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|-------------------------------|--|---|-------------|----------------------|
| <b>DECISION-MAKER:</b>        | LICENSING COMMITTEE<br>COUNCIL   |   |             |                      |
| <b>SUBJECT:</b>               | LATE NIGHT LEVY – CONSIDERATION OF<br>CONSULTATION RESPONSES           |   |             |                      |
| <b>DATE OF DECISION:</b>      | 11 SEPTEMBER 2014 - LICENSING COMMITTEE<br>17 SEPTEMBER 2014 - COUNCIL |   |             |                      |
| <b>REPORT OF:</b>             | CABINET MEMBER FOR COMMUNITIES   |   |             |                      |
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|                                     |
|-------------------------------------|
| <b>STATEMENT OF CONFIDENTIALITY</b> |
| None                                |

### **BRIEF SUMMARY**

If implemented by the Council the Late Night Levy will be an annual payment of between £299 and £4,440 by premises authorised to supply alcohol after midnight. The income is split between the police and the Council whose share is used solely for initiatives that assist reduce crime and disorder related to the night time economy.

This report presents the outcome of the consultation exercise on proposals to introduce a Late Night Levy and requests the Licensing Committee to make a recommendation to Council on whether or not a Late Night Levy should be introduced in the City.

### **RECOMMENDATIONS:**

#### **Licensing Committee**

- (i) To consider the consultation responses and recommend to Council whether or not to introduce a Late Night Levy in the city.
- (ii) To recommend the key provisions of the Late Night Levy, if it is decided to introduce one.

#### **Council**

- (i) To consider the report submitted to the Licensing Committee, the views of that committee and the consultation generally and resolve whether or not it is desirable to introduce a Late Night Levy as detailed in this report and if so, decide the matters referred to at paragraphs 5 and 6 below.

### **REASONS FOR REPORT RECOMMENDATIONS**

1. The provision for the late night levy has been introduced by the Government to allow authorities to require those businesses that benefit from the

existence of a late night economy in their area to contribute towards the costs that it causes. The term “late night economy” is not defined for the purpose of the levy but is a general term meant to reflect the business that takes place in the city after midnight, primarily leisure related and involving alcohol.

2. While the late night economy provides significant economic benefits to the City, there are consequential costs of crime and disorder, anti-social behaviour, and costs that fall on the police, the Council and other partners.
3. The Government has said legislation has been introduced as it is not considered:  
*“... fair to expect local communities and taxpayers to bear the full brunt of the costs that the late night economy causes in their area. Therefore, this charge allows licensing authorities to require those businesses that benefit from the existence of a late night economy in their area to contribute to some of the costs that it causes.”*
4. The rationale is not to restrict the extent of the late night economy but to ensure a contribution towards the consequential costs.
5. Council at it’s meeting on 15<sup>th</sup> April 2014 resolved to undertake a formal consultation on the desirability of a levy and options. The consultation period expired on 31<sup>st</sup> July 2014. The responses to the consultation need to be considered to enable Council to decide:
  - Pursuant to section 125(2) of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) whether the late night levy requirement is to apply to the City of Southampton
  - If so, pursuant to section 132(1) of the 2011 Act that:
    - (a) the date on which the late night levy requirement is first to apply is 1<sup>st</sup> April 2015
    - (b) for the first levy year and, subject to section 133 of the 2011 Act, each subsequent levy year:-
      - (i) the late night supply period shall begin at one minute passed midnight and end at 6 am;
      - (ii) that the following permitted exemption categories as defined in regulation 4 of the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012 are to apply:-
        - (1) regulation 4(a) – hotels etc. supplying alcohol for on-consumption by resident patrons;
        - (2) regulation 4(b) – theatres supplying alcohol for on-consumption to ticket holders, performers, guests at private events;
        - (3) regulation 4(c) – cinemas supplying alcohol for on-consumption to ticket holders, guests at private events;
        - (4) regulation 4(d) – bingo halls where the playing of non-remote bingo is the primary activity;
        - (5) regulation 4(e) – registered community amateur sports clubs;
        - (6) regulation 4(f) – community premises like church halls and village halls, etc. that are subject to the alternative licence

condition and

(7) regulation 4 (i) – premises authorised to supply alcohol for on consumption only between midnight and 6 am on 1 January

(iii) that the following permitted exemption category as defined in regulation 4 of the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012 is not to apply:-

(1) regulation 4(g) – single country village pubs in designated rural settlements which receive rate relief;

(2) regulation 4(h) – premises liable for the Business Improvement District levy.

(iv) that the following permitted reduction category as defined in regulation 5 of the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012 is not to apply:-

(1) regulation 5(1)(a) – members of business-led best practice schemes

Save that if such a scheme is subsequently approved and adopted by the Council in accordance with paragraph 6 below that the Head of Legal and Democratic Services be authorised to administer the scheme and take all decisions in relation to it, including reductions in the levy payable by approved premises

(2) regulation 5(1)(b) – certain premises authorised to supply alcohol for on-consumption which receive small business rate relief.

(v) the proportion of the net amount of levy payments that is to be paid to the relevant local policing body under section 131 of the 2011 Act is 70 per cent.

6. To authorise that the Head of Legal and Democratic Services has delegated powers to do all things necessary to implement these decisions, including:-

(a) Power to publish notice of the decisions in accordance with regulation 9(1)(b) of the Late Night Levy (Application and Administration) Regulations 2012;

(b) Power to determine whether the holders of any relevant late night authorisations fall within any permitted exemption or reduction categories and in particular whether the holders of any relevant late night authorisations who are members of any subsequently approved business-led best practice scheme fall within the permitted reduction category;

(c) Subject always to the statutory role of Licensing Committee and its Sub- Committees, to make arrangements for free applications to vary authorisations before the beginning of the first levy year and determine such applications in accordance with regulations 9(1)(c) and 9(5) of the Late Night Levy (Application and Administration) Regulations 2012;

(d) Power to determine the aggregate amount of expenses of the Council that are permitted deductions under section 130(1)(b) of

the 2011 Act;

- (e) Power to publish annual notices under section 130(5) of the 2011 Act relating to anticipated expenses and the net amount of the levy payments;
- (f) Power to make adjustments to payments in accordance with paragraph 7 of the Late Night Levy (Application and Administration) Regulations 2012;
- (g) Power to determine from time to time when and for what purposes the Council will apply the non-specified proportion of the net amount of the levy payments;
- (h) Authorisation to enter into an agreement with the Police and Crime Commissioner (PCC) and the Chief Constable regarding the use of the net amount of levy payments as a single programme and to establish a Late Night Levy Board (to include operators) to facilitate a single programme; and
- (i) Authorisation to create and implement a business-led best practice scheme that will satisfy the criteria contained in regulation 5(1)(a) of the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012 after consultation with the Police and Crime Commissioner, the Chief Constable, operators, and the Late Night Levy Board (if established).

7. To note that the Head of Legal and Democratic Services shall review the operation and effect of the levy in 2017 (or earlier, if considered necessary) and report the outcome of the review to Licensing Committee.

#### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

Not to introduce a levy. This option is fully considered in this report.

#### **DETAIL (Including consultation carried out)**

- 8. Section 125(2) of the Police Reform and Social Responsibility Act 2011 empowers a local authority to apply a late night levy to their area.
- 9. On 20<sup>th</sup> November 2013 Council passed a motion delegating authority to the Head of Legal and Democratic Services to commence a consultation on a proposed new late night levy. Preliminary consultation then took place with the PCC and police in order to work up draft and evidenced proposals.
- 10. On 15<sup>th</sup> April 2014 Cabinet agreed in principle proposals for the design of a late night levy and agreed that the Council should consult on them. The report to Cabinet is attached as Appendix 1.
- 11. The consultation started on 30<sup>th</sup> April 2014 and finished on 31<sup>st</sup> July 2014.
- 12. The Council is required to consult the Police and Crime Commissioner, the Chief Constable and licence holders who may be affected by the levy.
- 13. In addition officers:
  - consulted with other licence holders who would not be required to pay the levy, residents associations, solicitors who have represented licensed premises in the area, both national and local organisations with an interest in licensing matters and the late night refreshment houses in the

- city.
14.
    - prepared a consultation document setting out the proposals and a questionnaire respondents could complete. A copy of the consultation document is attached at appendix 2.
  15.
    - created a specific page on the Council internet site with details of the late night levy and links to the consultation document and instructions to respond by either e-mail or post.
  16.
    - provided a link to the consultation page on the Councils current consultation internet page.
  17. The statutory notices were placed on the Council's website and in the Southern Evening Daily Echo and Hampshire Independent on Friday 25<sup>th</sup> April 2014 and letters or e-mails were sent to those with whom we wished to consult.
  18. The list of consultees include all 721 premises licensed to sell alcohol by Southampton City Council, local and national solicitors involved with licensing, relevant and other authorities and resident associations. A full list is attached as Appendix 3.
  19. **Rationale for the proposals and supporting police data**

The principle behind the Council proposing the levy is that of the need to maintain, and hopefully increase, the range of measures including direct policing costs directly related to managing the anti social aspects of the city's night time economy and primarily alcohol consumption related behaviour post midnight. It is abundantly clear that there is a significant cost, not solely police costs, in managing this.

Critically the tests within the 2011 Act do not require consideration of how crime rates have changed over any given period of time. It is accepted the police data attached to the report covers a wider period than that envisaged under the levy proposals. However, the data clearly shows a significant degree of violent and ASB incidents which are linked to alcohol and which are policed by the measures currently in place.

Table 1 on page 7 of the Consultation document in Appendix 2 identifies spikes in reported violence against the person on Tuesday nights and weekends. The reason for this is these are the busiest nights for the NTE; Tuesday nights are traditionally busy "student nights" with associated drinks promotions and the second busiest night in the city There are estimated to be in excess of 40,000 students attending the two Universities in the city and the trade has grasped an opportunity to exploit this and have historically marketed their venues towards students on a Tuesday.

Qualifications are made in respect of the police statistical evidence. The police statistics are limited in nature. They are provided to show that there is not an insignificant level of crime and disorder in connection with the supply

of alcohol during the night time

It is acknowledged that the figures are incomplete and therefore inevitably limits as to what can be said with certainty. However officers are satisfied that the figures relate to the night time economy and associated alcohol supply even allowing for some latitude. Overall the figures paint a clear picture.

Even if some disregard is made in respect of incidents that occur relating to light night takeaways there still remains substantial cost.

The basis for the police figures and the reasons they have been presented as they have are the police do not record crime in such a manner to allow precise and detailed data, such as alcohol related crimes linked to a premises, to be extracted. Good indicators of such data are Violence against the person and ASB incidents that occurred in the NTE area.

The hourly breakdown of crimes demonstrates the peaks in the demand correlate to the busy hours of the alcohol premises.

The Amended Home Office Guidance on the Late Night Levy published in December 2012 has been fully taken into account in formulating these proposals and responses to the consultation submissions. This guidance is attached as appendix 4.

The rationale for proposing 0001 as the commencement time for the levy is that police data demonstrates an increase in anti social behaviour and crime from 2300. The one minute passed is suggested to avoid any doubt for premises licensed to sell alcohol up to midnight that they will not be subject to the levy.

### **Response to the Consultation**

20. There have been 33 responses to the consultation received from a mix of members of the public, licence holders and groups associated with the licensed trade. All the responses are available online and hard copies are in Political Group Rooms.
21. There are 7 responses from residents or residents associations, 10 from either licensing solicitors/professionals/ licensed groups, 11 licence holders, Hampshire police and the Police and Crime commissioner and 3 responses did not give a clear indication but are probably residents.
22. The licensing solicitors/professionals/ licensed groups would represent a number of premises each and some of the licence holders have more than one premises in the city.
23. Because the respondents are a mix of categories detailed individual breakdown of the responses is impractical as it is important appropriate

weight is given to each response. The following is a summary of the main points together with the Council's response

20 of the responses did not support the introduction of the late night levy, 10 did and 3 gave no clear indication.

- 7 respondents agreed the policing and other costs assessment was fair and 12 disagreed.
- 5 agreed with the crime assessment with 10 disagreeing mainly as the police figures had no context to them.
- 8 agreed a revenue was needed with 10 disagreeing stating partnership working was a preference
- 5 agreed with the supply period whilst 11 did not, alternative times of either 0100 or 0200 were suggested and 2 suggested it be 24 hours.
- 8 agreed theatres, cinemas and bingo halls should be exempt 9 disagreed
- 6 agreed Community Amateur sports clubs and community premises should be exempt and 11 against
- 13 agreed Country Village pubs should not be exempt, 4 disagreed
- 10 agreed BIDs should not be exempt and 5 disagreed
- 15 agreed there should be an exemption for New Years Eve with 2 disagreeing
- 8 agreed premises with Small Business rate relief should not be allowed a reduction and 6 disagreed
- 5 agreed a Business led Best practice scheme should not have a discount and 13 disagreed and 11 to 1 agreed a scheme should be developed and 13 to 2 agreed such a scheme should get a discount
- 11 agreed with the split of the revenue and 1 disagreed
- 6 agreed the date to implement the levy and 6 disagreed

24. A number of the responses expressed the opinion the data was flawed as the costs were not specific to the levy period. One group felt we have not met the legal requirement to consider the cost of policing and other arrangements between midnight and 6am

### Response

Officers believe they have followed due process and approach and that the overall data supplied by the police and other partners shows there is undoubtedly a significant cost to partners directly related to the post midnight - night time economy. It is not considered reasonable to have to provide forensic data to support exactly how much is spent after midnight by each partner. Whether that cost is 80% of the total or 50% is not considered to be a salient factor. The primary issue is that undeniably significant cost and resources are used managing the post midnight period and the funding for that in the current climate is very likely to cease. That is both adequate and reasonable justification.

The Council is not analysing trends in police data or relative levels in crime either nationally or locally but the overall costs of policing and the desirability of raising a levy to assist in dealing with the issue.

25. Common themes in the responses include

- Introduction of a late night levy is premature as the fees structure is under consultation (Plymouth has deferred a decision for this reason)

#### Response

The Home Office Guidance on the Consultation on fees under the Licensing Act 2003 states the purpose of the fee is not to tackle crime and states Late Night Levy and Early Morning Restriction Orders can be used for that purpose. European Service Directives also restrict the purposes fees to the administration of the licence.

- The data provided does not demonstrate the need for a levy as the data is too broad and does not detail the costs between midnight and 6 am

#### Response

See response above. In addition, the police have provided figures that demonstrate an increase in violent crime and anti social behaviour on Tuesday nights and weekends. Historically because of increased levels of violent crime Street Pastors, Taxi Marshals and the I.C.E. bus have all been deployed at weekends and have been successful in reducing the levels of violent crime but the police data clearly demonstrates there are peaks at weekends and Student nights (Tuesdays).

- The Levy is unfair as it is not targeted at the area that causes the problems, some polluters will be able to avoid paying and a number of non polluters will be forced to pay

#### Response

Regretfully, the Act does not allow the Council to select areas to adopt, if the Late Night Levy is adopted it has to cover the whole of the city by law. Whilst the NTE is not synonymous with the levy paying community the NTE is directly linked to the availability of alcohol after midnight and levy is the most appropriate option to be able to assist in dealing with it in times of reducing resources.

A reduction of services such as Taxi Marshals or Street Pastors has the real potential to result in an increase in crime, negative publicity for the NTE of the city and a negative impact on the economy of both day and night economies.



- Newcastle who introduced the levy in November 2013 have seen a third of eligible premises vary out of the levy period. This will incur additional costs to the council and reduce the income

### Response

Such variations will be commercial decisions for licence holders. Officers expect a number of premises to vary out of the levy period and reduce the income from the levy. Officers have estimated the gross amount collected may be around £100,000. This however will be sufficient, after deductions, to cover the costs of providing the present services to the NTE and it is hoped have a surplus to extend the services after consultation with the Levy Board.

- The levy has the potential to change the NTE of the city, smaller more diverse premises likely to struggle and so could reduce the range of what is on offer in the city that in turn will damage the NTE.

### Response

The levy has a sliding scale of charges, smaller premises pay a smaller amount starting at 82p per day, The introduction of the Levy will enable the authorities to provide adequate support to allow the NTE to flourish, to be safe and a desirable place to visit and operate a business. Officers consider the removal of the services to the NTE is likely to cause considerable damage to the NTE as it is likely violent crime and anti social behaviour will increase resulting in more premises being taken to review, less business investment and less visitors.

- A strong feeling any monies raised should be used for additional services

### Response

The priority is to secure the present level of service/initiatives all of which are discretionary. Any additional funds will be solely used to support the NTE and it is proposed a levy board will be convened to include the Council, Police, and trade to advise on how the monies raised should be best spent to improve the NTE.

- Costs associated with the management and policing of public spaces have no association with venues selling alcohol.

### Response

Those who cause ASB / crime in public spaces could have bought

alcohol from off-licences which would still remain a concern. They could have been drinking on premises after midnight and then left and caused problems in public places. It is therefore reasonable to include cleaning costs that relate to the public realm which can be strewn with bottles, glasses and general rubbish which is reasonably related to the night time economy.

### **Impact of the proposal.**

26. Southampton was recognised in 2011 for the work partners had done to reduce violent crime within the NTE with the Tilley Award and the Council recognises the efforts of the trade to improve over recent years.
27. The Tilley Award recognised it was not one project that made Southampton so good but a combination of schemes and these included the Taxi Marshals, Street Pastors and the I.C.E. bus. These schemes come at a significant cost and at a time of shrinking budgets funding for these schemes is very likely to cease. In the Council's view they are crucial to the success of the night time economy and therefore alternative funding is required.
28. The desire is to secure funding to allow these successful projects to continue, assist greatly in keeping the city safe at night and improve and thereby enhance the reputation of the city and encourage future investment.
29. The services provided to the NTE are concentrated on when and where they are most required and presently this is at weekends predominantly in the London Road and Bedford Place area. Taxi Marshals are at 3 sites, London Road, Lower Bannister Street and Above Bar Street. The I.C.E. bus parks in Above Bar Street near to the Cenotaph. Southampton Street Pastors cover a wider area but are limited to the city centre. However all these services make a significant contribution to the reputation of Southampton being a safe place to live, work, visit and enjoy.
30. There is a risk a number of premises will vary their licences to avoid the levy. Newcastle (the first authority to adopt the levy) has seen approximately a third of premises liable for the levy vary their licence to avoid it. If replicated here this could potentially result in a less diverse NTE and reduction in employment opportunities especially for the 18 to 24 age range. However, a number of premises do not use the full hours of their licence so a number that vary will already be operating outside of the levy hours. In officers views the impact of the levy on the diversity of the NTE will be limited.
31. Concern has been expressed that a large number of premises will have a terminal hour of midnight resulting in large numbers on the street at this time and placing the services such as police and transport under a strain. Officers do not believe this will be the case as presently the NTE does not get into full swing until after 11pm. Officers used their many years of experience to assess individual premises on the likelihood of changing their operating hours and it is their opinion there will not be a significant impact on present operating hours within the NTE.
32. In order to recover the costs of paying the levy premises may seek more

drinks promotions or stop or reduce funding to schemes that promote the licensing objectives such as contributions to street patrols or safe routes home.

33. The potential is for premises to seek longer hours and this could have a negative impact on costs as it may then be necessary to keep services such as police and taxi marshals on longer as well as the costs of processing the applications, many of which are likely to be objected to and will result in numerous hearings. It is difficult to predict how many premises will attempt to extend their hours but any operator will need to consider the extra costs of staff for longer hours against the risk of keeping customers longer and spending more in an already very competitive and difficult market.
34. There is presently a healthy relationship with the licensed trade and the relevant authorities. The responses to the consultation suggest this will be at risk if a levy is imposed and there is a strong call for an alternative course such as a BID or Community Alcohol Partnership be considered. The relevant authorities are committed to working in partnership to maintain a healthy NTE. If adopted and subsequently one of these initiatives or schemes such as a BID comes to fruition the levy will be reviewed and can be withdrawn if a better system is put in place.
35. The levy will by law need to be city wide. Accordingly, there are a number of premises that will attract the levy that presently will not directly see any of the services provided and fear the monies raised will only pay for existing services and consider they will not benefit from the levy and will in effect be subsidising the services given to the 'problem' area. This too could damage the relationship with the council. As already mentioned the relevant authorities will continue to work in partnership with the trade to maintain a healthy NTE. The night time economy is dynamic rather than static and regular reviews will take place through the Levy Board to analyse where the levy funds may be best placed.

#### **Other matters**

36. The Levy should be reviewed 2017, to allow for a full year's revenue, costs and impact to be properly assessed The results of the assessment can then be presented in time to consider continuation, cessation or amendments to the levy on the anniversary date of the implementation.
37. Home Office guidance suggests the authority should set a date at least 4 weeks prior to the implementation of the levy as a deadline to receive applications to vary licences for free to bring them out of the levy. Officers are requesting 2 calendar months to ensure undue strain is not placed on the team that will be required to process variation applications generated should the Late Night Levy be introduced.
38. The PCC has re-iterated his intention of using any monies raised to improving the safety of people using the City's NTE. This should allay the concerns of a number of respondents expressing a concern about where the money will be spent. The intention is that this is supplemented by a more formal agreement
39. Another response suggested the introduction date be extended by 6 months to allow time for the authority to process the variation applications and

prepare for the levy and to allow premises time to properly assess and budget for the impact of the levy. The proposed date was 1<sup>st</sup> February 2014. Officers consider this has the potential to cause problems. The timetable published in the consultation document required applications to vary out of the Late Night Levy hours to be completed by 31/12/14 and the levy be implemented on the 1<sup>st</sup> February 2015. This clashes with the increased trade and public holidays around Christmas and New Year. Officers now propose a date of 1<sup>st</sup> April 2015 to introduce the Late Night Levy should it be agreed to proceed. If the suggestion in paragraph 37 is agreed then applications to vary out of the Levy period will need to be submitted by 31<sup>st</sup> January 2015.

40. A lot of the responses complained of the blanket approach of the levy in that it applied across the city. This is a valid point, however the law does not allow for the levy to be introduced in selective areas. The monies raised from the levy will be invested to improve the NTE of the city and thereby benefitting all from an enhanced reputation.
41. The funding from the Police and Council for Taxi Marshals, Southampton Street Pastors and the I.C.E. bus is under threat. These services were recognised in the Tilley Award as being a key part to improving the violence statistics linked to the NTE but are discretionary. Officers are of the opinion insufficient funding of these schemes (and therefore a reduction of them on the ground) is likely to lead to an increase in crime and disorder and reduce the appeal of Southampton's NTE.
42. Through out the process we have referred to the Home Office Guidance on the Late Night Levy (Appendix 4).

#### **Timetable**

43. If the levy is to be introduced Council needs to decide the date on which the late night levy should commence. The recommendation in this report is 1<sup>st</sup> April 2015. This is the earliest date that it is considered practicable to introduce the late night levy in light of the matters that need to be addressed after a decision to a late night levy – statutory notices, processing free applications to vary, publication of the estimates of the administrative expenses, establishing a system to recover the late night levy.
44. On that basis the first levy year will run from 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016.
45. Those premises which already have an authorisation to supply alcohol will have to pay the levy at the same time as they pay the annual licence fee during that year. This is not the same date for every holder. Holders of new authorisations will have to pay the levy for the first time 14 days after the grant of the authorisation and with the annual licence fee in subsequent years.
46. The Council will have to pay the police share to the Police and Crime Commissioner within 28 days of the end of the levy year.
47. It is proposed to review the operation of the Late Night Levy in 2017 or earlier, if it is considered necessary.

## RESOURCE IMPLICATIONS

### Capital/Revenue

48. It is estimated the introduction of a Late Night Levy in Southampton will raise circa £100,000 per annum. This will reduce significantly if the supply period is for a lesser time.
49. The council's expenses will be deducted from this amount.
50. Any costs associated with the collection of this levy will be offset against the levy. Any balance must be ring fenced within the licensing budget in accordance with the Police Reform and Social Responsibility Act 2011.
51. The costs in the first year are likely to be significantly greater than following years to allow for implementation costs, allowing for initial set up costs, especially costs incurred processing the free variations allowed in the run up to the introduction to the late night levy.

### Property/Other

52. None

## LEGAL IMPLICATIONS

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

53. Police Reform and Social Responsibility Act 2011 ("The Act")
54. The Late Night Levy (Application and Administration) Regulations 2012
55. The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012
56. The Local Authorities (Functions and Responsibilities) Regulations 2000
57. The Local Authorities (Functions and Responsibilities) (Amendment Number 3) (England) Regulations 2004

### Other Legal Implications:

58. There are tests within the 2011 Act under Section 125(3) which provide what the Council must consider when deciding whether to introduce a levy. They are a) the costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 0600hrs. Secondly, (b) having regard to those costs, the desirability of raising revenue.

Consideration must be given to the costs of policing. Then consideration must be given to the desirability of raising revenue to meet those costs. Although it might seem a fair approach, there is no express requirement to consider relative costs or crime trends in the area.

However, it is not just policing costs, but policing costs and other arrangement costs for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 0600hrs which must be considered. Taken at its widest, this allows consideration of any arrangement within the

area which seeks to prevent disorder, hence the inclusion of the costs relating to Taxi Marshals, Street Pastors, and the ICE bus being considered, as they seek to prevent disorder and in place in connection with premises which supply alcohol.

The costs must be... in connection with the supply of alcohol between midnight and 0600hrs. This does not say 'directly related' and allows for a wide interpretation. Arrangements for e.g. street cleaning at late hours could be said to be in connection with premises supplying alcohol. If those premises were not open selling alcohol, there would not be the people in the area who e.g. buy fast food and add to the litter the streets.

Having regard to those costs, it is only the desirability of raising revenue which must be considered. This is not particularly prescriptive. If the Council is satisfied that there are substantial costs arising from (a) and that raising the levy will lead to a more than minimal return, this part of the test is met.

The introduction of the levy is a statutory process which needs to be followed exactly. Failure to do so could result in a legal challenge and, if successful, the refund of any levy paid (plus interest) as well as legal costs.

59. As well as ensuring that the proper procedure is followed (including proper consultation), the Council must take into account all material considerations and disregard all immaterial considerations before making the final decision. The key material considerations are those set out in the 2011 Act
60. There is no appeal against the introduction of a Late Night Levy. However, anyone unhappy who have a sufficient interest about the decision to introduce a levy could apply for judicial review of the Council's decision.

#### **POLICY FRAMEWORK IMPLICATIONS**

61. None

**KEY DECISION?** No

|                                    |     |
|------------------------------------|-----|
| <b>WARDS/COMMUNITIES AFFECTED:</b> | All |
|------------------------------------|-----|

#### **SUPPORTING DOCUMENTATION**

##### **Appendices**

|    |   |
|----|---|
| 1. | Report to Cabinet on 15 <sup>th</sup> April 2014 <a href="#">Report Appendix 1</a> <a href="#">Appendix 2</a> |
| 2. | The Consultation Document   |
| 3. | List of consultees  |
| 4  | Amended guidance on the Late night Levy dated 2012  |

**Documents In Members' Rooms**

|    |                        |
|----|------------------------|
| 1. | Consultation responses |
| 2. |                        |

**Equality Impact Assessment**

|  |    |
|--|----|
| Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out. | No |
|--|----|

**Other Background Documents**

**Equality Impact Assessment and Other Background documents available for inspection at:**

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. |  |  |
| 2. |  |  |

