account and issues instructions regarding the management and disposal of the images etc.

The cancellation process should also be used to evaluate whether the objectives have been achieved and whether the applicant carried out what they stated was necessary in the application form. This check will form part of the oversight function. Where issues are identified they will be brought to the attention of the line manager and the Senior Responsible Officer (SRO). This will assist with future audits and oversight.

Before an Authorising Officer signs a Form, they must:-

- (a) Be mindful of this Policy & Procedures Document and the training undertaken
- (b) Be satisfied that the RIPA authorisation is:-

- (i) **in accordance with the law;**
- (ii) **necessary** in the circumstances of the particular case on the ground mentioned

**and**

- (iii) **proportionate** to what it seeks to achieve. (see section on proportionality)
- (c) In assessing whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

- balance the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explain how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- consider whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidence, what other methods have been considered and why they were not implemented.

**The least intrusive method will be considered proportionate by the courts.**

- (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**collateral intrusion**). Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion. This matter may be an aspect of determining proportionality;
- (e) Set a date for review of the authorisation and review on only that date;
- (f) Obtain a Unique Reference Number (URN) for the application from the Solicitor to the Council on 01827 709258
- (g) Ensure that a copy of the RIPA Forms (and any review/cancellation of the same) is forwarded to the Solicitor to the Council, Central Register, **within 5**

**working days of the relevant authorisation, review, renewal, cancellation or rejection.**

### ***Additional Safeguards when Authorising a CHIS***

When authorising the conduct or use of a CHIS, the Authorising Officer must also:-

- (a) be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved.
- (b) Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a risk assessment;
- (c) Consider the likely degree of intrusion of all those potentially affected;
- (d) Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained;
- (e) Ensure **records** contain particulars and are not available except on a need to know basis.
- (f) Ensure that if the CHIS is under the age of 18 or is a vulnerable adult the Authorising Officer is the Chief Executive or in his absence, the Deputy Chief Executive.

The Authorising Officer must attend to the requirement of section 29(5) RIPA and of the Regulation of Investigatory Powers (Source Records) Regulations 2000. It is strongly recommended that legal advice is obtained in relation to the authorisation of a CHIS.

Any person granting or applying for an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance is taking place and of any similar activities being undertaken by other public authorities which could impact on the deployment of surveillance. It is therefore recommended that where an authorising officer from a public authority considers that conflicts might arise they should consult a senior officer within the police force area in which the investigation or operation is to take place.

### ***Urgent Authorisations***

As from 1 November 2012 there is now no provision under RIPA for urgent oral authorisations.

## Section I

### WORKING WITH / THROUGH OTHER AGENCIES

When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this document and the forms in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the various requirements. The agency must be made aware explicitly what they are authorised to do. The agency will be provided with a copy of the application form (redacted if necessary) or at the least the authorisation page containing the unique number.

Equally, if Council staff are authorised on another agencies RIPA authorisation, the staff will obtain a copy of the application form (redacted if necessary), or at the least the authorisation page containing the unique number, a copy of which should be forwarded for filing within the central register. They must ensure that they do not conduct activity outside of that authorisation.

Provisions should also be made regarding any disclosure implications under the Criminal Procedures Act (CPIA) and the management, storage and dissemination of any product obtained.

When another agency (e.g. Police, Customs & Excise, Inland Revenue etc):-

- (a) wishes to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and, before any Officer agrees to allow the Council's resources to be used for the other agency's purposes, the Officer must obtain a copy of that agency's RIPA form (redacted if necessary) or at the least the authorisation page containing the unique number for the record (a copy of which must be passed to the Solicitor to the Council for the Central Register) Should this be an urgent oral authorisation they should obtain a copy of the contemporaneous notes of what has been authorised by the Authorising Officer in line with current guidance. A copy of these notes will be forwarded for filing in the central register.
- (b) wish to use the Council's premises for their own RIPA action, the Chief Officer or Head of Service should, normally, cooperate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's cooperation in the agent's RIPA operation. In such cases, however, the Council's own RIPA forms should not be used as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

If the Police or any other Agency wish to use Council resources for general surveillance, as opposed to specific RIPA operations, an appropriate letter requesting the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the police or other Agency before any Council resources are made available for the proposed use.

**If in doubt, please consult with the Solicitor to the Council at the earliest opportunity.**

## **Section J**

### **RECORD MANAGEMENT**

**The Council must keep detailed records of all authorisations, renewals, cancellations and rejections in Departments and a Central Register of all Authorisation Forms will be maintained and monitored by the Solicitor to the Council.**

#### ***Records Maintained in the Department***

The following documents must be retained by the Department authorising the surveillance:

- a copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the Authorising Officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction was given by the Authorising Officer;
- the Unique Reference Number for the authorisation (URN).

#### ***Central Register maintained by the Solicitor to the Council***

Authorising Officers must forward a copy of the form to the Solicitor to the Council for the Central Register, within 5 working days of the authorisation, review, renewal, cancellation or rejection. The Solicitor to the Council will monitor the same and give appropriate guidance to Authorising Officers from time to time, or amend this document in the light of changes of legislation or developments through case law.

#### ***Retention and Destruction of Material***

The retention of the material obtained during a RIPA operation is governed by the Criminal Procedures Investigations Act (CPIA) 1996 and the Data Protection Act 1998.

Arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed surveillance or CHIS. Authorising Officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1998 and

any relevant codes of practice produced by individual authorised relating to the handling and storage of material.

The Council will retain records for a period of at least five years from the ending of the authorisation. The Office of the Surveillance Commissioners (OSC) can audit/review the Council's policies and procedures, and individual authorisations. The Office of the Surveillance Commissioners will also write to the Council from time to time, requesting information as to the numbers of authorisations made in a specific period. It will be the responsibility of the Solicitor to the Council to respond to such communications.

## **Errors**

There is a requirement as set out in the OSC procedures and Guidance 2011 to report all covert activity that was not properly authorised to the OSC in writing as soon as the error is recognised. This would be known as an error. This includes activity which should have been authorised but wasn't or which was conducted beyond the directions provided by the authorising officer. It is therefore important that when an error has been identified it is brought to the attention of the SRO in order to comply with this guidance. The Council has a responsibility to report to the Inspector at the commencement of an inspection all activity which should have been authorised but wasn't. This is to confirm that any direction provided by the Chief Surveillance Commissioner has been followed. This will also assist with the oversight provisions of the Councils' RIPA activity.

This does not apply to covert activity which is deliberately not authorised because an authorising officer considers that it does not meet the legislative criteria, but allows it to continue. This would be surveillance outside of RIPA. (See oversight section below)

## **Section K**

### **ACQUISITION OF COMMUNICATIONS DATA**

#### **What is Communications Data?**

Communication data means any traffic or any information that is or has been sent by or over a telecommunications system or postal system, together with information about the use of the system made by any person.

#### **Powers**

There are two powers granted by S22 RIPA in respect of the acquisition of Communications Data from telecommunications and postal companies (“Communications Companies”).

S22 (3) provides that an authorised person can authorise another person within the same relevant public authority to collect the data. This allows the local authority to collect the communications data themselves, i.e. if a private telecommunications company is technically unable to collect the data, an authorisation under this section would permit the local authority to collect the communications data themselves.

In order to compel a communications company to obtain and disclose, or just disclose communications data in their possession, a notice under S22 (4) RIPA must be issued. The sole grounds to permit the issuing of a S22 notice by a permitted Local Authority is for the purposes of “preventing or detecting crime or of preventing disorder”. The issuing of such a notice will be the more common of the two powers utilised, in that the Communications Company will most probably have means of collating and providing the communications data requested.

#### **Single Point of Contact**

In accordance with the Home Office Acquisition and Disclosure of Communications Data Code of Practice the Council is required to have a “the Council Single Point of Contact” is NAFN. The role of the SPoC is to enable and maintain effective co-operation between a public authority and communications service providers in the lawful acquisition and disclosure of communications data. Before an officer can be a SPoC specialist training recognised by the Home Office has to be undertaken. A SPoC must also register his or her details with the Home Office. The Solicitor of the Council is SPoC for Tamworth Borough Council.

Details of the training undertaken is kept in the Central Register.

The functions of the SPoC are to:

- Assess, where appropriate, whether access to communications data is reasonably practical for the postal or telecommunications operator;

- Advise Applicants and Authorising Officers on the practicalities of accessing different types of communications data from different postal or telecommunications operators
- Advise Applicants and Authorising Officers on whether communications data falls under section 21(4)(a), (b) or (c) of RIPA
- Provide safeguards for authentication
- Assess any cost and resource implications to both the Council and postal or telecommunications operator.

### **The Senior Responsible Officer**

In accordance with the Code of Practice each public authority must have a Senior Responsible Officer who is responsible for:

- The integrity of the process in places within the public authority to acquire communications data;
- Compliance with Chapter II of Part 1 of RIPA and with the Code;
- Oversight of the reporting of errors to the Interception of Communications Commissioner's Office (IOCCO) and the identification of both the cause of errors and the implementation of processes to minimise repetition of errors;
- Engagement with the IOCCO inspectors when they conduct their inspections and;
- Where necessary, oversee the implementation of post – inspection action plans approved by the Commissioner

The Council's Senior Responsible Officer is the Solicitor to the Council.

### **Application Forms**

Only the approved Accessing Communications Data forms referred to in Appendix 4 must be used. The forms have to be downloaded and completed in the Applicants handwriting

### **Procedure**

All applications to obtain communications data must be channelled through the SPoC. If an investigating officer is considering making an application to obtain communications data they should contact the SPoC for advice and to obtain the appropriate forms.

In completing the forms the investigating officer must address the issues of necessity, proportionality and collateral intrusion. The following is guidance on the principles of necessity, proportionality and collateral intrusion.

“Necessity” should be a short explanation of the crime (together with details of the relevant legislation), the suspect, victim or witness and the telephone or communications address and how all these three link together. It may be helpful to outline the brief details of the investigation and the circumstances leading to the application as this will assist with justifying necessity. The source of the telephone number or communications address should also be outlined. E.g. if the number was

obtained from itemised billing or a business flyer there should be specific identifiers such as the telephone number or exhibit number.

As regards “proportionality” there should be an outline of what the investigating officer expects to achieve from obtaining the data and explain how the level of intrusion is justified when taking into consideration the benefit the data will give to the investigation. The investigating officer should give an explanation as to why specific date/time periods of data have been requested. An explanation of what is going to be done with the communications data once it is acquired and how that action will benefit the investigation will assist with the justification of proportionality. The investigating officer should outline what other checks or methods have been tried e.g. visiting other known addresses, ringing the number etc. or why such methods are not deemed feasible.

“Collateral intrusion” should also be addressed on the suspect or individual in question to demonstrate that the intrusion is not arbitrary or unfair. There will only be minimal collateral intrusion in relation to subscriber checks or none will be identified at the time of making the application. In some case it will be clear that the suspect has been contacted on the actual telephone number by the complainant or the investigating officer and therefore this reduces the potential for collateral intrusion. Investigating officers should also mention whether it is known that the telephone number (or other type of data) has been used to advertise the business, either in the press/internet or on business cards/flyers as this would also be evidence to show that the suspect is actually using the telephone number and further reduce the potential for collateral intrusion. Collateral intrusion becomes more relevant when applying for service use data and investigating officers should outline specifically what collateral intrusion may occur, how the time periods requested impact on collateral intrusion and whether they are likely to obtain data which is outside the realm of their investigation.

Once the investigating officer has completed the application form it should be passed to the SPoC together with a draft Notice to the Communications Service Provider. If the SPoC is satisfied that the application should proceed, the Application and the draft Notice to the Communications Service Provider will be considered by an Authorising Officer<sup>1</sup>. If the SPoC decides that the application is not justified it will be rejected. If the SPoC requires further information in order to consider the application this will be requested from the investigating officer and recorded on the SPoC Log Sheet.

The Authorising Officer must consider:

- (a) whether the case justifies the accessing of communications data for the **purposes of preventing or detecting crime or of preventing disorder** and why obtaining the data is **necessary** in order to achieve the aims of the investigation and on the grounds permitted to the Council;

and

- (b) whether obtaining access to the data by the conduct authorised, or required of the postal or telecommunications operator in the case of a notice, is **proportionate** to what is sought to be achieved.

The Authorising Officer will complete the Application Form as appropriate.

If the Authorising Officer becomes directly involved in the operation, such involvement and their justification for undertaking the role of Authorising Officer must be explicit in the written considerations on the Application Form or alternatively the application should be passed to another Authorising Officer for consideration.

If the accessing of communications data is authorised the Authorising Officer will sign the Notice to the Communication Service Provider, complete the date/time of issue and return all forms to the SPoC

The SPoC will then issue the Notice to the Communications Service Provider

1. NOTE: The Code of Practice referred to in paragraph 5 above refers to "Designated Persons" as those whose authority is obtained with regard to the application. However, for the purposes of this policy and procedure the term "Authorising Officer" will be used for that of "Designated Person".

## **Duration**

Authorisations and notices are only valid for one month. A shorter period should be specified if this is satisfied by the request. An authorisation or notice may be renewed during the month by following the same procedure as obtaining a fresh authorisation or notice.

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

## **Record Management**

Applications, authorisations and notices for communications data must be retained by the SPoC until audited by the IOCCO. All such documentation must be kept in locked storage.

## **Errors**

Where any errors have occurred in the granting of authorisations or the giving of notices, a record shall be kept and a report and explanation sent to the IOCCO as soon as reasonably practicable.

## **Oversight**

The IOCCO will write to the Council from time to time requesting information as to the numbers of applications for communications data and confirmation as to whether there have been any errors which have occurred when obtaining data communications. It will be the responsibility of the Solicitor to the Council to respond to such communications.

## **Section L**

### **CONCLUSION**

Obtaining an authorisation under RIPA and following the guidance and procedures in this document will assist in ensuring that the use of covert surveillance or a CHIS is carried out in accordance with the law and subject to safeguards against infringing an individual's human rights. Complying with the provisions of RIPA protects the Council against challenges for breaches of Article 8 of the European Convention on Human Rights.

Authorising Officers will be suitably trained and they must exercise their minds every time they are asked to sign a Form. They must never sign or rubber stamp Form(s) without thinking about their personal and the Council's responsibilities.

Any boxes not needed on the Form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same. Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.

For further advice and assistance on RIPA, please contact the Solicitor to the Council (who is also the Monitoring Officer).

## **APPENDIX 1**

### **A FORMS**

#### **DIRECTED SURVEILLANCE**

All forms can be obtained from:

<https://www.gov.uk/government/collections/ripa-forms--2>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Application for Authorisation Directed Surveillance

Application for Review of a Directed Surveillance Authorisation

Application for Renewal of a Directed Surveillance Authorisation

Application for Cancellation of a Directed Surveillance Authorisation

## **APPENDIX 2**

### **B FORMS**

#### **CONDUCT OF A COVERT HUMAN INTELLIGENCE SOURCE**

All forms can be obtained from:

<https://www.gov.uk/government/collections/ripa-forms--2>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Application for Authorisation of the conduct or use of a Covert Human Intelligence Source (CHIS).

Application for Review of a Covert Human Intelligence Source (CHIS) Authorisation.

Application for renewal of a Covert Human Intelligence Source (CHIS) Authorisation.

Application for Cancellation of an authorisation for the use or Conduct of a Covert Human Intelligence Source.

## **APPENDIX 3**

### **C FORMS**

#### **ACQUISITION OF COMMUNICATIONS DATA**

All forms can be obtained from the Home Office: RIPA Codes of Conduct website:

<https://www.gov.uk/government/collections/ripa-forms--2>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Part I Chapter II request schedule for subscriber information

Specimen Part I Chapter II authorisation

Specimen Part I Chapter II Notice

Chapter II application for communications data

Guidance notes regarding chapter II application form

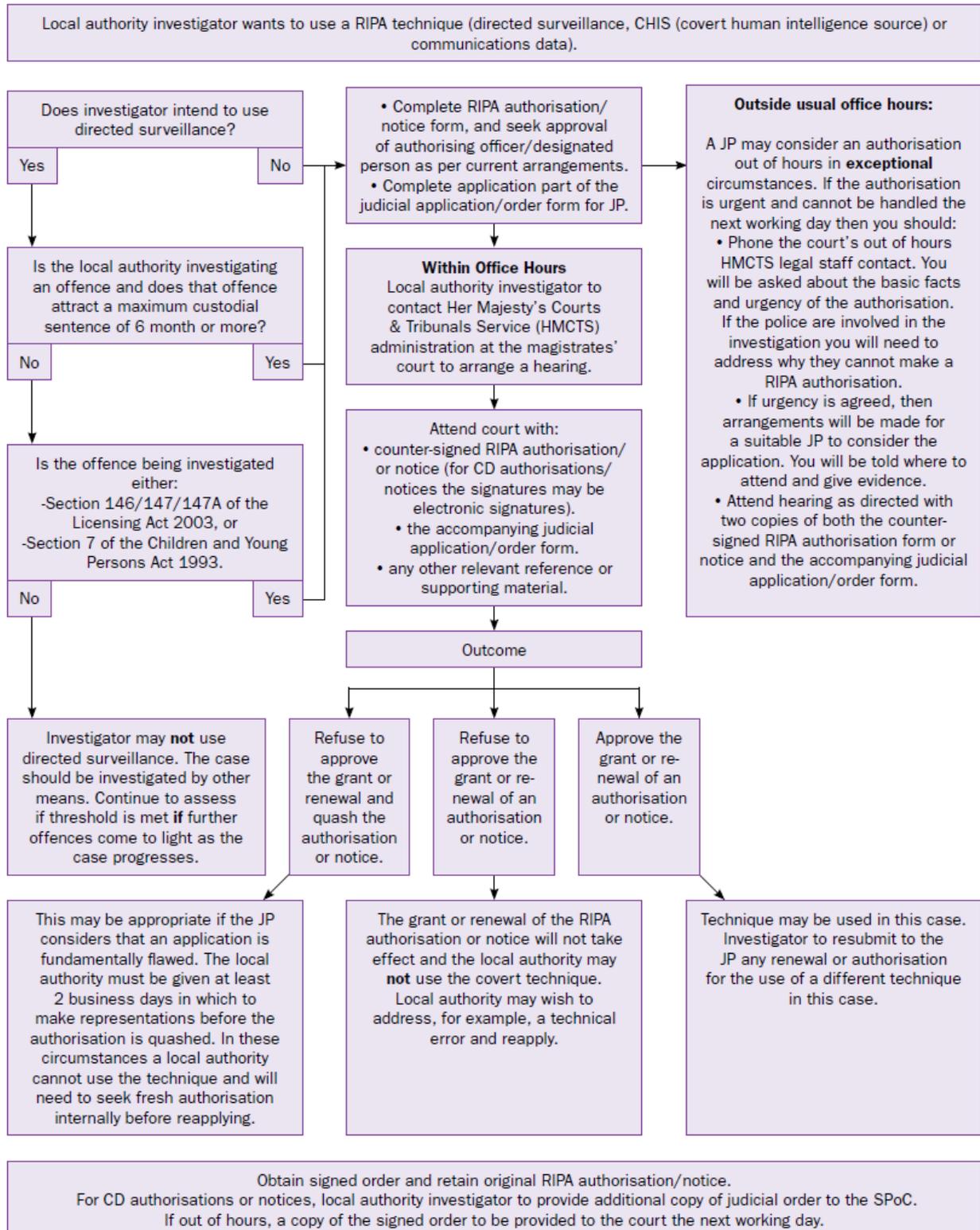
RIPA Section 22 notice to obtain communications data from communications service providers

Reporting an error by a CSP to the IOCCO

Reporting an error by a public authority to the IOCCO

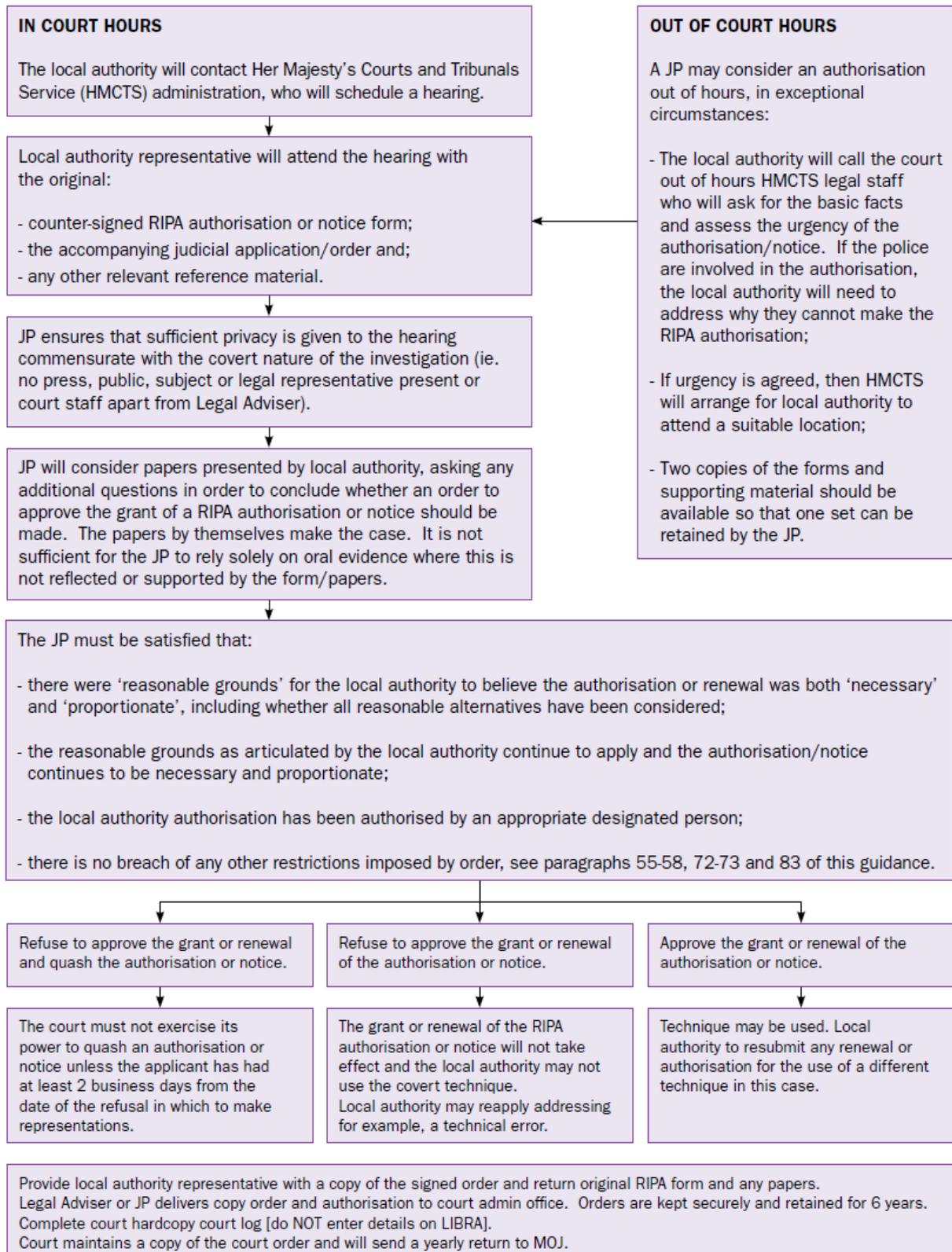
## Annex A Local Authority Procedure

### LOCAL AUTHORITY PROCEDURE: APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



## Annex B JP Procedure

### PROCEDURE: LOCAL AUTHORITY APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



**Application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.**

Local authority:.....

Local authority department:.....

Offence under investigation:.....

Address of premises or identity of subject:.....  
.....  
.....

Covert technique requested: (tick one and specify details)

- Communications Data**
- Covert Human Intelligence Source**
- Directed Surveillance**

Summary of details  
.....  
.....  
.....  
.....  
.....  
.....

**Note:** this application should be read in conjunction with the attached RIPA authorisation/RIPA application or notice.

Investigating Officer:.....

Authorising Officer/Designated Person:.....

Officer(s) appearing before JP:.....

Address of applicant department:.....  
.....

Contact telephone number:.....

Contact email address  
(optional):.....

Local authority  
reference:.....

Number of  
pages:.....

**Order made on an application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.**

Magistrates' court:.....

Having considered the application, I (tick one):

- am satisfied that there are reasonable grounds for believing that the requirements of the Act were satisfied and remain satisfied, and that the relevant conditions are satisfied and I therefore approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal and quash the authorisation/notice.

Notes

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Reasons

.....  
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.....

Signed:

Date:

Time:

Full name:

Address of magistrates' court:

# May 2017

June 2017

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May 2017

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29	30	31				

Monday	Tuesday	Wednesday	Thursday	Friday
<b>1 May</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Bank Holiday				
8	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>
	18:00 20:30 Mayor Making and Annual Council (Town Hall)			
<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>
<b>29</b>	<b>30</b>	<b>31</b>	<b>1 Jun</b>	<b>2</b>
Bank Holiday		18:00 20:30 Planning Training (Committee Room 1)		

1 - 5 May

8 - 12 May

15 - 19 May

22 - 26 May

29 May - 2 Jun

Democratic Services

# June 2017

June 2017							July 2017						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
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19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31						

Monday	Tuesday	Wednesday	Thursday	Friday
29 May	30	31	1 Jun	2
			18:00 20:30 Audit and Governance Committee (Committee Room 1)	
5	6	7	8	9
	18:00 20:30 Planning Committee (Committee Room 1)			
12	13	14	15	16
	18:00 20:30 Appointments and Staffing Committee (Committee Room 1)	18:00 18:30 I, S & G Scrutiny (Committee Room 1) 18:30 19:00 Corporate Scrutiny (Committee Room 1) 19:00 19:30 H & W Scrutiny (Committee Room 1)	18:00 20:30 Cabinet (Committee Room 1)	
19	20	21	22	23
		18:00 20:30 Corporate Scrutiny (Committee Room 1)	18:00 20:30 H & W Scrutiny (Committee Room 1)	
26	27	28	29	30
	18:00 20:30 I, S & G Scrutiny (Committee Room 1)	18:00 20:30 Cabinet (Grants) Sub Committee (Committee Room 1)		

29 May - 2 Jun

5 - 9 Jun

12 - 16 Jun

19 - 23 Jun

26 - 30 Jun

# July 2017

July 2017						
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August 2017						
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	Monday	Tuesday	Wednesday	Thursday	Friday
3 Jul		4 18:00 20:30 Planning Committee (Committee Room 1)	5	6 18:00 20:30 Cabinet (Committee Room 1)	7
10	11	12	13 18:00 20:30 Licensing Committee (Council Chamber)	14	
17	18 18:00 20:30 Council (Council Chamber)	19	20 18:00 20:30 Cabinet (Committee Room 1)	21	
24	25 18:00 20:30 Appointments and Staffing Committee (Committee Room 1)	26	27	28 18:00 20:30 Audit and Governance Committee (Committee Room 1)	
31	1 Aug	2	3	4	
31 Jul - 4 Aug					

3 - 7 Jul

10 - 14 Jul

17 - 21 Jul

24 - 28 Jul

# August 2017

August 2017							September 2017						
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1	2	3	4	5	6	7	8	9	10	11	12	13	14
14	15	16	17	18	19	20	21	22	23	24	25	26	27
28	29	30	31										

Monday	Tuesday	Wednesday	Thursday	Friday
31 Jul	1 Aug	2	3	4
	18:00 20:30 Planning Committee (Committee Room 1)			
7	8	9	10	11
		18:00 20:30 Planning Training (Committee Room 1)		
14	15	16	17	18
			18:00 20:30 Cabinet (Committee Room 1)	
21	22	23	24	25
	18:00 20:30 I, S & G Scrutiny (Committee Room 1)		18:00 20:30 H & W Scrutiny (Committee Room 1)	
28	29	30	31	1 Sep
Bank Holiday		18:00 20:30 Corporate Scrutiny (Committee Room 1)	18:00 20:30 Licensing Committee (Council Chamber)	

31 Jul - 4 Aug

7 - 11 Aug

14 - 18 Aug

21 - 25 Aug

28 Aug - 1 Sep

# September 2017

September 2017						
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October 2017						
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30	31					

Monday	Tuesday	Wednesday	Thursday	Friday
28 Aug	29	30	31	1 Sep
4	5	6	7	8
	18:00 20:30 Planning Committee (Committee Room 1)		18:00 20:30 Cabinet (Committee Room 1)	
11	12	13	14	15
	18:00 20:30 Council (Council Chamber)			
18	19	20	21	22
	18:00 20:30 Appointments and Staffing Committee (Committee Room 1)	18:00 20:30 Cabinet (Grants) Sub Committee (Committee Room 1)	18:00 20:30 Audit and Governance Committee (Committee Room 1)	
25	26	27	28	29
			18:00 20:30 Cabinet (Committee Room 1)	

28 Aug - 1 Sep

4 - 8 Sep

11 - 15 Sep

18 - 22 Sep

25 - 29 Sep

# October 2017

October 2017

November 2017

Mo	Tu	We	Th	Fr	Sa	Su
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Mo	Tu	We	Th	Fr	Sa	Su
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Monday	Tuesday	Wednesday	Thursday	Friday
<b>2 Oct</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>
	18:00 20:30 Planning Committee (Committee Room 1)		18:00 20:30 H & W Scrutiny (Committee Room 1)	
<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>
	18:00 20:30 I, S & G Scrutiny (Committee Room 1)	18:00 20:30 Planning Training (Committee Room 1)	18:00 20:30 Cabinet (Committee Room 1)	
<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>
		18:00 20:30 Corporate Scrutiny (Committee Room 1)	18:00 20:30 Audit and Governance Committee (Committee Room 1)	
<b>30</b>	<b>31</b>	<b>1 Nov</b>	<b>2</b>	<b>3</b>
	18:00 20:30 Appointments and Staffing Committee (Committee Room 1)			

2 - 6 Oct

9 - 13 Oct

16 - 20 Oct

23 - 27 Oct

30 Oct - 3 Nov

# November 2017

November 2017						
Mo	Tu	We	Th	Fr	Sa	Su
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December 2017						
Mo	Tu	We	Th	Fr	Sa	Su
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Monday	Tuesday	Wednesday	Thursday	Friday
30 Oct	31	1 Nov	2	3
			18:00 20:30 Cabinet (Committee Room 1)	
6	7	8	9	10
	18:00 20:30 Planning Committee (Committee Room 1)		18:00 20:30 Licensing Committee (Committee Room 1)	
13	14	15	16	17
20	21	22	23	24
27	28	29	30	1 Dec
27 Nov - 1 Dec	18:00 20:30 Appointments and Staffing Committee (Committee Room 1)		18:00 20:30 Cabinet (Committee Room 1)	

30 Oct - 3 Nov

6 - 10 Nov

13 - 17 Nov

20 - 24 Nov

27 Nov - 1 Dec

# December 2017

December 2017							January 2018						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
4	5	6	7	8	9	10	1	2	3	4	5	6	7
11	12	13	14	15	16	17	8	9	10	11	12	13	14
18	19	20	21	22	23	24	15	16	17	18	19	20	21
25	26	27	28	29	30	31	22	23	24	25	26	27	28

Monday	Tuesday	Wednesday	Thursday	Friday
27 Nov	28	29	30	1 Dec
4	5 18:00 20:30 Planning Committee (Committee Room 1)	6	7 18:00 20:30 Leaders Budget Workshop (Council Chamber)	8
11	12 18:00 20:30 Council (Town Hall)	13 18:00 20:30 Planning Training (Committee Room 1)	14 18:00 20:30 Cabinet (Committee Room 1)	15
18	19	20 18:00 20:30 Cabinet (Grants) Sub Committee (Committee Room 1)	21	22
25	26 Bank Holiday	27	28	29
25 - 29 Dec	25 - 29 Dec	25 - 29 Dec	25 - 29 Dec	25 - 29 Dec

27 Nov - 1 Dec

4 - 8 Dec

11 - 15 Dec

18 - 22 Dec

25 - 29 Dec

# January 2018

February 2018

Mo	Tu	We	Th	Fr	Sa	Su
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

January 2018

Mo	Tu	We	Th	Fr	Sa	Su
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

	Monday	Tuesday	Wednesday	Thursday	Friday
<b>1 Jan 18</b>		<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1 - 5 Jan	Bank Holiday	18:00 20:30 Planning Committee (Committee Room 1)			
<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	
8 - 12 Jan			18:00 20:30 Licensing Committee (Council Chamber)		
<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	
15 - 19 Jan					
<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	
22 - 26 Jan	18:00 20:30 Planning Committee (Committee Room 1)		18:00 20:30 Cabinet (Committee Room 1)		
<b>29</b>	<b>30</b>	<b>31</b>	<b>1 Feb</b>	<b>2</b>	
29 Jan - 2 Feb	18:00 20:30 Joint Scrutiny (Budgets) (Council Chamber)	18:00 20:30 Corporate Scrutiny (Committee Room 1)			

# February 2018

February 2018							March 2018						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
5	6	7	8	9	10	11	5	6	7	8	9	10	11
12	13	14	15	16	17	18	12	13	14	15	16	17	18
19	20	21	22	23	24	25	19	20	21	22	23	24	25
26	27	28					26	27	28	29	30	31	

Monday	Tuesday	Wednesday	Thursday	Friday
29 Jan	30	31	1 Feb	2
			18:00 20:30 H & W Scrutiny (Committee Room 1)	
5	6	7	8	9
	18:00 20:30 I, S & G Scrutiny (Committee Room 1)	18:00 20:30 Planning Training (Committee Room 1)	18:00 20:30 Audit and Governance Committee (Committee Room 1)	
12	13	14	15	16
	18:00 20:30 Appointments and Staffing Committee (Committee Room 1)			
19	20	21	22	23
	18:00 20:30 Planning Committee (Committee Room 1)		18:00 20:30 Cabinet (Committee Room 1)	
26	27	28	1 Mar	2
	18:00 20:30 Council (Budget) (Council Chamber)			

29 Jan - 2 Feb

5 - 9 Feb

12 - 16 Feb

19 - 23 Feb

26 Feb - 2 Mar

# March 2018

March 2018

April 2018

Mo	Tu	We	Th	Fr	Sa	Su
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Mo	Tu	We	Th	Fr	Sa	Su
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Monday	Tuesday	Wednesday	Thursday	Friday
26 Feb		27	28	1 Mar	2
26 Feb - 2 Mar				18:00 20:30 Licensing Committee (Council Chamber)	
5	6	7	8	9	
5 - 9 Mar	18:00 20:30 I, S & G Scrutiny (Committee Room 1)				
12	13	14	15	16	
12 - 16 Mar	18:00 20:30 Council (Council Chamber)	18:00 20:30 Corporate Scrutiny (Committee Room 1)	18:00 20:30 Cabinet (Committee Room 1)		
19	20	21	22	23	
19 - 23 Mar		18:00 20:30 Cabinet (Grants) Sub Committee (Committee Room 1)	18:00 20:30 H & W Scrutiny (Committee Room 1)		
26	27	28	29	30	
26 - 30 Mar	18:00 20:30 Planning Committee (Committee Room 1)		18:00 20:30 Audit and Governance Committee (Committee Room 1)	Bank Holiday	

# April 2018

April 2018						
Mo	Tu	We	Th	Fr	Sa	Su
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May 2018						
Mo	Tu	We	Th	Fr	Sa	Su
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

	Monday	Tuesday	Wednesday	Thursday	Friday
2 Apr	3	4	5	6	
9	10	11	12	13	
16	17	18	19	20	
23	24	25	26	27	
30 Apr - 4 May	1 May	2	3	4	

Bank Holiday

18:00 20:30 Cabinet (Committee Room 1)

18:00 20:30 Planning Training (Committee Room 1)

18:00 20:30 Licensing Committee (Council Chamber)

18:00 20:30 Planning Committee (Committee Room 1)

18:00 20:30 Cabinet (Committee Room 1)

2 - 6 Apr

9 - 13 Apr

16 - 20 Apr

23 - 27 Apr

30 Apr - 4 May