

To all Members

Direct Line: (01536) 535661
Email: anneireson@kettering.gov.uk
Our Ref: AI
Your Ref:
Date: 16th February 2021

Dear Councillor

You are summoned to attend a meeting of **KETTERING BOROUGH COUNCIL** to be held **virtually** on Wednesday 24th February 2020 at **6.00pm**.

This virtual meeting of Kettering Borough Council will be held using Zoom and live-streamed via YouTube. Members of the Council will be sent joining instructions for the meeting by email.

Yours faithfully



G. Soulsby
Managing Director

Instructions for viewing the meeting

To watch the live meeting on YouTube, please follow the instructions below:-

1. Click or visit the following link www.kettering.gov.uk/youtube
2. Select the following video (located at the top of the list):

“Council 24/02/2021”

Working with and on behalf of local people

A G E N D A

1. Apologies
2. The minutes of the Meeting of the Council held on 16th December 2020 to be approved as a correct record and signed by the Mayor
3. Declarations of Interest
 - (a) Personal
 - (b) Prejudicial
4. To receive any announcements from the Mayor and/or the Leader of the Council.
5. Report of the Managing Director.
6. The Mayor to provide details of any pre-registered public speakers

REPORTS:

7. Climate Change Action Plan - Update
8. Regulation of Investigatory Powers (RIPA) Annual Report

MOTIONS, QUESTIONS & MATTERS OF URGENCY:

9. To consider motions received in accordance with Council Procedure Rule 16 as follows:- **None**
10. To receive questions from members.
11. Any matters of urgency that the Mayor decides should be considered.

PUBLIC PARTICIPATION IN REMOTE MEETINGS OF THE COUNCIL

When registering to speak speakers must elect one of the following three options:

1. Provide a written speech which will be read at the meeting by the Mayor or an officer of the council, (such speech must be 3 minutes or less when read at an audible pace)
2. Submit an audio recording of the speech of 3 minutes or less
3. Elect to speak live at the meeting. Speakers must have sufficient internet connection, and must provide a copy of the speech in the event that they are unable to connect to the meeting for any reason. Live speakers will be given only one opportunity to speak live.

Only speakers choosing to speak live in the virtual meeting will be provided with log-in details to access the virtual meeting. Speakers choosing a pre-recorded option will be able to live-stream the proceedings on YouTube.

All speakers will be asked to provide a text copy of their speech to the committee administrator beforehand so that, in the event of losing contact, the Mayor can complete the speech on their behalf.

All audio speech clips submitted must be received no later than midday on the day of the meeting to allow time for them to be uploaded ahead of the meeting.

Members of the public who have registered to speak with the intention of attending remotely should sign into the meeting platform under the same name as they registered. Failure to do so may result in non-admittance to the meeting.

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BOROUGH OF KETTERING

at a meeting of the Council of the Borough of
Kettering held virtually on Zoom on 16th
December 2020

Present:

Councillor	James Burton (Mayor)	Councillor	David Howes
"	Linda Adams	"	Ian Jelley
"	Cedwien Brown	"	Anne Lee
"	Mike Brown	"	Paul Marks
"	Lloyd Bunday	"	Clark Mitchell
"	John Currall	"	Jan O'Hara
"	Ash Davies	"	Russell Roberts
"	Mark Dearing	"	Mark Rowley
"	Maggie Don	"	Mick Scrimshaw
"	Andrew Dutton	"	Margaret Talbot
"	Scott Edwards	"	Mike Tebbutt
"	Jim French	"	Lesley Thurland
"	Ruth Groome	"	Greg Titcombe
"	Jim Hakewill	"	Keli Watts
"	Jenny Henson	"	Jonathan West
"	Philip Hollobone		

20.C.32 APOLOGIES

Apologies for absence were received from Councillors Duncan Bain (Deputy Mayor) and June Derbyshire

20.C.33 MINUTES

RESOLVED

that the minutes of the meeting of the Council held on 23rd September 2020 be approved as a correct record and signed by the Mayor

20.C.34 DECLARATIONS OF INTEREST

Councillor Ruth Groome declared a personal interest as an employee of Northamptonshire County Council Libraries Service.

20.C.35 MAYOR'S ANNOUNCEMENTS

The Mayor made the following announcements:

- Former Mayor, John Coleman

The Mayor informed Council of the death of former Mayor, John Coleman who had passed away at the age of 85. John represented the Piper's Hill Ward on Kettering Borough Council from 1987 until 2003, serving on a number of Committees, including the Planning Committee. In 2000 he was elected Mayor.

John was born in the area and would always be remembered for his vast local knowledge. Together with his wife, Lilian, as Mayoress, they undertook a vast number of civic engagements in 2000-2001, taking every opportunity to promote the Borough and engage with as many local people and communities as they could.

The Mayor expressed condolences to Mrs Lilian Coleman and family on their sad loss.

- Belinda Scowen

The Mayor informed Council of the death of Belinda Scowen on 20th November following a battle with cancer, which was borne with strength and dignity. Belinda was a former Team Leader working in Customer Services. Belinda loved her job, always thinking of others and provided excellent customer services whilst caring for colleagues and residents. She would be sadly missed by her family, friends and colleagues at Kettering Borough Council. The Mayor expressed condolences on behalf of the Council.

A one minute silence was observed in memory of John Coleman and Belinda Scowen.

- Messages of Congratulation and Thanks

The Mayor congratulated Councillor John Currall on becoming Mayor of Burton Latimer and expressed birthday wishes to Councillor Jenny Henson.

Thanks were extended to Councillors and staff for their contributions to The Mayor's charity appeal for donated foreign currency, with particular thanks being given to Councillors Dutton, Stanton, Groome and Watts and Executive Director, Martin Hammond, for their donations.

- Update on Mayoral Activities

Updates were given on virtual activities and events as follows:

- Virtual Christmas tree of lights switch-on for Cransley Hospital
- Virtual Kettering Christmas lights switch-on with Hugh Dennis

- The Rotary Club Carol Service would be live-streamed on 17th December
- The Creative Arts Festival would take place on You Tube on 18th December

The Mayor advised Council that he had sent a letter of congratulations on behalf of the Council to Councillor Tom Beattie, Leader of Corby Borough Council, who had received a Councillor of the Year Award. He had also sent a letter expressing good wishes to Glynnis Hooper of Crazy Hats on her retirement.

Announcement by Councillor Keli Watts (Mayor 2019-2020)

Councillor Keli Watts announced that she had been unable to hold her planned fund-raising Jazz night for the British Heart Foundation due to Covid-19 restrictions. She thanked councillors and officers for help in fund-raising throughout her year of office, announcing that a total of £8,400 had been raised.

20.C.36 LEADER'S ANNOUNCEMENTS

The Leader made announcements in respect of the following achievements:-

- The Council had been shortlisted in the 2020 APSE Best Health and Wellbeing Initiatives Award
- A Rose of Northamptonshire Award had been received by the Shared Services refuse team as part of the Covid-19 Unsung Heroes of Northamptonshire Initiative

20.C.37 REPORT OF THE MANAGING DIRECTOR

No report.

20.C.38 RIGHT TO SPEAK

None

20.C.39 KETTERING TOWN COUNCIL BUDGET AND PRECEPT 2021-2022

A report was submitted which sought Council's approval for:

- (i) the budget for Kettering Town Council for the 2021-2022 financial year; and
- (ii) for a precept to meet that budget for next year to forward on to the Shadow Authority.

During debate, a number of questions were raised on the following matters:-

- The services to be provided by the new Town Council within the submitted budget
- The proposed precept for Kettering Town in relation to the North Northamptonshire budget
- Statutory responsibilities of town and parish councils for elections and allotments
- Costs of accommodation for Kettering Town Council
- The job description for the Interim Clerk
- Responsibility for the market and market charter
- Budget for Neighbourhood Plans

It was noted that the proposed budget included provision for work in connection with the Headlands Neighbourhood Plan, which was due to be completed in 2021. The Portfolio Holder for Finance agreed to circulate the job description for the Interim Clerk by e-mail following the meeting, pointing out to Council that duties included accounting and administration duties and designation as Kettering Town Council's Responsible Finance Officer. Accommodation costs included in the budget were based on market costs.

In relation to the proposed precept for Kettering Town Council, it was noted that it would be for the Town Council and the unitary council to make decisions on any responsibilities for services the Town Council might provide on behalf of North Northamptonshire Council in the future, and the figure provided only took account of those services already agreed by the Borough Council should transfer. The proposed precept was under £140,000, and thus there was no requirement for formal consultation.

(Councillor Michael Brown left the meeting at 6.33 pm)

RESOLVED that

- (i) the budget as set out in Appendix 1 to the report be approved; and
- (ii) a precept of £8.00 (Band D equivalent) Council Tax be notified to the Shadow Authority for 2021-2022.

(Voting: 29 for; 1 against)

20.C.40

CLOSEDOWN MEASURES – COMMITTEE MINUTE SIGN-OFF

A report was submitted which sought approval to delegate authority for the sign-off of final sets of committee and forum minutes to the Monitoring Officer in consultation with the Chair of the relevant committee/forum.

A request was made for an additional informal joint geographic forum meeting to be held on the subject of the unitary budget. The Deputy Leader agreed to investigate the suggestion. However, it was noted that consultation on the proposed unitary budget was currently ongoing, providing an opportunity for individuals to have their say.

RESOLVED that authority be delegated for the sign-off of final sets of committee and forum minutes to the Monitoring Officer in consultation with the Chair of the relevant committee/forum.

(Voting: Unanimous)

20.C.41 **MOTIONS**

None

20.C.42 **QUESTIONS FROM MEMBERS**

Zoom Meetings

Councillor Anne Lee asked the Deputy Leader the following question:

“Is KBC prepared to adopt a more flexible procedure for speakers at the Council’s public Zoom meetings, by allowing those speakers to join the relevant publicly broadcast Zoom meetings from the start with their video and sound muted? It would allow these speakers to follow the debate in real time before being unmuted, similar to physical meetings in the Council chamber, instead of being placed at a disadvantage because of the time lag. If not, why not?”

The Deputy Leader responded as follows:

“The purpose of placing speakers in the waiting room mirrors the practice in physical meetings where speakers are asked to sit at the committee table for the length of their contribution.

For viewers on YouTube, the retention of speakers, especially if there were lots of them, would potentially confuse those watching about who was a decision maker and who was not, which is why we have adopted the practice we have.

Committee Managers no longer have any control over the ability of Zoom meeting attendees to unmute themselves or to quickly remove video feeds for speakers.

Although causing some inconvenience, clarity about who is a committee member and who is exercising the right to speak remains important.”

Cllr Lee asked the following supplementary question:

"Does the assumption that speakers will turn on their video and microphone before and after they are allowed to do so illustrate that some councillors consider themselves as public masters rather than public servants."

The Portfolio Holder for Housing and Communications replied as follows:-

"No, I don't see it this way, but speaking from a practical point of view as Chair of the Planning Committee, it would have been possible to have had 21 speakers on 7 items at last night's meeting. No complaints have been received from members of the public."

The Deputy Leader added the following comment in response to the supplementary question.

"These are strange times. It is about how we can operate rather than how we would like to. Practicalities must be taken into account. People can still watch the live stream."

20.C.43 MATTERS OF URGENCY

None.

20.C.44 DATE OF NEXT MEETING

It was noted that the penultimate meeting of the Council would take place on 24th February 2021, with the final meeting scheduled for late March.

(The meeting started at 6.00pm and ended at 6.45 pm)

Signed

The Mayor

AI

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Report Originator	Interim Head of Development Services	<i>Fwd Plan Ref No:</i> N/A	
Wards Affected	ALL	24 th February 2021	
Title	CLIMATE CHANGE ACTION PLAN – UPDATE		

1. PURPOSE OF REPORT

1.1 The purpose of this report is to:

- a) Update members on the current National and International responses to Climate Change
- b) Update members on the progress that has been made on the actions to be undertaken by this Council to help address Climate Change as set out in October 2019.

2. INFORMATION

2.1 Members will recall their Climate Emergency Declaration and the commitment to achieve net zero carbon emissions for Kettering by 2030. In October 2019 an Action Plan was endorsed by the Executive Committee setting out the recommendations for a range of measures and activities that would be taken by this Council over the remaining life of the Authority to combat climate change.

2.2 This report is the final update on that Action Plan but it also seeks to set out the national and international context of this challenge, particularly in light of the COVID pandemic.

2.3 Going forward the Council’s actions will need to be subsumed within a wider plan for North Northamptonshire and the new unitary authority will be developing policy and plans in order to address this major challenge. To this end a Task and Finish Group has already been established as part of the Shadow Authority apparatus to consider the issues and make recommendations for how the new authority will proceed.

2.4 In terms of the effect of the pandemic on global warming scientists believe that this will be negligible. A report from the World Meteorological Organisation (WMO) in November 2020 states that carbon emissions fell by 17% at their peak thanks to the global lockdowns, primarily due to reductions in surface transport and industry and reductions in their emissions. However, this has only marginally slowed the overall rise in concentrations in the atmosphere, the scientists say. Preliminary estimates suggest that CO² will continue to increase this year but that rise will be reduced by 0.08 to 0.23ppm which is within the 1ppm natural variability

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that occurs from year to year. The report suggests that by 2030, global temperatures will only be 0.01C lower than expected.

- 2.5 However, there is some optimism that the nature of the recovery could significantly alter the longer-term outlook and a strong green stimulus could keep the world from exceeding 1.5C of warming by the middle of this century.
- 2.6 Significant progress has been made nationally in decarbonising the electricity supply. Renewable generation comprised 40.2% of total generation, just slightly less than the fossil fuel share at 42.5% for Q3 2020. This trend is set to continue and therefore focus will need to move to more local emissions such as housing, transport and industry to reduce these as they represent the areas where major decreases can be achieved. Local Government will need to be in the vanguard to help achieve these reductions.
- 2.7 The following section summarizes the national and international picture in respect of achieving the Paris Climate Agreement targets and net zero carbon commitment by 2050 by the UK Government. Section 4 provides an update summary on the progress of activities within the Kettering Borough Council Climate Change Action Plan.

3. NATIONAL AND INTERNATIONAL PROGRESS ON CLIMATE CHANGE

- 3.1 The Paris Agreement is a legally binding international treaty on climate change. <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

It was adopted by 196 Parties at COP 21 in Paris, on 12 December 2015. Its goal is to limit global warming to well below 2, preferably to 1.5 degrees Celsius, compared to pre-industrial levels.

- 3.2 The United States of America is set to re-join the Paris Agreement and Britain in partnership with Italy will host COP26 (Conference of the Parties) <https://ukcop26.org/> in Glasgow this November to renew efforts to achieve the goals of the Paris Agreement.
- 3.3 A recent report from World Resources Institute (WRI) concludes that the latest science shows that emissions will need to drop by half by 2030 and reach net-zero by mid-century to meet the Paris Agreement's goal and prevent the worst impacts of climate change. The State of Climate Action report assessed 21 indicators across six key sectors. Of all the indicators assessed, two show a historical rate of change sufficient to meet both 2030 and 2050 targets; 13 indicators show change headed in the right direction, but too slowly; and two show change headed in the wrong direction altogether. Data are incomplete to assess progress in four indicators. Progress, therefore, internationally is happening too slowly.

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- 3.4 The UK Government pledged to reduce carbon emissions to net zero by 2050 in June 2019 and was the first G7 nation to legislate for this. The Climate Change Act 2008 requires the government to set five-yearly carbon budgets, after taking advice from the Climate Change Committee (CCC). These run until 2032.
- 3.5 The CCC published its recommendations for the UK's Sixth Carbon Budget which will run from 2033 to 2037 in December 2020. Their recommended pathway requires a 78% reduction (a 63% reduction from 2019) in UK emissions between 1990 and 2035. In effect, bringing forward the UK's previous 80% target by nearly 15 years. <https://www.theccc.org.uk/publication/sixth-carbon-budget/>

The CCC maintain that the Sixth Carbon Budget can be met through four key steps:

Take up of low-carbon solutions. People and businesses will choose to adopt low-carbon solutions, as high carbon options are progressively phased out. By the early 2030s all new cars and vans and all boiler replacements in homes and other buildings are low-carbon – largely electric. By 2040 all new trucks are low-carbon. UK industry shifts to using renewable electricity or hydrogen instead of fossil fuels, or captures its carbon emissions, storing them safely under the sea.

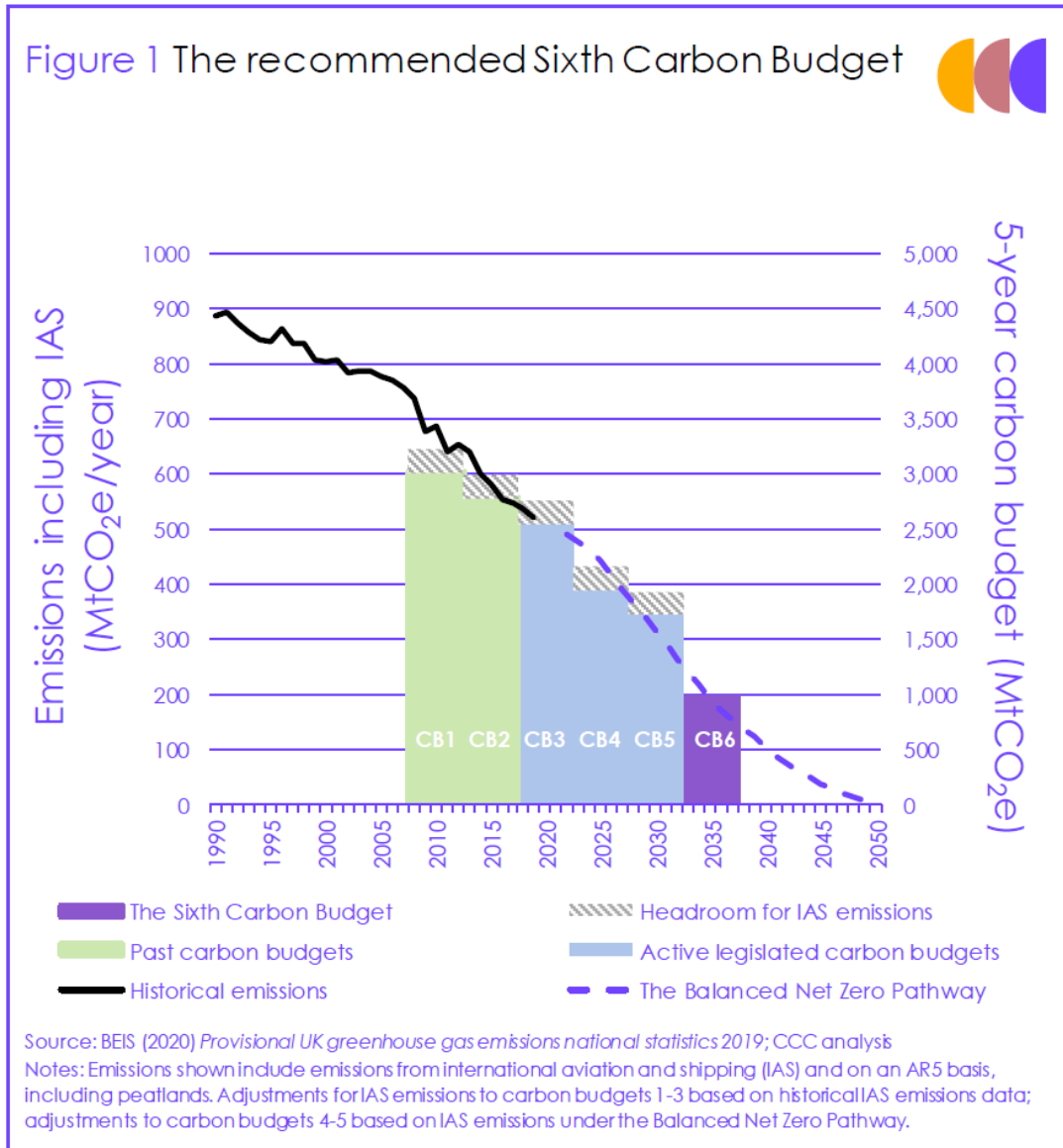
Expansion of low-carbon energy supplies. UK electricity production is zero carbon by 2035. Offshore wind becomes the backbone of the whole UK energy system, growing from the Prime Minister's promised 40GW in 2030 to 100GW or more by 2050. New uses for this clean electricity are found in transport, heating and industry, pushing up electricity demand by a half over the next 15 years, and doubling or even trebling demand by 2050. Low-carbon hydrogen scales-up to be almost as large, in 2050, as electricity production is today. Hydrogen is used as a shipping and transport fuel and in industry, and potentially in some buildings, as a replacement for natural gas for heating.

Reducing demand for carbon-intensive activities. The UK wastes fewer resources and reduces its reliance on high-carbon goods. Buildings lose less energy through a national programme to improve insulation across the UK. Diets change, reducing our consumption of high-carbon meat and dairy products by 20% by 2030, with further reductions in later years. There are fewer car miles travelled and demand for flights grows more slowly. These changes bring striking positive benefits for health and well-being.

Land and greenhouse gas removals. There is a transformation in agriculture and the use of farmland while maintaining the same levels of food per head produced today. By 2035, 460,000 hectares of new mixed woodland are planted to remove CO² and deliver wider environmental benefits. 260,000 hectares of farmland shifts to producing energy crops. Woodland rises from 13% of UK land today to 15% by 2035 and 18% by 2050. Peatlands are widely restored and managed sustainably.

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3.6 A graph to show the reduction of carbon emissions against successive carbon budgets to achieve net carbon zero if recommendations followed is provided below in Figure 1. Taken from 'The Sixth Carbon Budget - The UK's path to Net Zero' Dec 2020.



3.7 Within the supporting documents published with the UK's Sixth Carbon Budget are a range of sector reports which set out recommendations for how these industries/sectors will achieve net carbon zero by 2050. A report has also been produced for the Local Government sector to provide a framework for aligning climate action at the local level with the CCC's pathways for the UK.

The key recommendations from the report are that:

- The UK Government and local authorities share a common goal to deliver Net Zero.

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- The Sixth Carbon Budget can only be achieved if Government, regional agencies and local authorities work seamlessly together.
- More than half of the emissions cuts needed rely on people and businesses taking up low-carbon solutions – decisions that are made at a local and individual level. Many of these decisions depend on having supporting infrastructure and systems in place. Local authorities have powers or influence over roughly a third of emissions in their local areas.
- Top-down policies go some way to delivering change, but can achieve a far greater impact if they are focused through local knowledge and networks.
- Four key things are needed to achieve this vision of collaborative delivery:
 - **Framework:** An agreed framework for delivery for Net Zero incorporating local and national climate action
 - **Financing:** Appropriate long-term financing to support local authorities in delivering Net Zero
 - **Flexibility:** Local operational flexibility around how local areas address climate change
 - **Facilitation:** Coherent policy and powers for the facilitation of delivery.

3.8 Unfortunately, existing 2030 commitments globally do not yet match the long-term targets and still fall far short of what is needed to meet Paris Agreement targets. As host of COP26, the UK will need to send a clear signal that it is contributing fully to the Paris Agreement by setting a world-leading 2030 ambition and taking strong action now to move decisively onto the path of its long-term Net Zero ambition.

4. COMMITMENTS TO ACTION – UPDATE

4.1 The Council's Action Plan set out in October 2019 covers a range of direct actions in themed areas which the Council, as a service provider, was committed to make progress against before it became part of the new unitary authority. The update below builds on the mid-year report provided to the Monitoring and Audit Committee and represent the final annual report on this Climate Change Action Plan.

4.2 Many of these actions (and new initiatives) will be picked up by North Northamptonshire Council to drive the ambition to reduce carbon emissions locally and contribute to the national targets. To this end a Task and Finish Group has been set up by the Shadow Authority and recommendations will be produced in order to set the new Council off on the right footing.

4.3 Biodiversity and the Natural Environment

- *Double the amount of tree planting from the current average of 250 per year to 500 per year.*

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There has been substantial progress on this commitment. The Council plants 250 trees per year within its open space areas, parks and developments. The target level of planting was doubled to 500 trees for this year. Notable areas of planting include;

- Meadow Road Park has 20 new trees, including species such as alder, birch, rowan, field maple and cherry trees through the park (February 2020).
- Desborough Green Space has over 100 new trees, where some were donated by the Boughton Estates and others were funded by local people.

COVID19 restrictions has caused delays in obtaining saplings due to supply chain issues. However, substantial stocks are on order and awaiting arrival and planting will recommence imminently.

In addition to this Wicksteed Park planted 420 trees in March 2020 as part of the campaign run by the Woodland Trust.

- *Undertake a programme of reduced verge grass cutting to encourage biodiversity and design an associated communications plan to accompany that.*

This commitment has been delivered and received very well. The Environmental Care team are running an ongoing campaign called 'Pardon the Weeds – We are Feeding the Bees' which involves operatives considering which verges have early pollen plants within them and leaving these so that bees and other pollinators can access them and cross pollinate. The verges then get cut later in the season. A sign is staked in the verge letting people know why this has not been cut (see photo below). The campaign started in March 2020 and will be expanded for next year. Information on this was pick up and recognised by others as far away as Australia and an International Green Apple Award for best Environmental Practice has just been award to the Environmental Care team for the project. Later in the year the team were also the recipients of the Bees Knees Awards 2020 from DEFRA for providing food and habitats for pollinating insects. This campaign and alteration to cutting regimes on verges and other areas will be widened and enhanced for 2021.



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• We are aware there are growing issues around the use of glyphosate particularly with regards to the safety of the workforce and the effect on pollinators and the wider environment. We aspire, that from next year, we will spray strategically and not everywhere, in readiness for the impending ban on the use of glyphosate.

This commitment has been implemented. It is estimated that over the whole of the year the amount of glyphosate chemical that the Council uses on sites and in gullies and on paths to reduce weeds has been cut by at least a half. Use of it on football pitches and in formal parks has ceased. There are plans to review the use of this chemical further and potentially reduce it further. The service is assessing the formal cleansing rounds of the Town Centres and housing areas – where this has historically been used and considering whether to continue existing practice and use or whether more strimming and other methods of controlling weeds can be used.

4.4 Transport

• Begin the roll out programme of installation of Electric Vehicle Charging points in car parks.

This commitment has been achieved. The Council procured a contractor to install EV charging points within its main Kettering Town Centre car parks. This has provided 4 charging bays at each of the London Road, School Lane and Commercial Road Car Parks, which increases the level of public chargers available in Kettering town centre by 600%. These works were planned to be completed in April 2020, however, due to delays caused within the supply chain, by the COVID-19 pandemic all of the EV chargers were operational on 14th September 2020. The Council has posted information on its website regarding the EV chargers and how to use them. Further charging points are being planned at the Kettering Warren Hill site.

The County Council has also progressed its project for rolling out new on-street electric vehicle charging points across the County. Following consultation 3 locations have been confirmed for Kettering through the Virgin Media Park and Charge (VPACH) project and it is anticipated that installation of these chargers will occur in Q1 or Q2 of this year.

Private companies are also continuing to expand the EV charging network in Kettering Borough. Chargers are available now at the BP garage to the north of Desborough on Bear Way (2), the new Costa Coffee on Cransley Park Road (4) and the new McDonalds (4) at J10 of the A14.

The Country is still awaiting the decision by Government, following consultation on changing building regulations in England, that all new-build houses will be fitted with an electric car charging point. This would significantly increase the roll out of home charging points across the Country and would complement the type of schemes the County Council is implementing to get more chargers in existing urban areas where there is limited off street parking by providing on-street chargers.

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- *Ensure that any new fleet procured will be specified as low emission where an electric vehicle is not yet cost effective or available (e.g. refuse & recycling Trucks)*

Good progress is being made in respect of this commitment. During the latest fleet renewal process all relevant options including service requirements, cost, infrastructure and the impact of the fleet going forward have been considered.

The 'light vehicle' fleet is predominantly Ford and comes with the EcoBlue diesel engine which meets Euro6 standards. 110 vans are in the process of being replaced up to April 2021.

The vehicles include fuel saving technologies such as auto stop-start systems, gear change indication to aid economical driving and a selective management systems that uses AdBlue to convert certain emissions in the exhaust gas into nitrogen and water.

The waste collection vehicles have Euro6 standard engines and automatic transmission for increased efficiency. The Service will continue to review the practicality of procuring electric and hybrid vehicles as these become better adapted to commercial usage and tasks.

- *Install secure bike storage racks within Kettering town centre and in other locations to encourage more cycling.*

Significant progress is being achieved toward this pledge. Community Development has undertaken consultation to identify where cycle routes should link to and from the Town Centre and where cycling facilities would best be located. 66% of respondents felt the town centre would benefit from better cycle storage and the following locations were seen as the most favourable.

1. KGH
2. Kettering Train Station
3. KBC Car Parks

Further detailed options need to be investigated and collated before consultation on cycling storage facilities can be undertaken with the cycling community. However, certain projects have integrated within their proposals cycle storage facilities so that these can be brought forward more rapidly within the town centre. The High Street Heritage Action Zone public realm works to the High Street and Meadow Road will incorporate a cycle storage facility at the very heart of the town centre retail area. East Midlands Railway are also upgrading their cycle storage facility at Kettering Station into a Cycle Hub. The enhanced facilities will provide for 180 cycle parking spaces complete with CCTV, lighting, and access control. Timescales for the project completion are early 2021.

The Local Cycling and Walking Infrastructure Plan (LCWIP) will also improve cycling and walking facilities across the town, as a whole, in the medium to long

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term. The LCWIP is considered to be a strategic approach to identifying cycling and walking improvements required at the local level. They create a long-term approach to developing local cycling and walking networks, ideally over a 10 year period. Kettering's LCWIP is being led by KBC with £50,000 being provided by NCC for modelling and other technical work and £30,000 match funding from KBC for a project manager to coordinate the scheme on behalf of the Council. Once adopted this will put the Council in a strong position to bid for funding and resources to enhance this infrastructure. It is anticipated that this project will take approximately 12 months to complete.

In addition to these initiatives the County Council has introduced with Voi an E-Scooter trial within Kettering. This is an initiative to allow people to hire e-scooters to get around the town helping to take the pressure off Kettering's public transport during lockdown but also providing alternatives to the car reducing congestion and pollution in the long-term. Since launching the scheme in December 2020 it has been very well received even during the current lockdown and Voi are heavily focussed on safety aspects of the trial which exceed U.K. Government requirements. There are regular in-person and online rider education tuition, such as Voi's '*RideLikeVoila*' online traffic school.

In January 2021 a trail for E-bike hire in Kettering was also launched by Voi making Kettering one of the first towns in the UK to offer Voi's multimodal offer to its residents, giving them two new flexible and carbon-neutral transport options. Twenty e-bikes are available to rent in Kettering initially during the trial. The e-bikes will be bound by the same geographical area as e-scooters. Voi e-bikes/e-scooters use geofencing to ensure no ride, slow ride and no parking zones are observed, and they will be fitted with number plates to make it easy to identify and report. Certain areas within the town such as the Hospital will be designated as hubs where the bikes and scooters can be picked up and dropped off.

Finally, the County Council made use of covid related government funds to put down an experimental cycle lane on the carriageway of St Mary's Rd, which will be evaluated in due course for its effectiveness and compatibility with motorised traffic.

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4.5 Energy Use

- *Extend the scope of the of the 'Homes for the Future' project by completing the remaining pre-war council housing in Desborough and refurbishing further properties in Rothwell*

This commitment is on target to be delivered. Funding for these projects is included within the Council's capital programme for 2020/21 and the contract to deliver these upgrades began in November 2020. Progress has been slower than intended due to COVID19 restrictions, however, it is anticipated that works will be complete by the end of May 2021.

The works have been approved for the Homes for the Future project at Harrington Road and Alexandra Road, Desborough and Cambridge Street and Spencer Street, Rothwell. This involves the refurbishment of 12 properties in Desborough and Rothwell. The Homes for the Future project, in particular, aims to extend the useful life of existing older housing by more than thirty years and to upgrade properties so that they offer levels of insulation and energy efficient heating comparable to new build houses. The project will cost approximately £800,000 to deliver and although it commenced slightly later than anticipated it is projected to be completed by the end of May 2021 instead of June 2021 as originally envisaged.

- *Ensure that new Council housing developments include high levels of insulation and energy efficient heating with low running costs.*

This commitment is being delivered within Council new build projects although some delay has occurred on certain sites. Affordable housing schemes at Albert Street, Scott Road, Stamford Road and the Lawrences site will incorporate high

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levels of insulation and energy efficient heating in order to minimise running costs. Work on the Albert Street project is now underway with foundations and blockwork in progress. The contract for Scott Road is now signed and work commenced on site in February 2021. The other schemes are in the pipeline but have been delayed due to COVID19 restriction and planning issues. However, all of these projects will be delivered over the course of the next 12-18 months.

The Government has consulted on an uplift to Part L of the Building Regulations which will set the new Future Homes Standard (see above) and the responses to this are currently being assessed. This includes proposed options to increase the energy efficiency requirements for new homes in the future. The Future Homes Standard will require new build homes to be future-proofed with low carbon heating and high levels of energy efficiency; it will be introduced by 2025. This will enable Kettering to deliver new low carbon homes in the near future. Ahead of this the Council's Planning Service will be working with all developers to investigate whether higher levels of energy efficiency can be achieved on some individual schemes ahead of this becoming legislation. Some planning consents have recently been granted which demonstrate how far thermal insulation and carbon reduction can be taken in new build housing showcasing what can be done.

4.6 Reduce, Reuse, Recycle

- *Begin the roll out of recycling litter bins across the borough starting in parks and open spaces.*

Achievement against this commitment is being re-evaluated. Consideration of how recycling bins in public areas can best be introduced is still on-going to ensure that the objective of single waste stream (without contamination) can be achieved. Otherwise contaminated waste has to be landfilled and the purpose of segregating waste streams is lost.

- *Further promote recycling services in commercial properties directly managed by the Council.*

Progress is being made against this commitment. The Environmental Care team continues an on-going dialogue with Property colleagues and business tenants of the Council to encourage them to increase recycling and to provide better co-mingled waste streams that are high quality and demonstrate low levels of contamination. There are also discussions being had for food waste collection from commercial customers.

4.7 Procurement

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- *Where relevant, request that carbon reduction and climate change principles form part of the Council's procurement process. The supplier will be required to give consideration to climate change and how it impacts in delivering the contract.*

This commitment has been achieved. This has now been completed and has been incorporated into KBC's procurement process. Where relevant suppliers will need to give consideration to climate change and how this impacts their delivery of the contract and will be part of the assessment of award of contracts. Procurement tools, given the spending power of the Council, will be a significant way of influencing suppliers and partners in delivering greener services and projects for the Borough.

- *Ensure that energy efficiency proposals and requirements are considered in the programme of new build Council housing stock that this Council is committed to build in the next 18 months, for example, the developer will be required to demonstrate that the building, infrastructure, design and operation reflects known or anticipated carbon / climate change impacts so that such impacts are minimised as far as is practicable.*

See 4.5 above. This procurement for new build housing stock and also refurbishment of existing stock requiring energy efficiency consideration is already happening.

4.8 Planning Policy and Renewable Energy

- *Promote and support energy schemes that include Wind, Solar and other renewable technologies and include proposals for reduced energy use in new housing and commercial developments.*

There is significant progress being made against this commitment. The Council's Planning Service takes a positive and proactive approach to seeking high standards of resource and energy efficiency reducing carbon emissions from buildings as required by Policy 9 of the North Northamptonshire Joint Core Strategy and the Sustainable Design Supplementary Planning Document.

Bunzl development – Segro Kettering Gateway Site - This 230,000 sq.ft. warehouse facility is the first to be built at the site to a high eco specification, as part of an outline planning consent to deliver a total of up to 1.2 million sq ft. of industrial and warehouse space.

Developed to the highest specification, featuring up to 18-metre high eaves and 10 Megawatts of power available on the site, SEGRO Park Kettering Gateway incorporates first-rate sustainability credentials, including carbon neutral build options, rainwater harvesting, solar thermal heating and a minimum BREEAM 'Very Good' rating. The Council will continue to work with SEGRO and other developers to bring forward low carbon and energy efficient schemes.

Grafton Underwood Solar Farm - Planning Permission has been granted for the construction of a Solar Park for a temporary period of 30 years. The proposals

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include the installation of solar photovoltaic panels to generate approximately 38MW of electricity which would enable export of the electricity to the local electricity grid. This would generate enough low carbon electricity to power approximately 11,400 homes every year or 27% of all the dwellings within the Kettering Borough Council Area (Census 2011).

Kettering Energy Park – The Development Services Department continues to work closely with the scheme promoters for the Kettering Energy Park to bring forward a masterplan to enable businesses to locate on the energy park and to take advantage of the local renewable energy being produced by the existing wind turbines and future solar arrays that have planning permission. It is anticipated that consultation on this masterplan will occur during 2021.

• *Ensure that tree planting of British native species is included in new developments coming forward and fully implement Policy 21 of the North Northamptonshire Joint Core Strategy (Rockingham Forest) which seeks to deliver 40ha a year of new tree planting.*

This commitment has seen significant progress. The Forest for Life – Rockingham Project was designated as one of only five climate change schemes nationally to pilot a Carbon Sink Forestry project. This was supported through Policy 21 of the North Northamptonshire Joint Core Strategy which helps to provide developer contributions to allow landowners to plant up to 40ha of trees per annum. Since 2013 a minimum of 16ha of land has been planted with approximately 35,000 trees which have been a mix of native broadleaf trees including Oak, Beech and Hazel providing a range of environmental and landscape benefits. Much of this has been on the Boughton Estate in Kettering. The River Nene Regional Park, which operates this scheme, is now redoubling its efforts to work with landowners to provide grants to allow this planting to continue and at a more expansive pace. A new Project Officer has been appointed, with match funding provided through the Joint Planning Unit, to focus on bringing forward land parcels with landowners for planting.

Proposal to advance the strategic landscape planting for Hanwood Park would mean that significant numbers of trees (in the region of 25,000) will be planted and established on this development over the next 2 years. The immediate planting proposals around the linear park and Access E, Access F and the Central bowl were due for completion in Nov 2020 and this has resulted in over 5,000 trees being planted. The schedule of planting is set out below.

Ornamental trees: 461 (planted as large individuals)
Native shrub beds: 3917m² (0.4ha) – estimated 4,500 native woody shrubs
Native woodland: 15533m² (1.5ha) – estimated 3,750 trees
Native hedges: 624m – estimated 3,120 hedgerow shrubs and trees

4.9 The Council's Business Activity

• *Significantly reduce our paper use and encourage more use of digital & electronic dissemination of information, including for KBC committees and fora.*

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Good progress is being achieved against this commitment.

Parking & CPE

The opportunity has been taken to implement virtual permits to give customers the ability to not require paper permits. The PCN bags affixed to windscreens are biodegradable. The PCN ticket length has been reduced from the ECN ticket length of 15 inches to 10 inches (saving a third on the paper used).

Planning

The decision has been taken to stop printing paper copies of the planning application weekly list and copies of committee reports. This has saved a significant amount of printing and paper which had been distributed to a large circulation list. A project has also been implemented to digitise historical paper records within Planning and Building Control services. This will reduce storage needs, improve the recall of historical data electronically and decrease the need for retaining paper records.

The current coronavirus crisis has meant that the Council has needed to learn to work in different ways; working from home, using more tele and video-conferencing which will reduce the amount of paper the Council uses and the need to travel to meetings. We will need to take these lessons and learning points forward to ensure that less resources are continued to be used in future when the crisis is over.

- *Reduce work vehicle movements and encourage different ways of working or modes of transport.*

The progress against this commitment needs to be measured after the Coronavirus lockdown restrictions are lifted. A massive change to the way we work and travel has been forced onto the Country through successive lockdowns since March 2020. It will be seen, whether as a nation, we are able to embed some of these changed behaviours into life after lockdown – i.e. increased working from home, buying more locally, reducing vehicular travel and increasing cycling and walking.

Through the Council's Planning Service planning applications are also assessed on the grounds of sustainability which includes accessibility to other forms of transport than the private car. The provision of alternative safe forms of travel to and from new developments helps to reinforce sustainable methods of movement.

- *Review our options for increasing the amount of renewable energy sources within our existing energy contracts*

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This commitment has been achieved. The Council's energy contracts have been reviewed and these have all now been changed to renewable tariffs which means the Council is powering all of its buildings and services on renewable energy.

- *Empower our staff to identify ways to reduce waste and conserve natural resources, starting with a staff awareness campaign that will include key messages through newsletters, core brief, staff meetings.*

This commitment is on-going. Council teams are already considering how to increase the awareness and practice within various departments of reducing waste and minimising energy consumption. These messages will continue to be pushed down through the organisation and officers will be empowered to consider spend to save initiatives which could reduce the amount of resources that we use to run our operations and deliver our services.

4.10 Catalyst for Change

- *Encourage and incentivise walking and cycling as a healthy activity. We launched "Beat the Streets" in October, a 6-week programme to encourage walking and cycling across the Borough. Over 5000 people had signed up in the first week. We will seek to ensure that a legacy programme of healthy activities continue beyond this scheme.*

This commitment has been achieved. The 'Beat the Street' campaign has been a significant success story helping to get people fit and healthy while also reducing the number of vehicle trips for short journeys.

The overall number of participants were 8,629 taking part in the 'game' with over 85,000 miles covered. Some further data from the activity is as follows;

- 21 Primary schools took part in Kettering
- One of the six game phase weeks focussed on Go Travel to encourage active travel to school or work, which included the promotion of cycling in the area.
- Children walking to school increased from 54% before BtS to 66% after the game, along with an increase in walking home from school from 49% to 60%
- As part of the legacy plans, we had hope to run some cycling sessions over the summer holidays in 2020, but due to COVID restrictions, these are on hold until the restrictions lessen, as well as working with partners such as Brightkidz to encourage walking to school and encouraging schools to take up the Daily Mile Scheme and for them to engage in awareness weeks/days associated with active travel.
- We had also hoped to run some scooter sessions as well, but again COVID restrictions has also put these on hold.

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• Help deliver more cycle lanes – Provision exists within the S106 Agreements for East Kettering and Kettering Gateway for contributions towards cycle lanes alongside Barton Rd and Deeble Rd and these are in the early design stage with NCC. A continued dialogue with NCC to explore opportunities to include new cycle provision can be maintained through existing channels, but with more emphasis.

Good progress has been achieved against this commitment. The provision of cycle lanes within larger developments will continue to be delivered as required by the various planning permissions that have been granted. Where contributions have been provided to link cycle ways outside of development areas these will help to form part of the funding package which can be utilised to deliver the LCWIP or other cycle infrastructure which is being programmed independently. Further acceleration of design work for Barton Road and Deeble Road cycle lanes required due to a delay caused by the COVID pandemic.

• Promote an increased programme of community litter picks during 2020. Programme Spring Clean will work with community groups, providing equipment and publicity to encourage litter picks, recycling and to reduce the amount of future littering across the borough.

Slow progress has been made against this commitment due to the COVID19 pandemic. This has resulted in the increased programme being put on hold for successive months, as people have been required to stay at home to help save the NHS and not spread the virus.

However, the Environmental Care service is still liaising with many groups whom are rearranging their community litter picks, when lockdowns are lifted, where the Council supplies equipment and collects the waste, in addition discussing any additional support that can be provided to ensure the Borough is at a high standard of cleanliness. Promotion of school visits, when possible, are also being carried out with visits by the mechanical sweeper along with Question and Answer sessions set up to promote the recycling and reduction of litter across the Borough.

• Set up and promote a “Plastics Pledge”. This will be a Borough wide project that encourages individuals, organisations and businesses to sign up to a pledge to responsibly recycle, reuse plastic bags and containers and refrain from buying single use plastic products.

This commitment has not been met. A Plastic Pledge was to be launched to coincide with Earth Day on 22nd April 2020. This would have included an on online campaign shared borough wide. However, in light of the current COVID pandemic it would be preferable to postpone this so that it can be launched when greater impact can be made.

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- *Develop a dedicated web presence that will:-
Provide an advice and support package for “green” business.
Gives advice and support to local residents; and
Promote good practice across the borough
Incentivise business to improve practices by sponsoring an annual award for good practice in business.*

This commitment has been achieved. The Council has developed a dedicated web presence providing advice and information on what the Council and other stakeholders are doing in respect of climate change for residents and businesses. The link for this is <https://thisiskettering.com/climate>

A number of Environmental Awards exist, such as the Green Apple Awards <https://thegreenorganisation.info/awards-home/> an international organisation based locally in Northamptonshire, and it was considered more effective in the remaining lifetime of the organisation to promote Council projects and other activities within the Borough through these established award programmes. In future the new Unitary Authority will need to take a decision on how best to incentivise local businesses to adopt best practice and this will be a piece of work for the Economic Development team in the new authority.

4.11 COVID Pandemic - Impact on Climate Change and Air Quality

The lockdowns imposed across the globe and the associated reduction of economic activity have caused large reductions in greenhouse gas emissions (along with life-shortening air pollutants) from transportation and industrial activity. The International Energy Agency (IEA) expected global CO² emissions to decline by 8% in 2020 compared to 2019 (IEA, 2020). This temporary drop in emissions, however, will be inconsequential for climate change unless followed up with strong climate policy action. First, what matters for climate change is the stock and the composition of greenhouse gases in the atmosphere, not the short-term flows. Second, while past crises, including the 2008 Global Financial Crisis, have all been associated with temporary drops in emissions, these reductions have been more than compensated by stronger growth of emissions in the following years. The Organisation for Economic Co-operation and Development (OECD) and other agencies are therefore calling for the current stimulus packages and economic recovery strategies to fully embrace the opportunities to enable a radical transition to a carbon low economy. While there has been a pleasant improvement in air quality in many locations around the world this has to be sustained as the planet moves into the recovery phase.

More locally the Council's Annual Status Report has been submitted to DEFRA and initial comments regarding the report are very positive. Overall nitrogen dioxide levels have reduced within the Borough and air quality specialist consultants have undertaken a review of the diffusion tube locations, including the list provided by members of the M&A committee, and are in the process of actioning the findings of that review. In terms of promoting improved air quality the Electric Vehicle charging points in London Road, School Lane and

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Commercial Road car parks, now fully operational, will assist. Sequencing of the London Road/Bowling Green Road traffic lights will also reduce standing traffic and will improve air quality at one of the worst spots in the Borough which is nearing the point where an Air Quality Management Area (AQMA) may need to be declared if improvements are not seen.

Continued and accelerated work is required at a national and local level to ensure the climate change crisis is addressed and the carbon reduction policies and plans are established which will meet the stated national and local targets and also help to drive up air quality standards.

5. CONSULTATION AND CUSTOMER IMPACT

- 5.1 The range of actions and incentives outlined in Section 4 of this report has required significant consultation and engagement with local stakeholders.
- 5.2 The Council recognises that these initiatives cannot be undertaken alone and there are a range of stakeholders, groups and organisation that have a wealth of expertise and positive energy that can enhance and support this programme. The best means of engaging with them has been worked out with those local groups, on a case by case and project specific basis.
- 5.3 This has not only been appropriate for the initiatives where the Council is the catalyst for change but also with regard to service provision. For example, the action to install secure bike racks has also needed to engage cyclists in their design and location.

6. POLICY AND RESOURCE IMPLICATIONS

- 6.1 A number of the proposals contained in this report have a direct financial impact to KBC and a number of the proposals whilst having no direct financial implications, will require existing KBC staffing resources to secure funding or delivery through a third party.
- 6.2 A number of proposals within this report have required further costings to be undertaken, for example the installation of bike storage units – any initiatives that could not be met from within existing revenue or capital budgets have been brought back to meetings of the Executive or Council dependent on the level of resources required.
- 6.3 Where the activity is to be delivered by a third party, such as NCC for on-street electric vehicle charging points in Kettering borough or via a Section 106 (Developer Contribution) for cycle ways on new housing developments, the Council will work with the third parties to seek to deliver the necessary outcomes.

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7 LEGAL AND EQUALITY IMPLICATIONS

- 7.1 Kettering Borough Council being a statutory authority can only act within its legal powers in executing any action to promote climate change. Parliament has not passed any climate change legislation to mandate particular action on local authorities.
- 7.2 Public authorities have specific functions and duties which are neither shared nor replicable. Any adopted plans or policies to further climate change must be within Kettering Borough Council's powers as a borough council in Northamptonshire.
- 7.3 The Council must act within its powers and not encroach, without their consent, on the functions of other statutory authorities or government agencies including the County Council and Highways England.
- 7.4 Measures to improve the sustainability of new development, including housing, must be applied within the constraints of the planning process and the National Planning Policy Framework and standards which exceed those laid down in regulation have to be negotiated and cannot be enforced.

8 CLIMATE CHANGE IMPLICATIONS

- 8.1 By its very nature this report has significant positive implications for Climate Change within the Borough Kettering

9. RECOMMENDATION

- 9.1 Member note this final update report and progress achieved in respect to the Council's commitments within its Climate Change Action Plan contributing toward carbon emissions reduction and climate change mitigation.

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Report Originator	Martin Hammond, Monitoring Officer	<i>Fwd Plan Ref No:</i>	
Wards Affected	All	24 th February 2021	
Title	REGULATION OF INVESTIGATORY POWERS (RIPA) ANNUAL REPORT		

1. PURPOSE OF REPORT

1.1 To provide an annual report on the use by the Council of its Regulation of Investigatory Powers (RIPA) powers

2. INFORMATION

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is concerned with the regulation of surveillance by public authorities in the conduct of their legitimate business to ensure that, in conducting such surveillance, public authorities have regard to the Human Rights Act – the right to a private and family life.
- 2.2 Since 1st November 2012 local authorities have been required to obtain judicial approval prior to using covert surveillance techniques. Additionally, since this date, local authority use of directed surveillance under RIPA has been limited to the investigation of crimes which attract a six month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco. The forms of surveillance that the council is entitled to undertake, subject to approval by the Magistrates Court, are covert directed surveillance and the use of Covert Human Intelligence Services known as CHIS.
- 2.3 Over the past four years there have been no authorisations of covert surveillance by the council for a number of reasons, including:
- a. The transfer of benefit fraud investigation to the DWP
 - b. The constraints introduced by the change in legislation
 - c. Concentration on deterrence rather than prosecution
 - d. Concentration of overt surveillance techniques as a means of investigation in preference to covert surveillance
- 2.4 The Council is only likely to use CHIS in very exceptional circumstances, and has to date never authorised their use since RIPA was introduced.
- 2.5 Despite the Council not regularly using covert surveillance, it is still required to maintain a RIPA Policy, and monitor potential surveillance activity. The current policy was approved by Council in February 2019 and is attached at **Appendix A**. It complies with the requirements of the Investigatory Powers Commissioner’s Office.

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2.6 The council must keep a central record of all authorisations, which is held by Legal Services (although there are no recent authorisations). IPCO has recommended that the council reports RIPA activity annually to Full Council

2.7 Since February 2019, the Council has streamlined its various policies and procedures for dealing with covert surveillance, such as CCTV and dashcams.

3. CONSULTATION AND CUSTOMER IMPACT

3.1 The Council's surveillance activities do have the potential to have customer impact. It is therefore necessary to ensure that the council's policy and activities are maintained in accordance with current legislation, hence the update policy being presented. There is no need for consultation, as the council does and will comply with established legislation.

3.2 The current policy was submitted to the Research and Development Committee at its meeting on 6th February 2019 and agreed.

4. POLICY IMPLICATIONS

4.1 The revised RIPA Policy will form part of the Council's Code of Corporate Governance.

5. FINANCIAL RESOURCE IMPLICATIONS

5.1 None directly from this report.

6. HUMAN RESOURCE IMPLICATIONS

None

7. LEGAL IMPLICATIONS

7.1 The Council must adopt a RIPA policy which complies with current legislation. The revised draft attached is consistent with current legislation.

8. RECOMMENDATION

8.1 That Council notes this report.

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Background Papers:
Reports to Council Feb.
2019 and Research and
Development Ctte Feb
2019

Date 27th January 2021

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Kettering Borough Council

**Investigation and Enforcement
Surveillance Applications**

Policy and Procedures

Updated - Nov 2018

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INTRODUCTION

1.0 Purpose, Intent and Extent

- 1.1 This Policy is intended to formalise the ways in which Kettering Borough Council (KBC) will comply with the Human Rights Act 1998 (HRA) and the Regulation of Investigatory Powers Act 2000 (RIPA) with regard to the deployment of covert surveillance techniques.
- 1.2 Article 8 of the Human Rights Act 1998 provides rights of respect for private and family life, home and correspondence. RIPA ensures that public bodies comply with their obligations under the HRA and can demonstrate that they have done so.
- 1.3 It is important that officers involved in enforcement and investigations are fully appreciative of the fact that they are not subject to RIPA when undertaking their normal day to day activities e.g. wardens on patrol. It is perfectly permissible for officers engaged in this kind of activity to observe what is going on in their 'patch' and to record instances or events where evidence is required or intelligence is being gathered. RIPA only comes into play when specific individuals are being investigated in connection with a specific enquiry and the observations or indeed surveillance, takes on a more systematic and covert nature.
- 1.4 Under RIPA, a public authority can only interfere with a person's Article 8 rights if it can be shown that the interference had a clear legal basis, which in the case of Local Authorities can only be in connection with the prevention and detection of 'serious' crime and/or the prevention of disorder; that the interference is necessary and proportionate to aims of the enquiry and/or the information being sought could not have been obtained by less intrusive means - (see para 1.8).
- 1.5 In addition, when applying for or authorising applications under RIPA, Officers of the Council will have regard to any statutory codes of practice which apply.
- 1.6 The Council could use surveillance in several areas of operation e.g. fraud investigation and environmental and planning enforcement, housing, licensing etc. – it is important therefore that any surveillance undertaken complies with the legislation and is undertaken in accordance with the approved procedures.
- 1.7 That said, even when RIPA authorisation is not required, persons employed by KBC, when conducting activities which include surveillance, will still be required to record their reasons for not seeking authorisation under RIPA, in order to demonstrate that they have afforded the appropriate respect for a persons private and family life as required under Article 8 of HRA.

- 1.8 From 1 November 2012 there have been significant changes in the legislation as it applies to Local Authorities. From that date, if officers of any Local Authority wish to deploy Directed Surveillance, they can only do so if the suspected criminal offence attracts a maximum custodial sentence of 6 months or more or the offence is a criminal offence relating to the underage sale of tobacco or alcohol.
- 1.9 Another change effective from 1 November 2012 is that once an application has been authorised by the Authority it will then be subject to section 37 and 38 of the Protection of Freedoms Act 2012. This will require the Authority to obtain an order approving the granting of the authorisation, or renewal of an existing authorisation from a Justice of the Peace, be it a District Judge or lay magistrate. This process will be outlined later in the policy.
- 1.10 In accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Source Surveillance) Order 2003, the Council has nominated specific officers to authorise or sanction the use of covert surveillance, these being the posts as listed in Appendix 1 of this Policy and the Council will ensure that all Officers who are involved in surveillance and granting of authorisations are aware of the procedures to be followed, and that appropriate training is given.
- 1.11 In conclusion the principles that need to be adhered to are that:
- **Not all surveillance requires RIPA authorisation**
 - **Some surveillance can be undertaken without RIPA authorisation**
- But**
- **RIPA authorisation MUST be obtained for Directed Surveillance**
 - **In ALL cases consider proportionality, collateral intrusion and whether or not the same information could be obtained in a less invasive manner**

ALL surveillance conducted for or on behalf of KBC requires management authorisation, then approval by a Justice of the Peace

IF it is Directed Surveillance, the activity can only be conducted where the suspected criminal offence attracts a maximum custodial sentence of 6 months or more

OR the offence is a criminal offence relating to the underage sale of tobacco or alcohol.

2.0 Relevant Definitions

Before detailing the procedures officers will follow when conducting surveillance as part of their investigations, it will be helpful to list the relevant definitions:

‘Surveillance’ includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with/without the assistance of a surveillance device and includes the recording of any information obtained.

‘General observation’ forms part of the duties of many law enforcement agencies and other public authorities and is not usually regulated by RIPA. Indeed the police and other public authorities do not need to seek a RIPA authorisation just because they are going to use covert techniques, only when the techniques are likely to result in the acquisition of information relating to a person’s private or family life. See page 6 for the definition of ‘Private Information’.

‘Covert surveillance’ means surveillance that is, **and only if it is**, carried out in a manner calculated to ensure that the person subject to the surveillance is unaware that it is or may be taking place.

‘Overt surveillance’ means surveillance that is carried out without being secretive or clandestine and which is therefore essentially open and something which the/any possible subject of the surveillance is aware of.

‘Directed Surveillance’ means surveillance which:

- a) is **covert** but not intrusive surveillance; **and**
- b) is undertaken for the purpose of a specific investigation or a specific operation; **and**
- c) it is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); **and**
- d) it is conducted otherwise than by way of an immediate response to events or circumstances the nature of which are such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

If an immediate response is appropriate in such circumstances then the observation made would not constitute Directed Surveillance.

‘Intrusive Surveillance’ means **covert** surveillance carried out in relation to anything taking place on residential premises or in any private vehicle and that involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device. This kind of surveillance may take place by means either of a person or device located inside residential premises or a private vehicle of the person who is subject to the surveillance or by means of a device placed outside which consistently provides a product of equivalent quality and detail as a product which would be obtained from a device located inside. See Page 6 for definition of ‘Residential Premises.’

Surveillance within the ambit of the Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010 (SI2010/461) is to be treated as intrusive surveillance. This extends the provision to include places of imprisonment or detention, remand or committed in custody for trial or sentence; detention under paragraph 16(1), (1A) or (2) of Schedule 2 or paragraph 2(2) or (3) of Schedule 3 to the Immigration Act 1971 or section 36(1) of the UK Border Act 2007; detention under Part VI of the Criminal Procedure (Scotland) Act 1995, the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Mental Health Act 1983; police stations; the place of business of any professional legal adviser; and any place used for the sittings and business of any court, tribunal, inquest or inquiry.

A local authority cannot undertake Intrusive Surveillance.

‘Private vehicle’ means any vehicle, including vessels, aircraft or hovercraft, which is/are used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it. This would include, for example, a company car owned by a leasing company and used for business and pleasure by the employee of the company.

‘Residential premises’ means so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation (specifically including hotel or prison accommodation that is so occupied or used). Common areas, such as hotel dining areas or communal stairways in blocks of flats, to which a person has access in connection with their use or occupation of that accommodation, are specifically excluded.

‘Private information’ means any information relating to a person in relation to which that person has or may have a reasonable expectation of privacy. This includes information relating to a person’s private or family life and this should be considered to include an individual’s

private or personal relationship with others and family life should be construed as extending beyond the formal relationships created by marriage, including business and professional relationships. A person's private life may be affected by surveillance affected outside their home, business or other premises. A person's reasonable expectation as to privacy is a significant consideration albeit not necessarily a conclusive factor.

Private life considerations are likely to arise if several records are to be analysed together to establish, for example, a pattern of behaviour, or if one or more pieces of information (whether or not available in the public domain) are covertly (or in some cases overtly) obtained for the purpose of making a permanent record about a person or for subsequent data processing to generate further information. In such circumstances, the totality of information gleaned may constitute private information even if the individual records do not and where such conduct includes any form of surveillance, a Directed Surveillance authorisation will be required.

'Proportionality.' This means that the person granting the authorisation must believe that the use of the surveillance is proportionate to what is sought to be achieved by the conduct and use of that activity.

This involves balancing the intrusiveness (invasiveness) of the use of the surveillance on the target and others who might be affected by it against the need for the surveillance to be used in operational terms. The use of surveillance 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. The use of surveillance must be managed and not used unfairly or in an arbitrary manner.

As applicants need to evidence all of this on the surveillance application forms be they for Directed or some other form of surveillance, Authorising Officers need to ensure that they have considered all the aspects of proportionality before they authorise.

This can be done by:

- 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.

‘Collateral intrusion’ means intrusion into the privacy of those not the subject of or otherwise directly connected with the surveillance by obtaining private information about them. Where it is proposed to conduct surveillance activity specifically against individuals who are not suspected of direct or culpable involvement in the overall matter being investigated, interference with the privacy of such individuals should not be considered as collateral intrusion but as intended intrusion. Any such surveillance should be very carefully considered against the necessity and proportionality criteria.

‘Confidential information’ It should be unlikely that confidential information will be obtained during the course of an investigation undertaken by a Local Authority investigator, no matter in what capacity.

Confidential information consists of:

- Matters subject to Legal Privilege
- Confidential Personal Information
- Confidential Journalistic Material
- Parliamentary Information about Constituency Matters

This means information consisting of confidential personal information, confidential journalistic information and information relating to the spiritual, physical or mental health of an individual (whether living or dead) who can be identified from it, such as consultations between a health professional and a patient or information from a patient’s medical records. It also includes confidential discussions between Members of Parliament.

In the case of local authorities, where the likely consequence of the surveillance being undertaken would be the acquisition of ‘confidential information’ the surveillance would require a higher level of authorisation than would normally be the case and in connection with serious crime. In this authorisation should come from the Managing Director.

Matters subject to legal privilege should not be obtained under any circumstances.

‘Codes of Practice’ means the Code of Practice – Covert Surveillance and Property Interference Code of Practice and the Code of Practice - Covert Human Intelligence Sources published by the Home Office

The Codes of Practice are admissible as evidence in civil and criminal proceedings and so it is essential that all officers engaged in any surveillance activity both read them and adhere to them.

‘Communication Data’ for the purpose of this policy is any communication traffic or information sent via a telecommunication system or via the post and refers to any use of such a system by any person and available to Local Authorities when it contains the ‘who’, ‘when’ and ‘where’ of a communication but not the ‘what’ (i.e. the content of what was said or written).

‘CHIS’ means covert human intelligence sources as defined in Part 8 of this policy.

3.0 General Principles

3.1 As a part of the process for the investigation, prevention and enforcement of suspected criminal offences, and in connection with the prevention of disorder offences, a Local Authority is permitted to conduct observations and surveillance in pursuit of its enquiries.

3.2 However, if a Local Authority wishes to deploy **Directed Surveillance** then it can do so **only** for the purpose of preventing and detecting crime and preventing disorder and then **only** when the suspected criminal offences attracts a maximum custodial sentence of 6 months or more or is a criminal offence relating to the underage sale of tobacco or alcohol.

3.3 As stated, not all surveillance constitutes Directed Surveillance in which case there is no requirement to obtain RIPA authorisation. **Overt** surveillance is such an example, as is the deployment of covert surveillance in circumstances where there is little or no likelihood of any private information being obtained. However, this may not always be the case and in some investigations other forms of private information may be being obtained through other legal gateways – bank accounts for example.

In a case where other enquiries are being undertaken which may obtain private information be it in the private or public domains, then the holistic nature of the enquiry has to be taken into account and if private information is sought from any source, then RIPA authorisation **must** be obtained for **any** form of covert surveillance.

3.4 Local Authorities are not permitted to deploy Intrusive Surveillance but it is important to recognise that any surveillance is invasive, even if it is not intrusive as defined. Issues such as proportionality, necessity, collateral intrusion or the possibility of obtaining private information are very relevant when considering any form of surveillance. Therefore, for the purpose of any investigation or enforcement activity where **any** form of surveillance is going to be deployed, this will be subject to a considered application and authorisation process.

- 3.5 'Drive bys' and 'Surveillance surveys' will not be deemed to be Directed Surveillance and will normally not require RIPA Authorisation.
- 3.6 For the purpose of conducting **any** surveillance, the following procedures will be followed to ensure adherence to the principles detailed in this policy. These procedures consist of two sections, the first dealing with Directed Surveillance and the second concerning General Surveillance.
- 3.7 Further powers to obtain telecommunications data are also conferred upon local authorities and these will be described in Section Three.

SECTION ONE - DIRECTED SURVEILLANCE AND CHIS

4.0 Preliminaries

4.1 Prior to any application being made, it will be the responsibility of the investigating officer to consider the following:

- Is the proposed surveillance **lawful** - prevention or detection of crime or prevention of disorder?
- Is surveillance **necessary** to progress the investigation?
- Is surveillance **proportionate** taking into account the seriousness of the offence?
- Is there a **less intrusive** alternative for obtaining the information?
- Why the surveillance proposed constitutes **‘Directed Surveillance.’**
- Does the suspected criminal offence comply with the requirements of the Protection of Freedoms Act 2012? Does it attract a maximum custodial sentence of 6 months or more, or is the offence a criminal offence relating to the underage sale of tobacco or alcohol?

4.2 Having established that Directed Surveillance is appropriate, the investigator may conduct a ‘drive by’ of the location for the purpose of determining the practicality of mounting the surveillance. For this purpose, ‘drive by’ does not mean that the investigator cannot park or stop in order to assess the situation, but does mean that the investigator will remain in situ for only as long as is necessary for that purpose.

4.3 For the purpose of assessing the practicalities of mounting the surveillance, consideration will then be given to the following:

- Possibility of collateral intrusion;
- Distance between the observation point and the subject;
- Obstructions between the observation point and the subject;
- Visibility anticipated during the proposed periods of surveillance;
- Prospect of recognition of the subject;

- Any health and safety considerations.

4.4 Although not compulsory, it may be helpful for the investigator to draw a brief plan of the location detailing the Observation Point and area, subject to the proposed surveillance e.g. the subject's residence etc.

5.0 Application

5.1 For the purposes of any form of surveillance, be it Directed or otherwise, all applications, renewals, cancellations and RIPA data will be recorded on the appropriate documentation. These documents should be personalised for the appropriate LA/Department, although this is not compulsory. The form can be found at <https://www.gov.uk/government/publications/application-for-use-of-directed-surveillance>

5.2 The application form should be completed in full and should contain sufficient information to enable the person considering granting authorisation to make the decision based on the information contained therein and not with recourse to any additional material. It should contain the following:

- the reasons why the application is for Directed Surveillance;
- the reasons why the authorisation is necessary in the particular case and on the grounds (e.g. for the purpose of preventing or detecting crime/preventing disorder) listed in Section 28(3) of the 2000 Act and lawful in accordance with the requirements of the Protection of Freedoms Act 2012;
- A description of the offence and the relevant legislation sufficient to establish that the offence being investigated/prevented constitutes a serious crime;
- the nature of the surveillance;
- the identities, where known, of those to be the subject of the surveillance;
- an explanation of the information which it is desired to obtain as a result of the surveillance;
- the reasons why the surveillance is considered proportionate to what it seeks to achieve;
- details of any potential collateral intrusion and why the intrusion is justified;
- details of any confidential information that is likely to be obtained as a consequence of the surveillance;

- a subsequent record of whether authority was given or refused, by whom and the time and date.

5.3 It is essential that the extent of the covert surveillance is fully explained on the application form because the authorisation only permits the activities stated upon it. If an applicant does not include a particular activity within the authorisation form and then conducts that activity it will not be authorised and the activity will, prima facie, be unlawful and any evidence gathered may be inadmissible.

5.4 On completion of the form:

- The application form should be given directly to the applicant's Line Manager for comments and then to the Authorising Officer for consideration.
- Regardless of whether or not the application is approved, an entry should be made on the RIPA Matrix held by the Council's RIPA SPOC Officer. This document must contain details of all applications made, regardless of whether or not authorisation was granted. In addition, the matrix should also record the date of authorisation and details of the authorising officer, date of expiry of the 3 month period, dates of reviews and date of cancellation.
- The application form granted or otherwise, should be sent to the SPOC and a copy held on file in a secure location for reference by the investigation officer or any other person required so to do.
- Once an application has been authorised by the Authority it will then be subject to section 37 and 38 of the Protection of Freedoms Act 2012. This will require the Authority to obtain an order approving the granting of the authorisation, or renewal of an existing authorisation from a Justice of the Peace, be it a District Judge or lay magistrate.
- If granted, surveillance must not continue beyond the date specified in the application/renewal and cancelled appropriately or in any case after a period of 3 months less one day, whichever is the lesser, without it having been reviewed or renewed.

6.0 Authorisations

6.1 Directed Surveillance within the scope of this Policy needs to be properly authorised and recorded. An authorisation must be in writing to and authorised personally by an Authorising Officer. A list of the Authorising Officers can be found at Appendix 1 and may be revised as required. No other person may authorise applications.

- 6.2 It is critically important that the extent of the Directed Surveillance is fully explained on the application form because the authorisation only permits the activities stated upon it as at Para 5.4 above
- 6.3 The Authorising Officer must fill in the appropriate details of the authorisation upon the relevant application form and keep a copy of those documents. A copy of the forms must be forward to the SPOC.
- 6.4 In cases where observations are being conducted from premises with the permission of the owner consideration has to be given to the question of seeking public interest immunity to allow for the exclusion of material which identifies the location of an observation point, in order to protect the identity of owners and occupiers of the same. Watkins LJ in R. v. Johnson [1989] 1 All ER 121 at 128, Court of Appeal, gave the following ruling for a trial judge assessing such an application [editorial in bold type]:

“The minimum evidential requirements seem to us to be the following.

(a) The police officer in charge of the observations to be conducted, and no one of lower rank than a sergeant **[it is suggested, in the case of the Council, the Applicant]** should usually be acceptable for this purpose, must be able to testify that beforehand he visited all observation places to be used and ascertained the attitude of the occupiers of premises , not only to the use to be made of them but also to the possible disclosure thereafter of the use made and the facts which could lead to the identification of the premises thereafter and of the occupiers. He may, of course, in addition inform the court of difficulties, if any, usually encountered in the particular locality of obtaining assistance from the public.

(b) A police officer of no lower rank than a chief inspector **[it is suggested, in the case of the Council, a Head of Service]** must be able to testify that immediately prior to the trial he visited the places used for observation, the results of which it is proposed to give in evidence, and ascertained whether the occupiers are the same as when the observations took place and, whether they are or are not, what the attitude of those occupiers is to the possible disclosure of the use previously made of the premises and of facts which could lead at trial to identification of premises and occupiers. Such evidence will of course be given in the absence of the jury **[and, it is argued, the defence]** when the application to exclude the material evidence is made”.

It is for this reason that it is likely any documentation regarding the above will be marked 'sensitive' for disclosure purposes. Further reference should be made to the Criminal Procedure and Investigations Act 1996 and to the Code of Practice issued pursuant to section 23(1) of that Act.

- 6.5 In general, the Authorising Officer should not be directly involved in the investigation or operation in question. Should this be unavoidable for operational reasons, this should be highlighted in the information passed to the central record of authorisations.
- 6.6 Authorisations will cease to have effect after three months unless renewed or cancelled on the grounds that the aims of the surveillance have been achieved or it is no longer needed. Authorisations for surveillance may stipulate that they should be reviewed after a lesser period but will always remain in effect for three months unless previously cancelled. All applications should be cancelled or renewed within 3 months less a day.

7.0 Magisterial Approval

- 7.1 With effect from 1 November 2012, once an application has been authorised by the Authority it will then be subject to section 37 and 38 of the Protection of Freedoms Act 2012. This will require the Authority to obtain an order approving the granting of the authorisation, or renewal of an existing authorisation from a Justice of the Peace (JP), be it a District Judge or lay magistrate.
- 7.2 The application to the JP must be made by the Authority which approved the application and not by a third party. The officer designated to undertake the judicial approval application must be so designated under S.223 of the Local Government Act 1972.
- 7.3 Following approval by an Authorising Officer, an appropriate officer, normally the officer in charge of the case, or possibly the Authority's RIPA SPOC, will partially complete an application for judicial approval form, a copy of which will be attached to the file. The officer will then contact Her Majesty's Courts and Tribunal Service (HMCTS) Administration Team for a hearing date. Normally this can be arranged in 'office hours' by contacting the Listing officer at Northampton HMCTS who will make arrangements for the hearing to take place at the first available opportunity.
- 7.4 On the rare occasions where an urgent 'out of hours' approval is required then the officer dealing will refer to the Magistrates Clerk's 'out of hours' rota which will be held by the SPOC. This process should only be used in emergencies and should not be used simply because the application has been made late. The required hearing will then be arranged. It is highly unlikely that the 'out of hours' procedure will ever

be invoked and officers should be mindful that if they are acting in immediate response to events they do not require RIPA authorisation at that time and that the subsequent application can and should be made during normal hours should they wish to continue with the surveillance.

7.5 Once the hearing has been arranged, it is desirable that the Authorising Officer and the officer dealing will attend the court as required as it is the Authorisation which will be subject to scrutiny by the magistrate and not the investigation. He/she will be in possession of copies of the following documents which will be passed to the court clerk prior to the hearing:

- the judicial approval application form;
- the authorised RIPA application;
- any subsequent renewals/judicial notices;
- any supporting documentation.

7.6 The hearing is a 'legal proceeding' and as such the officer/s will be formally designated to appear; will required to be sworn in and to present the case for the approval of the application to the magistrate under oath; give evidence and answer any questions or queries. This process will be similar to that of a warrant application and will not be undertaken in open court. However it must be stressed that the forms and documents provided must make the case in themselves and the applicant should not rely on oral evidence presented at the hearing.

7.7. The JP will then decide whether he or she is satisfied that at the time that the authorisation was granted/renewed or a previous notice was granted/renewed that:

- the authorisation is lawful;
- there are reasonable grounds for believing that the authorisation/notice was necessary and proportionate;
- the person making the application is an appropriate designated person within the Authority who granted the authorisation and
- that the authorisation had been made in accordance with any legal restrictions e.g. that it is in connection with the prevention or detection of crime or disorder and that the suspected criminal offence attracts a maximum custodial sentence of 6 months or more, or the offence is a criminal offence relating to the underage sale of tobacco or alcohol.

7.8 The decision will be recorded on the application form and a copy will be retained by HMCTS. A copy of the decision must also be provided to

the Authority's SPOC and the original kept of the file. The decision must be complied with.

- 7.9 If the Authority considers that insufficient information was provided at the hearing and it is for this reason that a negative decision was made, they may consider re-applying but if the refusal was on the grounds of insufficient necessity or proportionality, or that the application contravened a legal restriction then unless there has been a significant change in the circumstances since the last application, it would be unlikely to succeed.
- 7.10 The application for judicial approval form can be found in the RIPA documents saved on the intranet as well as at the back of this policy which gives a process map of the authorisation application process.
- 7.11 Follow this link to the Protection of Freedoms Act 2012 – changes to provisions under the Regulation of Investigatory Powers Act 2000 (RIPA) guidance document produced by the

Home Office <https://www.legislation.gov.uk/ukpga/2012/9/section/38>

This should be read in full by all officers engaged in the process.

8.0 Covert Human Intelligence Source – (CHIS)

- 8.1 A person is a CHIS if:
- He/she establishes or maintains a personal or other relationship with a person for the covert purpose of:
 - obtaining information or to provide access to information to another person: or
 - discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
- 8.2 A CHIS is basically an agent, informant or possibly an officer working undercover and either developing a new or maintaining an existing relationship with a subject for the purpose of covertly obtaining information – the kind of activity commonly used by the Police, Security Service, Customs & Excise, other intelligence services etc.
- 8.3 The provisions of RIPA are not intended to apply in circumstances where members of the public volunteer information as part of their normal civic duties, or to contact numbers set up to receive information e.g. Crime stoppers or Anti-fraud Hotline.
- 8.4 However, a member of the public giving information will become a CHIS if the information which he/she passes to the Council has been

covertly obtained in the course of (or as a consequence of the existence of) a personal or other relationship.

- 8.5 When an informant gives repeated information about a suspect or about a family, and it becomes apparent that the informant may be obtaining that information in the course of a family or neighbourhood relationship, then legal advice must be sought as it is likely that the informant may in reality be a CHIS.
- 8.6 KBC can lawfully use a CHIS only for the purpose of preventing or detecting crime; only in connection with a serious offence and then only when authorised by a Magistrate. However, in practice, there are insufficient resources, knowledge or experience to ensure that the Council's responsibilities can be fulfilled and so under **no** circumstances will the use of a CHIS be authorised. If any officer is in doubt about an issue which they think may constitute a CHIS they must seek legal advice.
- 8.7 Social Media used for surveillance purposes has the potential to become a CHIS, or even a Directed Surveillance issue. As the result of the proliferation in the use of social media such as Facebook, Twitter and others, even E bay, a considered approach is required to establish whether or not the use of the technique constitutes either Directed Surveillance or a CHIS when using these as sources of information in pursuit of an investigation.
- 8.8 If an individual places material in the public domain and does not apply any privacy controls to it, then this, if used alone, has to be considered open source for the purposes of using that material in connection with an investigation. However, the same would not apply if the investigator were to subvert any privacy settings by becoming a 'friend' for the purposes of e.g. Facebook and if he were to then covertly exploit that relationship to obtain material for use in that investigation. Then a CHIS issue would apply and the investigator would be in breach RIPA and the Council's policy.
- 8.9 Furthermore, repeated or systematic visits to any open source site would in all likelihood be conducted covertly, and could constitute Directed Surveillance with a requirement that the appropriate authorisation should be obtained considered. Moreover, information obtained from such means if used with other information obtained elsewhere with a view to building up a profile of the subject, then the totality of the information obtained could be construed as 'private' with all the applicable RIPA ramifications. Again, when in doubt, any officer should seek legal opinion.
- 8.10 In the case of any Social Networking sites, such as E bay for example, merely examining public feedback to gauge the level and type of sales listed would not in itself constitute DS or CHIS, and neither would a one

off test purchase.

9.0 Surveillance Activity

9.1 The purpose of this document is to identify the correct procedures for applying and monitoring RIPA applications and is not intended to detail how the surveillance will be undertaken as this will be largely determined by the circumstances of the individual investigation.

9.2 However, all surveillance must be undertaken in accordance with legislative requirements and rules of evidence and it would be suggested that prior to commencing any surveillance, the officers concerned should have completed appropriate training. Most importantly, the surveillance must be carried out in accordance with that authorised on the application and should not extend beyond the bounds of that authorisation without having been reviewed and approved beforehand.

10.0 Reviews/Renewals

10.1 Reviews - An internal review of the surveillance should be carried out on a regular basis. Is an internal function and should not be confused with a renewal which requires magisterial authorisation. An internal review may be considered an appropriate measure to determine if the surveillance should be cancelled before the expiry of the authorisation, or to continue beyond a pre-determined period, this being less than the statutory 3 months authorisation. The form can be found at <https://www.gov.uk/government/publications/renewal-form-for-directed-surveillance>

10.2 Renewal - In the case where it is considered that the surveillance carried out within the 3 month authorisation period was insufficient to achieve the desired outcome, or that the activity applied for was inadequate to achieve the desired objective, and there are grounds to consider that a continuance/extension of and or change to the surveillance previously authorised, may result further information being obtained, the following will apply:

- A renewal form should be submitted outlining the reasons for the application. The form can be found at <https://www.gov.uk/government/publications/renewal-form-for-directed-surveillance> .
 - The application form should be given directly to the applicant's Line Manager for comments and then to the authorising officer for consideration, if they are not one and the same.
 - An entry should be made on the RIPA Matrix, against the appropriate application. This document must contain details of all applications made, as well as details of the authorising officer, date

of expiry of the 3 month period, dates of reviews and date of cancellation.

- The renewal, granted or otherwise, should be sent to the Authorising Officer and a copy held on file in a secure location for reference by the investigation officer or any other person required so to do.
- If granted, surveillance must not continue beyond the date specified in the renewal or for a period in excess of 3 months, whichever is the lesser, without having been further reviewed and renewed.
- Refer to para 7.5 – any renewal will be subject to Magisterial Consideration following the process outlined.

11.0 Cancellations

11.1 Surveillance will be terminated immediately when:

- It is considered that the surveillance has achieved the desired result, and sufficient evidence has been obtained to substantiate the allegation;
- or that there is sufficient evidence to disprove the allegation;
- or there are no grounds to consider that a continuance of the surveillance may result in the desired information being obtained;
- or where the period granted for the surveillance or 3 months have expired, whichever is the lesser, the surveillance will be cancelled.

11.2 To cancel surveillance a cancellation form will be submitted. A copy of the form can be found at <https://www.gov.uk/government/publications/cancellation-of-use-of-directed-surveillance-form> and the following process will apply:

- the cancellation form should be given directly to the applicant's Line Manager for comment and then to the Authorising Officer for approval.
- An entry should be made on the RIPA Matrix, against the appropriate application. This document must contain details of all applications made, as well as details of the Authorising Officer, date of expiry of the 3 month period, dates of reviews and date of cancellation.

- The cancellation should be sent to the Authorising Officer and a copy held on file in a secure location for reference by the investigation officer or any other person required so to do.
- The cancellation should be completed and processed immediately at the end of the period specified in the application or renewal or within a period of 3 months, whichever is the lesser.
- In order to comply with data protection legislation, at the termination of the activity, unless any evidence of criminal or anti social behaviour is recorded and is to be used in connection with any further investigation, including one which may involve the future deployment of Directed Surveillance, the evidence gathered as a result of the covert surveillance will be destroyed and a note made to this effect on the Directed Surveillance Cancellation form.

12.0 Immediate Response

12.1 In a case where an officer is acting in immediate response to events or circumstances it is permissible to conduct surveillance without having obtained written or magisterial authorisation. If this is the case the following will apply:

- At the first opportunity, the appropriate application form must be completed.
- The application form should be given directly to the applicant's line manager for comments and then to the authorising officer for consideration, if they are not one and the same.
- An entry should be made on the RIPA Matrix and the application sent to the Authority's SPOC and a copy held in a secure location for reference by the investigation officer or any other person required so to do.
- Refer to para 7.5 – any subsequent application will be subject to Magisterial Consideration following the process outlined.

13.0 Joint Investigations

13.1 In many cases, investigations are conducted in conjunction with other benefit agencies such as the DWP, HMRC, Trading Standards and the Police etc. It is usual practice that one of the participants is designated as the lead agency and so would assume the responsibility of undertaking certain functions, surveillance applications being one of them.

13.2 It is unreasonable to expect all of the participating agencies to apply and monitor the surveillance being conducted on one specific operation, so in the case of joint agency working, the following will apply:

- One of the participating agencies to be designated as the lead – this normally defaults to the agency which instigated the investigation. Agreement to be noted on the application form
- The application form should be given directly to the applicant's Line Manager for comments and then to the authorising officer for consideration, if they are not one and the same.
- A copy of the completed application form should be forwarded to the investigation officer from each other participating agency for their attention.
- Refer to para 7.5 – any application made by a local Authority will be subject to Magisterial Consideration following the process outlined. In the case of other agencies, this requirement may not apply.

14.0 Records

14.1 All records maintained under the Act must be kept secure and confidential. A central record of all authorisations, reviews, renewals, cancellations and refusals, whatever the type of surveillance, is held by the SPOC –RIPA Coordinator. Copies of all such papers must be forwarded to that officer at the earliest opportunity either by providing hard copies or scanning and providing electronic copies. If hard copies are sent an advisory e-mail should be sent when they are sent as a check in case they go missing. Documents should be sent in sealed envelopes and marked 'Strictly Private & Confidential' or delivered by hand. If being provided electronically, the original signed forms should be scanned and they should be encrypted if appropriate.

SECTION TWO - GENERAL SURVEILLANCE

15.0 Preliminaries

- 15.1 There may be occasions where **overt** surveillance or some other form of surveillance which does not require RIPA authorisation is under consideration e.g. where there is **no** prospect of obtaining any private information about anyone.
- 15.2 In fact every effort should be taken to obtain evidence sufficient to prove the offence without the need to deploy surveillance and it is recognised advice that Directed Surveillance should be used as a '**last resort.**' In all cases if there are less intrusive means of obtaining the required information then these should be deployed in preference to deploying Directed Surveillance or indeed, any form of surveillance. This could include amongst other things, witness evidence, documentary evidence and even interviewing the suspected offender if there is one. Even if some form of surveillance is deemed necessary 'overt' surveillance may suffice in which case magisterial approval is not required.
- 15.3 This principle is not unlike the concept of 'tax avoidance' and 'tax evasion'. It may be perfectly possible to 'avoid' the need for RIPA authorisation by not deploying surveillance but by obtaining the evidence by less intrusive means, or if some form of surveillance is required, ensuring it is **overt**. However, where there is a **need** for the deployment of Directed Surveillance, it is **essential** that the application and authorisation process authorisation is not 'evaded' and that the appropriate forms are completed, submitted, approved and magisterial consent is obtained before the activity takes place.
- 15.4 Even the concept of what is considered to be '**overt**' should be seriously considered – something that may, on the face of it appear to be overt may not in fact be so – would a local government officer undertaking benefit fraud surveillance be acting overtly merely by conducting the surveillance from a marked council vehicle – probably this would be covert – whereas another local authority officer employed as a dog warden who is conducting surveillance to catch a 'serial dog fowler', when conducting the surveillance from clearly marked 'dog warden van' may well be overt. It is a requirement that the Authority takes all practical steps to ensure that the overt activity is exactly that, either by clear and adequate signage that an area is under surveillance or by notifying anyone who could be affected by the activity being deployed.
- 15.5 However, in the case where static cameras are deployed as a preventative measure, to ensure that the activity is overt and in order to make it clear to anyone in the vicinity of the cameras that the area is under surveillance, clear signage will be displayed and the signs will be clearly marked with the KBC logo.

15.6 In cases where General Surveillance is deployed, although RIPA authorisation is not required, there should be some consideration of the factors which could be of concern to anyone subject to the surveillance, third parties or any other interested party and the Authorising Officer should make a record of their decisions.

15.7 As in the case of RIPA applications the points to consider are outlined at paras 2.1.to 2.4 and a drive by and sketch plan may be considered as part of the assessment process. It is essential that the sketch plan includes the locations of the signs and field of view covered by the cameras.

16.0 Application

16.1 All applications, renewals, cancellations for general surveillance should be documented by the Authorising Officer.

16.2 The application form should be completed in full and should contain sufficient information to enable the person considering granting authorisation to make the decision based on the information contained therein and not with recourse to any additional material.

16.3 On completion, the application form should be given directly to the applicant's Line Manager for comments and then to the authorising officer for consideration, if they are not one and the same. Details of the application do not have to be entered on the RIPA matrix.

16.4 So as to eliminate any doubt, the Authorising Officer should stipulate fully what activity is being authorised, even if this is a direct repetition of the activity being applied for.

17.0 Surveillance Activity

17.1 As in the case of RIPA, this procedure does not attempt to deal with surveillance techniques, although, in this case, the officer must ensure that a RIPA authorisation is 'not' required for the appropriate reasons, which will usually be one or more of the following:

- Primarily, the surveillance is overt, ensuring that everyone subject to the surveillance is aware that it is taking place.
- There is little or no likelihood that private information about anyone will be obtained – the information to be obtained merely relates to the commission of an offence such as painting graffiti or the level of noise being generated as opposed to the actual content of the noise and the issues surrounding collateral intrusion have been resolved.
- The surveillance is in immediate response to events although, as in the case of Directed Surveillance, it may be impractical to complete

the required paperwork there and then but as soon as practicable afterwards.

- The surveillance is not directed against a person/people but against an inanimate object such as the mere presence of vehicle or in relation to offences taking place on land where there is no specific suspect.

17.2 Again, all surveillance must be undertaken in accordance with legislative requirements and rules of evidence and it would be suggested that prior to commencing any surveillance, the officers concerned should have completed appropriate training.

18.0 Cancellations

18.1 Surveillance will be terminated immediately, and notification provided on the relevant form, when it is deemed to be no longer required.

18.2 The cancellation form should be given directly to the applicant's Line Manager for comment and then to the authorising officer for countersignature, if they are not one and the same. After being signed they should be retained on the investigation file.

18.3 In order to comply with data protection legislation, at the termination of the activity, unless any evidence of criminal or anti social behaviour is recorded and to be used in connection with any further investigation, including one which may involve the future deployment of Directed Surveillance, the evidence gathered as a result of the overt surveillance will be destroyed and a note made to this effect on the Surveillance Cancellation form.

19.0 Confidential Information

19.1 There is no possibility that the acquisition of Confidential Information (as defined in para 2) can be authorised as a result of General Observations in any circumstances as the very nature of the material obtained is to be considered 'private' and therefore a RIPA authorisation, approved by the Chief Executive will be required.

20.0 Conclusion

20.1 RIPA does not deal with the material or information obtained as a result of surveillance. The managing and handling of such material of information must be strictly in accordance with the Data Protection Act, 1998 and the Criminal Procedure and Investigations Act, 1996. Officers should ensure that any material is managed and handled properly and in accordance with these provisions and any other statutory or other requirements that may apply from time to time. Failure to do so may render the material or information inadmissible as well as exposing the Council to risk.

20.2 However, if this policy and procedures are adhered to, then the element of risk connected to the Council's deployment of Directed or General Surveillance will be substantially mitigated against.

SECTION THREE – COMMUNICATIONS DATA

21.1 Introduction

21.2 We live in an increasingly communication based society and many forms of unlawful or antisocial behaviour manifest themselves via telecommunications e.g. ‘trolling.’ Very often there can be a communication trail which provides evidence to support an investigation.

21.3 The acquisition of communication data is available to Local Authorities under certain circumstances - for the prevention and detection of crime or preventing disorder (Section 22(2)(b) of RIPA). However, unlike Directed Surveillance, there is no sentencing condition to consider before making an application.

21.4 In summary - Communications Data (CD) available to Local Authorities contains the ‘who’, ‘when’ and ‘where’ of a communication but not the ‘what’ (i.e. the content of what was said or written).

22.1 Communication data

22.2 Communication data for the purpose of this policy is any communication traffic or information sent via a telecommunication system or via the post and refers to any use of such a system by any person.

22.3 RIPA breaks this definition down into three categories, each covered by separate sections of the Act Section 21(4)(a) – Information regarding communications data/traffic:

- Traffic data obtained and held by the communications service provider regarding the account holders use of the service – the things that make the communication work or where information may be stored.
- Local authorities do **not** have access to this information.

Section 21(4)(b) – Information regarding use of services:

- ‘Everyday information’ about times/dates calls were made, duration of such calls, and the numbers called or received, sent e mail logs (not the content of), service connection, conference calling logs and call barring, forwarding and re-direction details and details of recordable post.
- Local authorities can access this information.

Section 21(4)(c) - Information about service users

- Subscriber account details, names and addresses, installation and billing addresses, payment and contact details.

- Local authorities can access this information.

23.1 General Principles

23.2 Local authorities can obtain information about service users and the use of services and there are occasions where this could be useful such as a serious Anti-Social Behaviour case where harassment is taking place via a mobile phone and correlating the time of calls made to a particular number with information provided by the complainant may support or further the investigation.

23.3 But the same rules for applying and authorising this activity apply - necessity, proportionality etc. – these will have to be followed as they would for Directed or General Surveillance.

24.1 How we obtain the Information

24.2 Under RIPA Section 22(3) you could request to be authorised to obtain this information yourself, extracting the data directly from the Communication Service Provider's (CSP) records. More likely you are going to utilise RIPA Section 22(4) and request the communication service from an authorised provider and in practice this will be via the National Anti-Fraud Network which for the purposes of these applications will act as the SPOC for the Authority.

24.3 The idea of only having one point of contact for each public authority was agreed between the Home Office and the Communication Service Provider's to ensure data was only supplied to those entitled to obtain the data. Only the SPOC(NAFN) can acquire communications data on behalf of the Council.

24.4 The investigating officer must complete an application form in full with no sections omitted.

(<https://www.gov.uk/government/publications/chapter-ii-application-for-communications-data>)

The form is subject to inspection by the Interception of Communications Commissioner and the applicant may be asked to justify their application.

24.5 The SPOC will then assess whether the form is completed properly, that the request is lawful, the request is one to which the CSP can practically respond and that the cost and resource implications for the CSP/Council are within reason after which the SPOC will then submit the form to the Authorising Officer for authorisation.

24.6 The application must then be approved by a Magistrate. The investigating officer should liaise with the Authority's Legal Department

to obtain this authorisation after which a hearing will be arranged with the Court to seek the Magistrate's approval. See Section One Para 7.3

24.7 Once authorised, the SPOC will forward the application to the CSP and once the data sought is returned to the SPOC, a copy of the information will be passed to the applicant.

24.8 Authorisations to collect communications data under s22(3) have a life span of one month. However, they can be renewed by serving a new authorisation or notice for further months, within any time within the current life of the notice. Magistrates would need to approve any renewal.

APPENDIX 1

REGULATION OF INVESTIGATORY POWERS ACT 2000

Authorising Officers:

Confidential Information	Managing Director
Directed Surveillance	Managing Director
SPOC (RIPA co-ordinator)	Head of Democratic and Legal Services
All other matters	
Benefit Fraud	Head of Income and Debt Recovery
Audit Investigations	Head of Finance and Strategic Development
Planning, Listed Building & Conservation	Head of Development Services
Environmental Health	Head of Environmental Health
Housing	Head of Housing

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