

## ITEM NO: 16

<b>DECISION-MAKER:</b>	FULL COUNCIL		
<b>SUBJECT:</b>	LICENSING ACT 2003 -CUMULATIVE IMPACT POLICY		
<b>DATE OF DECISION:</b>	13 <sup>TH</sup> MAY 2009		
<b>REPORT OF:</b>	SOLICITOR TO THE COUNCIL		
<b>AUTHOR:</b>	Name:	MARK HEATH	Tel: 023 8083 2371
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### STATEMENT OF CONFIDENTIALITY

None

### SUMMARY

In response to formal representations received from Hampshire Constabulary including a report identifying three areas of the City, namely London Road / Bedford Place, Above Bar and Bevois Valley Road, and substantial evidence linking crime to the night time economy the City Council as Licensing Authority must consider whether a Cumulative Impact Policy ("CIP") as an addition to the previously adopted overarching Licensing Policy is appropriate and necessary.

Council previously considered this matter on 17th September 2008 when it resolved to go out to consultation.

### RECOMMENDATIONS:

- (i) To consider the draft Licensing Act 2003 Cumulative Impact Policy (appendix 1) and other appendices, including the representations made during the consultation period, and to resolve whether to adopt such a policy or not.

### REASONS FOR REPORT RECOMMENDATIONS

1. Following receipt of police and other evidence the Licensing Authority must consider that evidence and determine whether a cumulative impact policy is appropriate and necessary.
2. No such policy can be implemented until the statutory consultation procedure is completed. Such consultation was undertaken between September 2008 and April 2009

### CONSULTATION

3. The Council has undertaken an extensive consultation in accordance with the Act and Regulations as well as the Council's own consultation requirements by ensuring that the policy is published on the Council's website and made available for inspection at designated Council buildings as well as at specified public libraries.
4. The representations received have been summarised and are contained in appendix 2.

### ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. There is no statutory requirement to adopt a CIP but in light of the evidence submitted by the police it is considered reasonable to explore this option and

proceed to consultation.

## **DETAIL**

### Background – what is cumulative impact?

6. “Cumulative impact” is not mentioned specifically in the Licensing Act 2003 but means in essence the potential impact on the promotion of the licensing objectives due to a significant number of licensed premises concentrated in one particular and defined area. The statutory guidance published by DCMS makes it clear that the cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement. The relevant part of the statutory guidance dealing with cumulative impact is available in the Members’ Room (appendix 3).
7. In some areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from licensed premises. For example, concentrations of drinkers can result in queues at late night fast food outlets and for taxis and buses. Even though some city centre ranks are marshalled queuing may in turn be leading to conflict, disorder and anti-social behaviour. While more flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater in these cases than the impact of customers of individual premises. These conditions are more likely to occur in the city centre, but may also arise in other urban centres and the suburbs.

### The situation in Southampton

8. Following the implementation of the Licensing Act 2003 the Police, in particular, have expressed concerns regarding specific areas of the city and the impact resultant from the nature and combined effect of premises. Discussion has taken place over an extended period ultimately resulting in the formal submission in late June 2008 of a report authored by the police entitled “Proposed Special Policy Areas – Cumulative Impact Policy Southampton City Centre” (appendix 4). The report was commissioned in order to assess whether defined areas of Southampton are disproportionately affected by offending linked to the night-time economy.
9. Three areas, namely; Bedford Place/London Road, the Above Bar area and Bevois Valley, have been identified by the Police as areas disproportionately affected by cumulative impact. The report is available in the Members Room and on Southampton Online as are detailed maps showing the parameters of the proposed CIP areas. The key findings and recommendations of the police’s report are that
  - The three identified locations all record a level of violent offending that is disproportionately high in terms of the city as a whole and also the main commercial area of Southampton
  - The peak times for violence are in keeping with peak times for the night-time economy
  - Each of these locations record an above average level of offences

flagged as having been influenced by alcohol.

- In terms of offences where a premise is directly involved, all three locations record multiple offences.
- The overall trend with regard to these offences is either steady or upward.
- Both the Above Bar and Bedford Place/London Road areas also record a disproportionately high level of criminal damage.

It is recommended that a Cumulative Impact Policy is pursued in these areas as a tool to control violent crime and alcohol related offending.

#### Draft Policy

10. In light of the evidence submitted to the Licensing Authority a draft policy has been formulated in accordance with the Act and the statutory guidance by the Solicitor to the Council (appendix 1). The policy has also been reviewed and approved by Leading Counsel to ensure it is compatible with national practice and fully complies with the Act's requirements.
11. In the light of the specialist legal advice, further consideration has been given to the evidence available to council at its September 2008 meeting, and further evidence has been sought from a variety of sources and further consultation undertaken.  
  
A summary of the additional evidence in support of the proposed Cumulative Impact Policy appears at appendix 5, together with a list of streets affected by the proposed Cumulative Impact Policy (appendix 6) and maps showing the areas affected (appendix 7)
12. All the appendices are available in Members' Rooms and published on Southampton Online.

#### Effect of the Policy

13. The effect of adopting a special policy of this kind is to create a rebuttable presumption that any applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. It is important to note that the policy can only be applied in those instances where a relevant representation is made in relation to premises within the defined areas. The practical effect of the policy is that the rebuttable presumption will apply (when representations are made) to all new premises licences, club premises licence applications, provisional statements and any variation application which might be considered to add to the cumulative impact. Cumulative impact can still be raised within representations and considered as an issue for premises outside any defined area, however, the policy and rebuttable presumption will not apply.

#### Procedure for implementation of a Cumulative Impact Policy

14. Section 5 Licensing Act 2003 requires that each licensing authority must in each three year period determine its policy with respect to the exercise of its licensing functions, and publish a statement of that policy (a "licensing

statement"). As members are aware the policy was reviewed and freshly adopted prior to 7th January 2008.

15. The same section of the Act requires each authority during the three year period to keep its policy under review and make such revisions to it, at such times, as it considers appropriate. It should be noted that by making revisions or alterations the three yearly period for review remains unaffected.
16. The statutory guidance is clear that any policy must be based upon evidence. As a result consideration of widening the scope or area of any policy can only be made on a strong evidential basis that can withstand external scrutiny, particularly judicial review.
17. Before implementing any revision or amendment to its policy, the statutory guidance states that a licensing authority must consult:
  - a. the chief officer of police for the licensing authority's area,
  - b. the fire and rescue authority for that area,
  - c. such persons as the licensing authority considers to be representative of holders of existing licences in respect of premises situated in the authority's area,
  - d. such persons as the licensing authority considers to be representative of clubs registered within the authority's area,
  - e. such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
  - f. such other persons as the licensing authority considers to be representative of businesses and residents in its area.
18. The statutory guidance details the relevant steps to implement a policy of this nature as:
  - Identify concern about crime and disorder or public nuisance
  - Consider whether there is good evidence that crime and disorder or nuisance are happening and are caused by the customers of licensed premises, or that the risk of cumulative impact is imminent
  - Identify the boundaries of the area where problems are occurring
  - Consult with those specified in section 5(3) of the 2003 Act, and subject to the outcome of the consultation
  - Include and publish details of special policy in licensing policy statement

## **FINANCIAL/RESOURCE IMPLICATIONS**

### **Capital**

19. None.

### **Revenue**

20. All matters in relation to the consultation, implementation and revision of the policy are budgeted for.

### **Property**

21. None.

### **Other**

22. None.

### **LEGAL IMPLICATIONS**

#### **Statutory power to undertake proposals in the report:**

23. S.5 Licensing Act 2003.

24. S.17 Crime and Disorder Act 1998

#### **Other Legal Implications:**

25. Section 17 of the Crime and Disorder Act 1998 requires local authorities to consider crime and disorder reduction in the exercise of all their duties, activities and decision-making. This means that all policies, strategies and service delivery need to consider the likely impact on crime and disorder. This consideration is paramount in the rationale for adopting a CIP.

### **POLICY FRAMEWORK IMPLICATIONS**

26. The Cumulative Impact Policy itself will be a policy framework document by way of amendment of the City Council's Licensing Act 2003 Statement of Licensing Policy.

## SUPPORTING DOCUMENTATION

### Appendices

1.	Draft Licensing Act 2003 Cumulative Impact Policy
2.	Summary of representations received
3.	Extract from the Statutory Guidance under the Licensing Act 2003
4.	Police Report entitled: "Proposed Special Policy Areas – Cumulative Impact Policy Southampton City Centre"
5.	Additional evidence in support of the Bedford Place, Above Bar Street and Bevois Valley Stress Areas and the Cumulative Impact Policy
6.	List of streets affected by the proposed Cumulative Impact Policy
7.	Maps of areas affected by the proposed Cumulative Impact Policy

### Documents In Members' Rooms

	None

### Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	Government Guidance on Licensing Act 2003	
2.		

**Background documents available for inspection at:** Office of the Solicitor to the Council, Civic Offices, Southampton

E-mail: [Richard.ivory@southampton.gov.uk](mailto:Richard.ivory@southampton.gov.uk)

**FORWARD PLAN NO:**

**KEY DECISION?** no

**WARDS/COMMUNITIES AFFECTED:**

Bargate and Bevois

## TO BE DETACHED BY DEMOCRATIC SERVICES

REPORT MONITORING FORM	
<b>THIS FORM MUST BE COMPLETED FOR <u>ALL</u> REPORTS!</b>	
<b>PLEASE ENSURE YOU COMPLETE THE SECTIONS HIGHLIGHTED IN YELLOW NEAR THE END OF THIS FORM.</b>	
DATE OF DECISION:	13 <sup>TH</sup> MAY 2009
DECISION MAKER:	FULL COUNCIL
SUBJECT/TITLE OF REPORT:	CUMULATIVE IMPACT POLICY

KEY DECISION?	<input type="checkbox"/>	[TYPE YES, NO or N/A]
DATE PROPOSAL INCLUDED IN FORWARD PLAN:	<input style="width: 100%;" type="text"/>	
REGULATION 15 EXCEPTION?	<input type="checkbox"/>	[TYPE YES, NO or N/A]
Date notification given to Scrutiny:	<input style="width: 100%;" type="text"/>	
REGULATION 16 URGENCY?	<input type="checkbox"/>	[TYPE YES, NO or N/A]
Date agreement of Scrutiny obtained:	<input style="width: 100%;" type="text"/>	

OTHER LEGAL IMPLICATIONS:	Paragraph number/comment:
Human Rights Act 1998:	<input type="text"/>
Race Relations Act 1976 (as amended):	<input type="text"/>
Disability Discrimination Act 1995	<input type="text"/>
Crime & Disorder Act 1998(specifically s.17 duty):	<input type="text"/>
Proceeds of Crime Act 2002(Money Laundering):	<input type="text"/>
Freedom of Information Act 2000:	<input type="text"/>
European "State Aid" Guidance:	<input type="text"/>

POLICY FRAMEWORK PLANS:		
Adult Learning Plan	<input type="checkbox"/>	Early Years Development Plan
Annual Library Plan	<input type="checkbox"/>	Education Development Plan
City Performance Plan	<input type="checkbox"/>	Housing & HRA Business Plan
Children & Young Persons Strategic Plan	<input type="checkbox"/>	Local Transport Plan
Community Strategy	<input type="checkbox"/>	Medium Term Plan
Community Safety Strategy	<input type="checkbox"/>	Youth Justice Plan
Plan & Strategies which together comprise the Development Plan	<input style="width: 100%;" type="text"/>	

Report Tracking	
VERSION NUMBER:	1
DATE LAST AMENDED:	08/04/09
AMENDED BY:	Richard Ivory





**Approval by Executive Member:**

Name:

Date:

**Approval by Level 1 Manager:**

Name:

Date:

**Approval by Executive Director/ Policy Coordinator:**

Name:

Date:

**FOR DEMOCRATIC SERVICES USE ONLY:**

DATE AND TIME REPORT RECEIVED:

Date

Time:

LEGAL CLEARANCE:

[TYPE YES or NO]

Name:

FINANCIAL CLEARANCE:

[TYPE YES or NO]

Name:

POLICY CLEARANCE:

[TYPE YES or NO]

Name: