

	REPORT TO CABINET TO BE HELD ON 14 MARCH 2017
	Key Decision YES Forward Plan Ref No N/A
Corporate Priority All corporate priorities	Cabinet Portfolio Holders: Public Health and Housing Strategic Planning and Transformation

REPORT OF: DIRECTOR (LD) – 17/63

WARDS AFFECTED: ALL

SUBJECT: STREET TRADING - RESOLUTION TO DESIGNATE STREETS AS 'CONSENT STREETS' UNDER SCHEDULE 4 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

RECOMMENDATION:

Cabinet resolves:-

- i) that the designations of all streets within the Borough of Scarborough be changed from their existing designation as at the date of this resolution, to the designation of consent street, under the terms of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act');
- ii) that, for the avoidance of doubt, where streets in the Borough of Scarborough have not previously been designated under the 1982 Act they shall by this resolution be designated as consent streets;
- iii) that the changes in designation of the said streets shall take effect on 9th May 2017; and
- iv) that the action plan outlined at para 7 of this report be approved.

REASON FOR RECOMMENDATION (S):

To ensure that the Council has in place a clear legal framework through which to authorise and regulate street trading and to enable it to take robust enforcement action in respect of unauthorised street trading

HIGHLIGHTED RISKS:

A failure to establish an effective legal framework within which to regulate street trading will result in an increased incidence of complaints to the Council, bringing associated reputational risk. Furthermore, road safety may be compromised through the inappropriate siting of street traders across the Borough

1. INTRODUCTION

- 1.1 As set out in the report to Cabinet of 13th December 2016, in order to implement a new regime to regulate street trading in the Borough, two separate aspects must be addressed:-
 - 1.1.1 Firstly, the Council must rationalise the designation of streets within its Borough in a more consistent way. Designation of streets under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, ('the 1982 Act') provides the Council with the legal framework to control trading on the streets in the Borough, and the legal power to take enforcement action against unauthorised traders. Without such designation being made, it is perfectly lawful for street trading to occur on many of the Borough's streets and the Council will have no power to regulate this;
 - 1.1.2 Secondly, the Council must have in place a Street Trading Policy to set out a transparent and consistent decision making process with regard to how street trading will be authorised and regulated.
- 1.2 The two aspects referred to at 1.1 above are separate requirements, but must be implemented in tandem, in order for the Council to ensure the introduction of a robust regulatory regime.
- 1.3 This report deals solely with the designation of streets referred to at 1.1.1 above. The draft Street Trading Policy is presently progressing through the consultation process and will be brought back to Cabinet in a separate report in April 2017. It has been necessary to bring separate reports relating to (a) the designation of streets and (b) the draft Street Trading Policy to separate Cabinet meetings, due to the statutory timescales and procedures required by the 1982 Act.

- 1.4 The Council has powers under Schedule 4 of the 1982 Act to regulate street trading by designating streets in its area under one of three statutory designations: 'prohibited streets', 'licence streets' or 'consent streets'. Where streets have been so designated, the Council has the ability to authorise trading on those streets on certain terms, and to regulate unauthorised trading.
- 1.5 Where streets in the Borough have not been designated into one of the three designations, the Council has no power under this legislation to regulate trading on those streets.
- 1.6 Between the years of 1983 and 2001, individual streets in the Council's area have been designated, in a piecemeal fashion, into each of the three statutory designations. Consequently, at present, certain individual streets within the Borough are designated as 'prohibited streets', others are 'consent streets', others are 'licence streets', and many streets have no designation at all, and therefore fall outside of the Council's control in terms of street trading.
- 1.7 Complaints have been received from members of the public and existing premises-based traders with regard to the Council's lack of enforcement of unauthorised street trading. The Council has historically found it difficult to take robust enforcement action given the lack of a consistent street designation approach.
- 1.8 It is therefore proposed that all the streets in the Borough now be re-designated under the 1982 Act, so that rather than different streets being designated into different classifications under the legislation, with different rules applying to each designation, they all are brought together under the same designation. This is an approach adopted by other authorities.
- 1.9 It is proposed that all streets within the Borough be designated as 'consent streets' as this designation will give the Council the maximum control, flexibility and discretion over the granting of street trading consents and will enable straightforward and consistent operational management and enforcement of the regime.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 Given the economic advantages that the introduction of a much fairer and more transparent system of regulating street trading will provide, together with improved customer service, this report supports all four of the Council's Corporate Priorities.

3. BACKGROUND AND ISSUES

- 3.1 The 1982 Act sets out a statutory notice process which must be followed in order to change the designation of streets. This requires the Council to publish in the local newspaper a notice of its intention to make a resolution to designate streets as consent streets and also to send the same notice to the local Police and Highways Authority.
- 3.2 On the 13 December 2016, Cabinet resolved to give notice of the Council's intention to pass such a resolution to designate all streets in the Borough as consent streets.

4. CONSULTATION

- 4.1 On the 12 January 2017 the Council published in the Scarborough News notice of its intention to make a resolution to designate all the streets in the Borough as consent streets. Copies of the notice were sent to North Yorkshire Police and North Yorkshire County Council as Highways Authority.
- 4.2 A period of 28 days was permitted to allow objections to the intended resolution to be submitted and considered, in line with the requirements of the 1982 Act.
- 4.3 The consultation period expired on the 10 February 2017.
- 4.4 No objections have been received by the Council to the intended resolution.

5. ASSESSMENT

- 5.1 Street trading is defined under the 1982 Act as 'the selling or exposing or offering for sale of any article (including a living thing) in a street'.
- 5.2 'A street' includes:
- (a) any road, footway, beach, or other area to which the public have access without payment, and
 - (b) a service area as defined in section 329 of the Highways Act 1980'
- 5.3 Where a street is designated as a 'prohibited street' it is an offence to engage in trading on that street.

- 5.4 Where a street is designated as a 'licence street' or 'consent street' it is an offence to engage in trading on that street without first having obtained a licence or a consent, (as appropriate), from the Council.
- 5.5 Streets which have not been designated under any one of the three statutory designations are not within the jurisdiction of the Borough Council. This means that the Borough Council is not able to exert any form of control over trading in these streets and it would be a matter for the Highways Authority of the County Council to take action under their highways powers.
- 5.6 The procedures applicable to authorising trading are different, depending on whether a street is designated as a 'licence street' or a 'consent street'.

5.6.1 **Licence Streets** – where streets are designated as 'licence streets', the Council is *obliged* to grant or renew a licence to an applicant in the terms applied for, or alternatively to follow a statutory procedure of serving notices to allow representations from the applicant. The Council is only able to refuse to grant or renew a licence, to vary its terms, or to revoke it, on certain prescribed statutory grounds. The applicant has a right of appeal to the Magistrates Court and then the Crown Court in respect of the Council's decision.

5.6.2 **Consent Streets** - where streets are designated as 'consent streets', consents may be granted, refused or revoked by the Council as it thinks fit. The Council is able to attach such conditions to a consent as are reasonably necessary and conditions may be varied at any time. Consents may be revoked by the Council at any time and there is no right of appeal to Court available to the applicant.

It can be seen that the 'consent street' designation provides more control and flexibility to the Council than the 'licence street' designation.

- 5.7 Streets within Scarborough Borough Council's area are presently designated as a mixture of 'prohibited', 'licence' and 'consent streets' and a large proportion of streets have no designation at all. This is as a result of individual streets having been designated in a piecemeal fashion over a period of 18 years, rather than a holistic approach having been taken.
- 5.8 It is now proposed that all streets in the Borough be brought under the same designation in order to provide a consistent legal framework within which to regulate street trading on all of the Borough's streets. It is proposed that all streets be re-designated from their existing designation, (or lack thereof), to the designation of 'consent streets', as this designation gives the Council the maximum degree of flexibility and discretion with regard to the issue of consents, and the maximum degree of control over trading on streets within its area. The discretion relating to the issuing of consents will be exercised in accordance with the Street Trading Policy, which will provide for transparent and consistent decision making.

- 5.9 The 1982 Act sets out a statutory notice process which must be followed in order to change the designation of streets. This requires the Council to publish in the local newspaper a notice of its intention to make a resolution to designate streets as consent streets and also to send the same notice to the local Police and Highways Authority. This notice was published in the Scarborough News and sent to the appropriate authorities on 12th January 2017.
- 5.10 After consideration of any objections received in response to such notice, Cabinet may make the resolution that the streets be designated with effect from a specified date, which must be at least one month from the date of resolution.
- 5.11 No objections or representations have been received in response to the published notice and Cabinet is therefore recommended to resolve to designate all streets in the Council's area as consent streets, with effect from 9th May 2017. This date is in line with the proposed adoption of the draft Street Trading Policy, which will need to be adopted by full Council in parallel with the re-designation of streets.
- 5.12 Designation of all streets as consent streets will enable the Council to ensure that it effectively balances the interests of safety, public health, amenity and the existing premises-based business community, with the need to create a vibrant and welcoming street scene, which encourages traders to thrive and enhances the Borough's commercial offer.
- 5.13 Once the resolution has been made there is a further statutory requirement for advertisement in a local newspaper on two consecutive weeks.

6. IMPLICATIONS

6.1 Policy

The draft Street Trading Policy is presently progressing through the consultation process and will be brought before Cabinet in April 2017. The contents of this report and the Street Trading Policy must be progressed in tandem, however have had to be brought to different meetings of the Cabinet due to timescales laid down in statute in relation to the designation of streets.

6.2 Legal

Legal implications are contained within the body of the report.

The failure of the Council to consult on the Resolution to re-designate streets in the Borough under the provisions of the 1982 Act and to consider and where necessary, take on board any comments received may result in a Judicial Review being brought against the Council.

6.3 Financial

There are no financial implications arising from this report.

6.4 Equalities and Diversity

This report has been prepared in accordance with the Council's Corporate Equalities Scheme.

6.5 Staffing Implications

There are no staffing implications arising from this report.

6.6 Planning Implications

There are no planning implications arising from this report.

6.7 Crime and Disorder Implications

There are no crime and disorder implications arising from this report

6.8 Health and Safety Implications

There are no health and safety implications arising from this report.

6.9 Environmental Implications

There are no health and safety implications arising from this report.

7. ACTION PLAN

7.1 In order to bring forward the re-designation of the Borough's streets as consent streets the following action plan is proposed:-

- (a) Report to Cabinet to make Resolution to re-designate streets with effect from 9 May 2017 – 14 March 2017.
- (b) Public notice placed in local newspaper (at least one month before the Resolution to re-designate streets comes into effect) on two consecutive weeks – 23 and 30 March 2017
- (c) Resolution to re-designate streets becomes effective – 9 May 2017



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Background Papers:

Report number 16/294 to Cabinet 13th December 2016

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT Rebecca Jackson ON 01723 232352 e-mail Rebecca.jackson@scarborough.gov.uk

Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	21/2/17	Failure to designate all streets in Borough as consent streets	Status quo of mixed designations would remain. Lack of certainty around designation status of streets, due to piecemeal method of designation to date, would continue to prevent effective regulation and enforcement of unauthorised street trading	None	D3	A1	RLJ	Re-designation of all streets in Borough as 'consent streets' to introduce clarity and consistency of approach