



**REPORTS FOR DECISION BY THE
CABINET MEMBER FOR ENVIRONMENT**

Date Issued: **14 May 2009**

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K = KEY DECISION

A Record of Decision will be issued following the conclusion of 5 clear working days from the date of issue of the Report

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MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR THE ENVIRONMENT

REPORT OF ASSISTANT DIRECTOR OF DEVELOPMENT AND COMMUNITY SERVICES

Report prepared by Clive Cheeseman

Date Issued: 14 May 2009

1. BUS PASSES ON COMMUNITY TRANSPORT

1.1 Issue for Decision

- 1.1.1 To consider funding the acceptance of the National Bus Pass on Community Transport Services provided in the Maidstone Borough Council area which are not automatically entitled to be included in the scheme.

1.2 Recommendation of Assistant Director of Development and Community Services

- 1.2.1 That Maidstone Borough Council allows the Community Transport Services operated under Section 19 Minibus permits, by Lenham and Stockbury Parish councils, to be included within the National Bus Pass Concessionary Travel Scheme (Kent Countywide).

- 1.2.2 Any further Community Transport schemes that commence operation in the Maidstone Borough Council would be the subject of a further report to the Cabinet Member.

1.3 Reasons for Recommendation

- 1.3.1 In June 2007 three post bus services that had been operating in the Maidstone Borough Council area were withdrawn (serving the Lenham rural area, Stockbury/Detling and Loose/Coxheath). They had operated on Mondays to Fridays as public bus services and as such were required to accept concessionary bus passes.
- 1.3.2 Kent County Council decided not to replace these services, indicating that this was because the cost of subsidising each passenger journey exceeded their guideline for doing so. However following representations from Lenham Parish Council they agreed to fund a limited service on one day a week whilst the Parish Council set up a Community Transport operation. The County Council is providing some

assistance towards the setting up of a Community Transport operation at Lenham, including the supply of a vehicle, and the same assistance has been offered to Stockbury Parish Council who are also intending to start a similar operation.

- 1.3.3 It is understood that Kent County Council have been approached on behalf of Stockbury Parish Council about obtaining re-imbursement in respect of accepting bus passes on their services. They have been advised that this will be a matter for the Borough Council to decide as such operations are not automatically included in the Kent Countywide scheme. The reason for this relates to the type of Minibus Permit under which the scheme is operated. There are two types. A section 22 permit is for services which are open to the general public and such services are required to be allowed into the scheme. However a section 19 permit, under which Lenham and Stockbury are currently planning to operate is for a "closed door" i.e. membership based service, which is not automatically included. Under the scheme rules it is then up to the Council in whose area journeys are being undertaken as to whether they agree to fund the acceptance of passes on those services.
- 1.3.4 The administrators of the Kent Countywide scheme have been forwarded details of the services that Lenham are initially planning to operate. These are for services to Maidstone on three days a week with an expected average patronage of 10 passengers with bus passes, and a single adult fare for other passengers of £3.00 single. Based on these figures we have been advised that reimbursement for this scheme would be in excess of £5,000 in a full year.
- 1.3.5 A smaller figure is likely in respect of the intended Stockbury operation, though details of their planned services have not yet been supplied. This suggests a figure of around £10,000 in 2009/10 for both schemes.
- 1.3.6 By comparison a post bus service would normally carry around half that number of people at a lower fare and receive around a quarter of that amount in reimbursement.
- 1.3.7 These schemes could alternatively apply to the Traffic Commissioner for a Section 22 permit, and bus passes would then have to be accepted on the services and reimbursed.
- 1.3.8 At the time these schemes were initially being considered it was not clear what type of permit they would operate under and the organisers apparently assumed that bus passes could be accepted by their service and they would be reimbursed for this. Many of the planned service users had previously been able to use their passes on the post buses or the temporary replacement service, and have no other alternative

bus services that they can use. There is likely to be adverse public reaction if they are not allowed to use them on the services.

- 1.3.9 If the Community Transport schemes are not allowed to accept bus passes under section 19 permit operations and be reimbursed for this, it may also affect the viability of their planned operations. Refusing them may appear to be pointless if they then simply apply for a section 22 permit instead.

1.3.10 Finance

- 1.3.11 As indicated in paragraph 1.3.4 the estimated cost of reimbursing the Lenham scheme is £5,000 a year. It is likely that Stockbury would cost a similar figure giving a potential initial liability of around £10,000 for the two schemes.

- 1.3.12 However should these, or any other scheme operate under a Section 22 permit, instead of section 19 they would automatically have to be admitted to the Kent countywide scheme and Maidstone Borough Council would have to pay the cost of reimbursement.

- 1.3.13 The cost of funding the National Bus Pass increased quite considerably during the 2008/09 financial year. In mid March 2009 the latest figures from the scheme administrators indicated that the expected costs had risen by around 20% above those which had been predicted earlier in the year. Although the final figures for the financial year will not be available for some months they are not expected to reduce and should be expected to remain at a similar or higher level for the 2009/10 financial year. In addition a bus operator appeal to the Secretary of State against the 2008/09 scheme resulted in an award of additional payments. Whilst this only had a limited effect on Maidstone for the 2008/9 year it has the potential to cause considerable additional costs to all Districts in the 2009/10 financial year. Whilst it is expected that these costs can be met within the allocated budget there is unlikely to be any spare money available to fund any other additional concessions or costs.

1.4 Alternative Action and why not Recommended

- 1.4.1 If the requests are refused the operations are likely to apply for a section 22 permit instead and would then automatically be allowed to accept bus passes. Causing such a delay would result in poor public perception of the council.

1.5 Impact on Corporate Objectives

- 1.5.1 The matters discussed impact on the ability of residents to access council and other local services.

1.6 Risk Management *COMPULSORY*

1.6.1 There is a risk that allowing these two schemes to accept bus passes will set precedence that any others considering operating Community Transport schemes may wish to follow.

1.7 Other Implications [Insert an 'X' in the boxes below to indicate if the recommendations will have any implications in the specified area]

1.7.1

1.	Financial	<input checked="" type="checkbox"/>
2.	Staffing	<input type="checkbox"/>
3.	Legal	<input type="checkbox"/>
4.	Equality Impact Needs Assessment	<input type="checkbox"/>
5.	Environmental/Sustainable Development	<input type="checkbox"/>
6.	Community Safety	<input type="checkbox"/>
7.	Human Rights Act	<input type="checkbox"/>
8.	Procurement	<input type="checkbox"/>
9.	Asset Management	<input type="checkbox"/>

1.7.2 The financial implications are considered in paragraphs 1.3.10 to 1.3.13 above.

1.8 Background Documents

1.8.1 None

NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED

Is this a Key Decision?

Yes

☐

No

☒

If yes, when did it appear in the Forward Plan? _____

Is this an Urgent Key Decision?

Yes

☐

No

☒

Reason for Urgency

[State why the decision is urgent and cannot wait until the next issue of the forward plan.]

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

Councillor Mark Wooding

Cabinet Member for Environment

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MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR ENVIRONMENT

REPORT OF THE ASSISTANT DIRECTOR OF ENVIRONMENTAL SERVICES

Report prepared by R E Wallis PEHO

Date Issued: 14 May 2009

1. Transfer of Food Safety, Pest Control and Sunday Trading Enforcement Functions – The Hop Farm, Beltring

1.1 Issue for Decision

- 1.1.1 To consider whether the Council should enter into a legal agreement to transfer the food safety, pest control and Sunday trading enforcement functions to Tonbridge and Malling Borough Council to ensure a coordinated approach to enforcement at the Hop Farm, Beltring.

1.2 Recommendation of Assistant Director of Environmental Services

- 1.2.1 That the Assistant Director of Environmental Services be given delegated authority to enter into a legal agreement with Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council to transfer the food safety, pest control and Sunday trading enforcement functions to Tonbridge and Malling Borough Council, in relation to The Hop Farm, Beltring.

1.3 Reasons for Recommendation

- 1.3.1 The Council has a statutory duty to enforce a range of regulatory functions at the Hop Farm, Beltring. Those functions that are being considered for transfer relate to:

- Health and Safety at Work
- Food Safety
- Pest Control
- Sunday Trading
-

- 1.3.2 Health and Safety enforcement which is not part of this report is a non executive function and this was subject to a separate report that was submitted to and recommended by General Purposes Group on 8th April 2009 and approved by full Council on 22nd April 2009.

- 1.3.3 The Hop Farm site is mainly within the area of Tonbridge and Malling Borough Council, there are parts which fall within both Maidstone Borough Council and Tunbridge Wells Borough Council boundaries – but these are areas used for ancillary functions to the main activity of the Hop Farm, for example, car parking. It is important that the regulatory activities, previously identified, are coordinated by one authority at this venue which attracts many visitors, particularly over the summer months.
- 1.3.4 The Local Government Acts 1972 and 2000, together with associated regulations, provide for a council to exercise delegated functions on behalf of other councils. Discussions with neighbouring councils have resulted in an agreement which would permit Tonbridge and Malling Borough Council to exercise delegated functions on our behalf in respect of the Hop Farm site.
- 1.3.5 Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council have already approved the agreement and full Council has approved the delegation of the Health and Safety function and only the executive functions of Food Safety, Pest Control and Sunday Trading need to be approved. A copy of the final agreement, together with a map of the site with the Council boundaries marked is attached at Appendix 1.
- 1.3.6 The final agreement now has an indemnity for Maidstone Borough Council for any breach of discharging the delegated functions by Tonbridge and Malling Borough Council and a 3 month termination clause. These issues were raised by General Purposes Group on the draft agreement, on the 7th January 2009 and negotiated changes agreed between the parties.
- 1.3.7 There are no cost implications for this Council.

1.4 Alternative Action and why not Recommended

The Council could choose not to enter into the proposed agreement. This would result in Maidstone Borough Council retaining enforcement responsibility for a small area of The Hop Farm, which could lead to a disjointed approach to enforcement at this site. Any major event, activity or incident on this small area relating to the legislation in the report may require Maidstone Borough Council Officers to attend. Event and site management is better controlled by one authority.

1.5 Impact on Corporate Objectives

1.5.1 Quality Living

The proposal will provide a coordinated approach to enforcement on the site for the benefit of both the business and public.

1.6 Risk Management

1.6.1 The failure to effectively coordinate enforcement activities could adversely affect public health and safety on this site.

1.7 Other Implications

1.7.1

1. Financial	
2. Staffing	
3. Legal	X
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	
7. Human Rights Act	
8. Procurement	
9. Asset Management	

1.7.2 Legal

Tonbridge and Malling Borough Council will be able to carry out functions on behalf of other authorities once they have been properly delegated by those authorities under S101 of the Local Government Act 1972 for non executive functions and S20 of the Local Government Act 2000 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000 for executive functions.

1.8 Conclusions

- 1.8.1 The transfer of regulatory functions to Tonbridge and Malling Borough Council will ensure a coordinated approach and improved effectiveness to enforcement at The Hop Farm, Beltring.

1.9 Background Documents

1.9.1 Report to general Purposes Group April 2009

NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED

Is this a Key Decision? Yes ☐ No ☒

If yes, when did it appear in the Forward Plan? _____

Is this an Urgent Key Decision? Yes ☐ No ☒

Reason for Urgency

[State why the decision is urgent and cannot wait until the next issue of the forward plan.]

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

Cllr Mark Wooding

Cabinet Member for Environment

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Ron Wallis

Principal Environmental Health Officer

Telephone: 01622 602145

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Appendix 1

THIS DEED is made the _____ day of _____
Two thousand and nine **BETWEEN TONBRIDGE AND MALLING BOROUGH COUNCIL** of
Gibson Building Gibson Drive Kings Hill Kent(“TMBC”) of the one part and **(1) MAIDSTONE
BOROUGH COUNCIL** of _____ Maidstone _____ House
King Street Maidstone Kent (“MBC”) and **(2) TUNBRIDGE WELLS BOROUGH COUNCIL** of Town
Hall Mount Pleasant Road Tunbridge Wells Kent(“TWBC”) of the other part

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

1. References to any enactment include references to that enactment as for the time being amended, applied, consolidated, re-enacted by or having effect by virtue of any subsequent enactment and for this purpose “enactment” means any Act whether public, general or local and includes any byelaw, order, rule, regulation, scheme or other instrument having effect by virtue of an enactment;
2. the “Delegated Functions” has the meaning given in the Schedule below;
3. “Functions” means powers and duties and includes the power to do anything which is calculated to facilitate or is conducive or incidental to the discharge of functions.
4. the “1972 Act” means the Local Government Act 1972
5. the “2000 Act” means the Local Government Act 2000
6. the “Regulations” means the Local Authorities (Arrangement for the Discharge of Functions)(England) Regulations 2000
7. the “Site” means the area of land together with buildings thereon known as the Hop Farm Beltring Kent and more particularly identified on the plan attached to this Agreement and thereon shown outlined in red.
8. “the Plan” means the plan attached to this Agreement.

WHEREAS:-

- (1) TMBC, MBC and TWBC are all local authorities constituted by the 1972 Act and operate executive arrangements pursuant to the 2000 Act
- (2) By virtue of the 1972 Act the TMBC, MBC and TWBC are the authorities responsible inter alia for the Delegated Functions within their respective administrative areas
- (3) The Site is situate partly within the administrative area of TMBC (hatched blue on the Plan) and partly within the administrative areas of MBC (hatched green on the Plan) and TWBC (hatched yellow on the Plan)
- (4) By virtue of Section 101 of the 1972 Act (in respect of those matters that are non – executive functions) and Section 19 of the 2000 Act (in respect of those matters that are executive functions) and the Regulations and subject as therein provided a local authority may arrange for the discharge of any of its functions by (inter alia) any other local authority
- (5) TMBC wishes to exercise the Delegated Functions of MBC and TWBC in respect of the entirety of the Site
- (6) MBC and TWBC are willing to enter into arrangements with TMBC pursuant to Section 101 of the 1972 Act Section 19 of the 2000 Act and the Regulations and of all other enabling powers for the discharge of those functions on the following terms:

NOW THIS DEED WITNESSETH as follows:-

1. Commencement

This Agreement shall come into effect on the date hereof and shall continue for one year and thereafter run from year to year unless determined by either party pursuant to clause 5 below.

2. Delegation of Functions

In consideration of the provisions of this Agreement and pursuant to the powers contained in Section 101 of the 1972 Act Section 19 of the 2000 Act and the Regulations, MBC and TWBC hereby delegate to TMBC and TMBC hereby accepts such delegation of the Functions of MBC and TWBC relating to their respective administrative areas at the Site subject to the conditions and restrictions contained in this Agreement.

3. Discharge of Functions

TMBC may arrange for the discharge of the Delegated Functions at the Site in accordance with the provisions of Section 101 of the 1972 Act and Section 19 of the 2000 Act and regulation 10 of the Regulations shall apply in relation to those functions as it applies in relation to the functions of TMBC. TMBC is empowered to take all such action including legal proceedings as may be necessary arising out of or in connection with the Delegated Functions in respect of the Site.

4. Agency

4.1 TMBC shall act as the agent of MBC and TWBC in respect of the discharge of the Delegated Functions in respect of the administrative areas of MBC and TWBC at the Site.

4.2 TMBC shall indemnify and keep indemnified MBC and TWBC from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by MBC and TWBC resulting from a breach of the discharging of the delegated functions by TMBC including any act neglect or default of TMBC's employees servants contractors or agents

5. Termination

This Agreement may without prejudice to the Local Government Act 1972 Section 101(4) and regulation 8(3) of the Regulations be terminated at any time by either party giving to the other not less than 3 months notice in writing.

6. NOTWITHSTANDING Clause 2 hereof and as provided in Section 101(4) of the 1972 Act and regulation 8(3) of the Regulations nothing herein contained shall prevent the MBC and TWBC from exercising the Delegated Functions in respect of their own administrative areas **PROVIDED** that it is agreed that MBC and TWBC will not normally exercise any of such functions in respect of their administrative areas at the Site except in the case of emergency and then only after consultation with TMBC unless the urgency of the situation does not permit such consultation.

7. Expenses

All expenses costs or charges arising out of the exercise by TMBC of the Delegated Functions shall be defrayed by TMBC.

8. Contracts (Rights of Third Parties) Act 1999

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement unless expressly stated within it.

IN WITNESS whereof TMBC, MBC and TWBC have caused their respective Common Seals to be hereunto affixed the day and year first above written

THE SCHEDULE

The Delegated Functions

To their full extent the environment health functions relating to:-

- (i) Health and Safety at work
- (ii) Food safety
- (iii) Pest control
- (iv) Sunday trading

AND which functions arise from or are carried out pursuant to the following statutes and the regulations and orders made thereunder and any statutory modification or re-enactment thereof

- (a) Offices, Shops and Railway Premises Act 1963
- (b) Health and Safety at Work etc Act 1974
- (c) Sunday Trading Act 1994
- (d) Local Government (Miscellaneous Provisions) Act 1976
- (e) Food Safety Act 1990
- (f) Food and Environment Protection Act 1985
- (g) Prevention of Damage by Pests Act 1949
- (h) EC regulations 882/2004, 852/2004, 853/2004, 854/2004, 2073/2005, 2075/2005

AND for the avoidance of doubt any reference to non-executive functions in this Agreement refers to all functions arising under or relating to the said Health and Safety at Work etc Act 1974 and the said

Offices, Shops and Railway Premises Act 1963 and any reference to executive functions refers to all other matters.

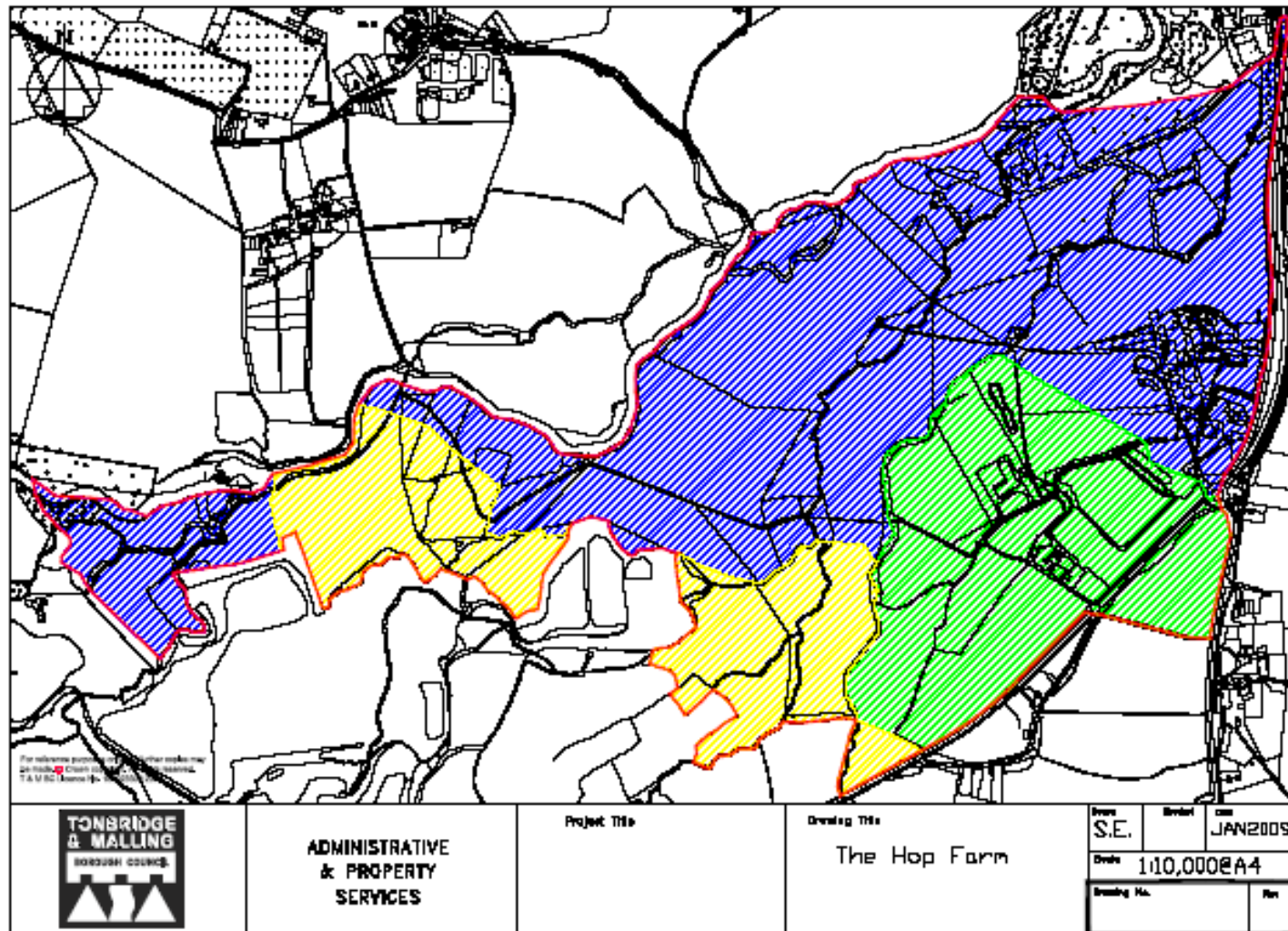
THE COMMON SEAL of TONBRIDGE)
& MALLING BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Chief Solicitor

THE COMMON SEAL of MAIDSTONE)
BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Solicitor – Authorised Signatory

THE COMMON SEAL OF TUNBRIDGE)
WELLS BOROUGH COUNCIL was)
hereunto affixed in the presence of: -)



MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR THE ENVIRONMENT

REPORT OF THE ASSISTANT DIRECTOR OF ENVIRONMENTAL SERVICES

Report prepared by Steve Wilcock

Date Issued: 14 April 2009

1. **AIR QUALITY ACTION PLAN UPDATE**
- 1.1 **Issue for Decision**
- 1.1.1 To consider the recommendations made by the Environment and Leisure Overview and Scrutiny Committee regarding the progress and outstanding actions with regard to air quality management.
- 1.2 **The Recommendation of the Assistant Director of Environmental Services**
- 1.2.1 That the Cabinet Member agrees that the responses identified in the report be sent to the Overview and Scrutiny Committee.
- 1.3 **Reasons for Recommendation**
- 1.3.1 On 24 March 2009, officers attended the meeting of the Environment and Leisure Overview and Scrutiny Committee, to present an update on the activities of the council with regard to the progress in carrying out the Action Plan, which follows on from the declaration of the urban-wide Air Quality Management Area in August 2008.
- 1.3.2 The Committee raised questions with officers on a number of matters and made four specific recommendations which are provided in the Appendix to the report.
- 1.3.3 The recommendations state that the Committee would like to consider the draft action plan, prior to its approval by cabinet and that there should be a supplementary planning document regarding pollution issues fed into the Local development Framework (and the two other recommendations??).

1.3.4 Not all the proposals can be agreed this year due to the timescales and steps necessary.

1.4 **Alternative Action and Why Not Recommended**

1.4.1 As the formation of an Action Plan is a statutory requirement once an Air Quality Management Area has been declared, there is no alternative action available.

1.5 **Impact on Corporate Objectives**

1.5.1.1 The activities discussed contribute towards the Council's Corporate Improvement Program (CIP) GEN 12

1.6 **Risk Management**

Perceived Risk	Seriousness	Likelihood	Preventative Action
Air Quality Action Plan not in place.	High	Low	Agree to steps explained in the report.

1.7 **Other Implications**

1.7.1

1. Financial	X
2. Staffing	
3. Legal	
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	
7. Human Rights Act	
8. Procurement	
9. Asset Management	

Financial

- 1.7.2 Some proposals will need to be considered as part of the budget setting process for the next financial year

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Is this a Key Decision? Yes ☐ No ☒

If yes, when did it appear in the Forward Plan? _____

Is this an Urgent Key Decision? Yes ☐ No ☒

Reason for Urgency

[State why the decision is urgent and cannot wait until the next issue of the forward plan.]

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

Cllr Mark Wooding, Cabinet Member for Environment

Telephone: 01622 602000

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Steve Wilcock, Senior Pollution Officer

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¹ Resolutions are listed as found in the minutes of the relevant meeting.

¹ Insert in this box the Cabinet Member whose portfolio the recommendation falls within.

¹ The Officer/Cabinet Member responsible for responding to the recommendation should indicate in this box either the acceptance or rejection of the recommendation.

If the recommendation is rejected an explanation for its rejection should be provided. The 'timetable' and 'lead officer' boxes can be left blank

If the recommendation is accepted an explanation of the action to be taken to implement the recommendation should be recorded in this box. Please also complete the 'timetable' and 'lead officer' boxes.

¹ The Officer/Cabinet Member responsible for responding to the recommendation should indicate in this box when the action indicated in the previous box will be implemented.

Appendix

Recommendationⁱ	Cabinet Memberⁱⁱ	Responseⁱⁱⁱ	Timetable^{iv}	Lead Officer^v
The draft Air Quality Action Plan be considered by the Committee prior to its approval by Cabinet;	Environment	Agreed. There are several important steps needed to be completed before the action plan can be completed; these were explained to the committee.	By April 2010	Steve Wilcock
The Highways Agency be lobbied to ensure the variable speed limit order is put in place by September 2009;	Environment	Agreed. A letter will be sent to the Highways Agency requesting that the order is put in place and enforced as soon as possible. The matter will also be raised with the HA at the regular liaison meetings	Letter to be sent May 2009	Steve Goulette
Officers ensure that a Supplementary Planning Document with regard to pollution issues is produced in time to feed into the Local Development Framework; and	Environment	Agreed. This is an ongoing document that falls into the Planning Policy timetable.	14-28 weeks from the agreed LDS period. Aiming for September 2009.	Steve Wilcock
Information with regard to what European Standard the Service Buses used for Park and Ride Service meet to be circulated to the Committee.	Environment	Currently contracted from Arriva. Euro 3 using 5% bio-diesel.	As presented.	Steve Goulette

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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