

	REPORT TO CABINET TO BE HELD ON 11 APRIL 2017	
	Key Decision	YES
	Forward Plan Ref No	
Corporate Priority: Meets all Corporate Priorities	Cabinet Portfolio Holder	Cllr Bill Chatt

REPORT OF: THE DIRECTOR (LD) – 17/79

WARDS AFFECTED: All

SUBJECT: STREET TRADING – INTRODUCTION OF NEW POLICY AND FEES UNDER SCHEDULE 4 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 (POST CONSULTATION)

RECOMMENDATIONS:

That Cabinet:

- (i) Note the analysis of the results of the consultation on the Street Trading Policy (attached at **Appendix 1**)
- (ii) Consider the consultation comments and amendments made to the draft Policy as a result (attached at **Appendix 2**)
- (iii) Note the results of the Equality Impact Assessment (attached at **Appendix 3**)
- (iv) Approve the amended draft Street Trading Policy and proposed fees (attached at **Appendix 4**) post consultation; and
- (v) Recommend its approval by Council for adoption
- (vi) Recommend that authority be delegated to the Individual Cabinet Member to review and approve revised fees on a regular basis

REASON FOR RECOMMENDATION:

The Council currently has a limited ability to effectively regulate street trading activities in the Borough, in the form of enforcing parking restrictions or dealing with nuisance complaints. Over recent years there have been growing concerns from existing businesses, particularly during the Spring and Summer seasons, in relation to unauthorised street trading. The adoption of a Street Trading Policy, along with the Resolution made by Cabinet, at its meeting on 14 March 2017, to re-designate all streets in the Borough as 'consent streets' under the Local Government (Miscellaneous Provisions) Act 1982, will provide the Council with the framework to effectively regulate such activities in its area.

HIGHLIGHTED RISKS:

A failure to establish a proper framework to regulate street trading activities will ensure that complaints received by the Council will continue to grow, with an associated risk to its reputation. Furthermore, road and public safety may be compromised through the inappropriate siting of street traders on the highways located in the Borough.

1. INTRODUCTION

- 1.1 The Council does not currently have an adopted Street Trading Policy in place. In addition, there has not been a single point of contact to manage the process of authorising and regulating street trading; instead the Council has sought to take a corporate approach with several service areas seeking to deal with enquiries and complaints from the traders and the public. This has led to inconsistencies in approach and an ineffective enforcement regime. The Licensing Authority is therefore seeking to implement a new Street Trading Policy to bring clarity, transparency, and accountability to the process.
- 1.2 The Council has powers under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) to regulate street trading by designating streets in its area under one of three statutory designations. 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.
- 1.3 Individual streets in the Council's area have been designated into each of the three statutory designations in a very piecemeal fashion between the years of 1983 and 2001. This has resulted in streets within the Borough being designated into each of the designations and some streets having no designation at all.
- 1.4 Members will be aware that at the Cabinet meeting of 14 March 2017 it was resolved that the designations of all streets within the Borough of Scarborough be changed from their existing designation to the designation of consent street. It was further resolved that the changes in designation would take effect on 9 May 2017, in line with the new Policy.

- 1.5 In addition the Licensing Committee approved the Policy and the action plan as outlined at paragraph 7.1 of the report at their meeting of 13 March 2017. Cabinet are asked to note the comments and responses attached to this report and to approve the amended draft Policy at **Appendix 4**. It should also be noted that a report on the Council's proposed Street trading regime was considered by Overview and Scrutiny Board on 23 February 2017. The members of this Board were supportive of our proposals.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 Given the economic advantages this Policy will provide to street traders, allied to introducing a much fairer system, improved customer service that properly regulates these activities, this report supports all four of the Council's Corporate Priorities.

3. BACKGROUND AND ISSUES

- 3.1 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'
- 3.2 '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'
- 3.3 On 25 October 1982 the Council's Policy and Resources Committee resolved to adopt Schedule 4 of the 1982 Act, with effect from 1 April 1983.
- 3.4 This permitted the Council to designate streets in its area as either 'prohibited streets', 'licence' streets' or 'consent streets'.
- 3.5 Where a street is designated as a 'prohibited street' it is an offence to engage in trading on that street.
- 3.6 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 consent from the Council
- 3.7 The terms on which trading might be permitted are different depending on whether a street is designated as a licence street or a consent street. Streets which have not been designated as any 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 matters would fall to the Highways Authority of the County Council to take action under their highways powers, if for example there was

an obstruction or danger on a public highway. Instances of unauthorised street trading, whilst being problematic for the Borough Council, its residents and businesses, are not always high on the list of priorities for the Highways Authority. It would therefore be beneficial for the Borough Council to be in a position to manage street trading on all of the streets in its area.

3.8 It can therefore be seen that, historically, as a result of a lack of current Street Trading Policy, a piecemeal designation of individual streets over a period of over 20 years, and an attempt to manage street trading on a corporate basis across various service areas, there has been an inconsistent approach to street trading across the Borough, which has made effective enforcement problematic.

3.9 In order to resolve this position it is necessary to do the following:-

3.9.1 Provide for a single point of accountability within the Council for the regulation and enforcement of the street trading regime, allowing for a clear point of contact for the public, whether that be for a prospective trader wishing to seek permission to trade lawfully on the Borough's streets, or a member of the public wishing to complain about unauthorised or problematic trading taking place.

3.9.2 Maximise the Council's control over street trading within the Borough by bringing all streets within the Borough into a single statutory designation.

3.9.3 Adopt a new Street Trading Policy to set out a transparent, objective and easily accessible framework, within which robust decisions can be taken to authorise or refuse applications to trade on the street, and effective enforcement action can be taken in the event of unauthorised trading being encountered.

3.10 It is therefore proposed that:

3.10.1 The street trading regime is administered by the Licensing Authority in line with other regulatory regimes under the 1982 Act. This has been taken into account in the recent review of the Service.

3.10.2 All streets in the Borough be re-designated from their present designation/lack of designation to become 'consent streets' (already approved by Cabinet at its meeting on 14 March 2017).

3.10.3 A new Street Trading Policy be adopted to provide a framework for decision making in respect of street trading applications and enforcement action in relation to street trading within the Borough.

4. CONSULTATION

4.1 Consultation has taken place with the following:

- The general public via an online survey on the Council's website
- All local "street trading" businesses
- Local chambers of Commerce
- North Yorkshire Police
- North Yorkshire County Council
- Overview & Scrutiny Board – at its meeting on 23 February 2017
- Other interested/affected stakeholders such as SBC's Estates, Property, Legal, Finance, Economic Development and Tourism services

4.2 A consultation period of 8 weeks commenced on 21 December 2016 and concluded on 15 February 2017 (in terms of the Policy) and on 10 February 2017 (for the resolution re-designating streets).

4.3 A total of 137 responses were received to the consultation. The vast majority of responses (84.6%) agreed with the overall objectives of the Policy and 92.5% agreed with the factors laid out in the Policy for determining street trading applications. There were, however, a number of issues highlighted, some of which have resulted in both minor and more substantial changes to the Policy document.

5. ASSESSMENT

5.1 It is important that the Council takes into account consultees' comments as part of the consultation process. Consideration of consultees' comments and reasons is clearly set out in **Appendix 2** of this report.

5.2 One key issue arising from the consultation related to the limited time periods for which a Consent could be issued. In particular it was highlighted that 3 months may not be a sufficient length of time to capture the seasonal trade, and that the inability to renew a 3 month permit created an additional barrier for applicants. Officers recognise that seasonal based traders may wish to trade in excess of 3 months which has resulted in an amendment to the Policy to include 6 month Consents thereby catering for additional seasonal trading. However, as 3 and 6 month Consents are deemed to be seasonal in nature, the proposal to allow only 12 month Consents to be renewed remains.

5.3 A number of comments were also received regarding the 10 working day proposed consultation period. After consideration of the comments received, Officers still believe that 10 working days represents a fair balance to all parties, in that it affords consultees with effectively 2 weeks to respond whilst also not unduly delaying applications. Members will note that where issues subsequently arise with a Consent holder, the Consent may be revoked at any time by the Council for a number of reasons, including but not limited to:

- non-compliance with policy, conditions or relevant legislation;

- causing a nuisance to local residents/businesses;
- changes in local conditions, e.g. parking restrictions;
- the consent holder receiving a criminal conviction or caution;
- compromising highway safety;
- preventing NYCC Highways Authority from undertaking its duties;
- street works necessitating a temporary suspension of the Consent; or
- any other reasonable grounds.

In relation to other comments received concerning the consultation process, Officers propose that as Ward Councillors are likely to hold valuable knowledge of their local area, they also be included as consultees for any applications received for street trading received in their wards.

5.4 Consultees' also highlighted the potential impact on community and charitable events, their concerns broadly cover three key areas:

- That the requirement to obtain a basic criminal disclosure for such events was too onerous on the traders and organisers involved. Given these events are short-term and community focussed, it is considered that they represent a relatively low risk. As a consequence Officers are proposing that community and charitable based events be exempt from the requirement to obtain a basic criminal disclosure.
- That the fees for such events were excessive, particularly where only a small number of traders were to be involved. In response Officers are proposing a sliding fee scale be introduced relative to the number of traders involved with a maximum charge of £200. All fees shall be regularly reviewed to ensure they continue to reflect the costs of delivering the street trading regime.
- That some community events may be financially disadvantaged, particularly those which are subsidised by street trading organised and conducted under the auspices of the event organisers. Officers consider that restricting trade during such events could unfairly disadvantage consent holders who have been issued a 3, 6 or 12 month Consent. In addition the number and frequency of such events taking place across the Borough may result in trading being excessively restricted, making a Consent unviable.

5.5 In addition to the above, concerns have been raised over the Council's ability to effectively enforce a street trading regime. Members will note that Section 7 of the Policy outlines the Council's approach to enforcement; which has been supplemented with a guidance document to address practical and operational matters pertinent to enforcement. Officers are confident that this will provide an effective and robust approach to enforcement, as is the case with other regulatory functions administered by the Council.

- 5.6 Cabinet are now asked to consider the revised draft Policy and associated fees and approve it for submission to Council for final adoption and implementation.

6. IMPLICATIONS

Policy

- 6.1 This report introduces a new Policy to regulate street trading in the Borough.

Financial Implications

- 6.2 The failure of the Council to consult on this draft policy and Resolution to re-designate streets in the Borough under the provisions of the 1982 Act, to consider and where necessary, take on board any comments received in proposing and adopting a final policy may result in a Judicial Review being brought against the Council.
- 6.3 The costs involved will be met from existing budgets. Furthermore, the costs of implementing the Policy will be met through the fees charged for the various categories of street trading consent

Legal

- 6.4 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the Council may designate any of the streets in its area as prohibited, consent or licence streets in terms of street trading. It may also charge a reasonable fee(s) for any consents it issues, and place conditions on the consent to trade. A person who is aggrieved by the Council's decision either to refuse to issue a consent, or revoke an existing one has the option to seek judicial review of the decision made.

Crime and Disorder

- 6.5 Under s17 of the Crime and Disorder Act 1998 the Council has a duty to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent, crime and disorder in its area.
- 6.6 In addition there are obvious links to community safety in ensuring that street trading activities do not adversely impact on, for example other road users or nearby properties in terms of potential public nuisance from such activities.

Equality and Diversity

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

7. ACTION PLAN

- 7.1 If a recommendation is given to approve the revised draft Policy, the following timetable is suggested:

- (a) A report be submitted to Full Council on 8 May 2017 requesting adoption of the final Street trading Policy and fees.
- (b) Final Street trading Policy, fees and Resolution to re-designate streets become effective – 9 May 2017.



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Background Papers:

Local Government (Miscellaneous Provisions) Act 1982.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR.

Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	22/11/16	Failure to have an effective Street Trading Policy in place	Limited and inconsistent approach to decision making and enforcement of street trading activities, potential for challenge to legality of decision making, potential to compromise safety of other road users, continued receipt of complaints from public and premises-based traders in respect of unauthorised street trading, limited ability to take robust enforcement action	None	D3	A1	JB	Introduction of a comprehensive and transparent Policy, following a consultation exercise with stakeholders, to allow greater consistency and fairness in regulating street trading activities
2	22/11/16	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

Glossary of Terms

Risk

An event which may prevent the Council achieving its objectives

Consequences

The outcome if the risk materialised

Mitigation

The processes and procedures that are in place to reduce the risk

Current Risk Score

The likelihood and impact score with the current mitigation measures in place

Corporate Objectives

An assessment of the Corporate Objectives that are affected by the risk identified.

Target Risk Score

The likelihood and impact score that the Council is aiming to achieve

Service Unit Manager

The Service Unit or Officer responsible for managing the risk

Action Plan

The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

A = Very Low

B = Not Likely

C = Likely

D = Very Likely

E = Almost Certain

Impact

1 = Low

2 = Minor

3 = Medium

4 = Major

5 = Disaster