

Meeting: Cabinet	Date: 11 September 2013	Classification: Unrestricted	Report No: CAB 26/134
Report of: Corporate Director – Steve Halsey Communities Localities and Culture Originating officer(s) David Tolley, Head of Consumer and Business Regulations Service		Title: Sexual Entertainment Venues – Adoption of Policy Wards Affected: All	

Lead Member	Deputy Mayor – Ohid Ahmed
Community Plan Theme	A Safe and Cohesive Community
Strategic Priority	Fostering Greater Community Cohesion

1. **SUMMARY**

- 1.1 This report advises on the progress for the adoption of legislation and policy for the control of lap dancing and striptease premises in the Borough. Consultation carried out in relation to both the adoption of legislation and the shaping of the policy has been completed and analysed. If adopted, the policy will establish a nil limit for licenses for new premises but would allow current operators to continue subject to regulatory controls.

2. **DECISIONS REQUIRED**

- 2.1 The Mayor in Cabinet is recommended to:-
- 2.2 Adopt the proposed policy for Sexual Entertainment Venues which:
- (1) establishes a nil limit on licenses for new premises;
(2) allows existing licensed sexual entertainment venues to continue to operate subject to regulatory controls and license fees.
- 2.3 Agree that the policy for Sex Establishments should take effect on the same day that Schedule 3 takes effect in Tower Hamlets.

- 2.4 Note that the Licensing Committee will be asked to resolve that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 be applied in the London Borough of Tower Hamlets area to enable the proposed Sexual Entertainment Venues Policy to be brought into effect:
- 2.5 Note that the Licensing Committee will be asked to make regulations prescribing standard conditions as set out in Appendix 2.
- 2.6 Note that the Licensing Committee will be asked to resolve that fees as set out in Appendix 3 should apply to applications for Sexual Entertainment Venues.

3. REASONS FOR THE DECISIONS

- 3.1 The legislation that allows greater control of Sex Establishments is discretionary. Therefore if the Council wishes to avail itself of these powers the relevant legislation has to be adopted.
- 3.2 Cabinet (3rd August 2011) indicated that it wished to apply Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 to the London Borough of Tower Hamlets area. In order to progress to adoption the authority is required to undertake consultation specific to the adoption of these powers. This consultation has now been completed and analysed. The Licensing Committee has the appropriate delegation to resolve that Schedule 3 should apply to the London Borough of Tower Hamlets.
- 3.3 Local Authorities adopting Sex Establishments legislation are not required to have in place a policy. It is accepted good practice however that the Authority should develop a Policy that defines how the legislation will be administered and applied. Policy development should be carried out with appropriate consultation. This consultation has been completed and analysed. The policy, as recommended, provides a pragmatic solution to the achievement of Executive aspirations for a strong policy line against the exploitation of women. It reflects the consultation findings, equalities considerations, research review and previous Overview & Scrutiny findings. The law does not allow moral or religious considerations to drive council policy in this area.

4. ALTERNATIVE OPTIONS

- 4.1 The principal options considered are set out in the body of the report.
- 4.2 Adoption of the legislation is not compulsory and so the Council could choose not to pursue adoption. However the council would not be able to make decisions based upon the broader considerations allowed for in the 2009 Act including the appropriateness of the establishment within a locality and overall numbers of establishments across the borough.

- 4.2 The proposed policy is recommended over other policy options for reasons set out in the report. It would be possible not to have a policy at all, in which case each license application would be considered on a case by case basis resulting in a higher risk of inconsistency in approach which could in turn increase the potential for legal challenge or reputational damage where discrepancies occur.

5. BACKGROUND

- 5.1 The legislation brought in by Government in 2009 allows Local Authorities the discretion to adopt the new legislation. Once the powers have been adopted the Council can, through its licencing processes:
- i) Control the number of premises
 - ii) Control the location of premises
 - iii) Give local people a greater say over sexual entertainment venues in their area.

- 5.2 This report requests consideration of the adoption of the provisions for regulating sexual establishments which cover licences for sex shops, sex cinemas and sexual entertainment venues (SEVs) as set out in the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') as amended by the Policing and Crime Act 2009

6 BODYOF REPORT

- 6.1 A policy has been developed (Appendix One) that sets out how the new legislation will be administered and applied. The policy identifies how the Council would exercise its power to restrict the number and location of premises in the Borough. Standard conditions are detailed in Appendix Two and the schedule of fees at Appendix Three.

- 6.2 The policy has been developed to reflect and complement existing Council plans and strategic approach, namely:-

- Tower Hamlets Community Plan.
- Tower Hamlets Crime & Drug Reduction Partnership Plan.
- Tower Hamlets Enforcement Policy.
- Tower Hamlets Core Strategy.
- TowerHamletsTown Centre Spatial Strategy.
- Tower Hamlets Statement of Licensing Policy (Licensing Act 2003).
- Tower Hamlets Statement of Licensing Policy (Gambling Act 2005).

- 6.3 The policy has also been prepared with regard to:

- Consultation responses
- Human Rights Act 1998
- Equalities Act 2010

- 6.4 The policy seeks to contribute to the “One Tower Hamlets” principle by fostering community cohesion, reducing inequalities and empowering communities.
- 6.5 Furthermore, and linking to the documents identified above, the policy seeks to:-
- i) Address concerns about the level of crime and fear of crime.
 - ii) Contribute to retaining the richness in Tower Hamlets’ diversity.
 - iii) Recognise the importance of place shaping and ensuring connected and cohesive communities through planning and design.
 - iv) Encourage respect among communities.

Consultation on the Adoption of the Legislation

- 6.6 Consultation on the adoption of the sexual entertainment venues legal framework ran for six weeks from March 18th 2013 to April 29th 2013. The consultation was promoted through East End Life, press releases to all local and Bengali media and on the council’s website. Emails notifying about the consultation were sent out, this included emails sent to the responsible authorities, the Licensing Committee, Faith groups, Community Safety Partnership, Women’s Organisations, Networks and Forums, Advocacy Services and RSL and Housing Associations. All sexual entertainment venues and their registered owners received letters notifying them of the consultation.
- 6.7 The consultation was hosted online on the Council’s website and paper copies were provided if requested. The consultation posed the question ‘Do you think the council should adopt new powers to regulate sexual entertainment venues via an enhanced licensing regime?’
- 6.8 A total of 4,973 responses (526 online and 4,447 paper returns) were received, with 1,424 forms being returned from the Pleasure Lounge. The responses were as follows:
- 108 (2.2%) ‘Yes’ responses, in favour of adopting
4,865 (97.8) ‘No’ responses, not in favour of adopting
- 6.9 There is strong evidence that the sex industry has coordinated a response from its clientele to such an extent that it has undermined the consultation as being one that can provide an accurate picture of wider community opinion. The results are in stark contrast to the more balanced community response received to the Councils consultation on the policy approach that might be taken to control sex entertainment venues. This serves to point up the inconsistent nature of the consultation specific to the adoption of the relevant powers. Whilst the result may be unrepresentative of the community as a whole and heavily skewed by the intervention of the sex entertainment industry the Council should never the less take the response in to consideration when reaching a decision. Whilst the Council is required to

undertake consultation on the adoption of the legislation, a strong 'No' response does not prevent adoption if there remain good reasons for regulation of sex establishments under the scheme established by Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982..

- 6.10 It is important to recall that adoption of the scheme will enable the Council to regulate the number and location of premises and give local people a greater say over venues in their areas. Whilst each case will still have to be considered on its own merits, it allows the Council to adopt strong policies to protect women, reduce ASB and limit negative impacts brought about by these venues.
- 6.12 Overall it is considered preferable to adopt a scheme in Tower Hamlets and take into account the views of those in favour of sexual entertainment venues when setting the Council's policy and in the consideration of each application.
- 6.13 London Councils that have a cap on numbers or limit to existing establishments include: Camden, Hackney, Hammersmith & Fulham and Westminster

Consultation on the draft Policy

- 6.14 Consultation responses to the draft policy have been analysed by the company Social & Market Strategic Research (SMSR). SMSR have concluded that there was a small majority in favour of the proposal to have a nil value policy for all localities. In this regard the questionnaires return a 52% 'for' to 48% 'against' split and with a +/-2% sampling error, the Focus Groups were also equally split on this point. A higher level of support was received in relation to the defined localities (75%) and the policy considerations (60%) than was given to the zero tolerance policy direction (52%).
- 6.15 In relation to those against the nil policy there is a flawed perception that the localities have been identified primarily to support the nil establishment policy and that the approach taken is biased towards that end and is therefore 'unfair'. The localities are, in fact, drawn from the Council's Core Strategy and are based upon analysis of local characteristics for planning and development purposes. The Focus Groups identified that the localities are not necessarily appropriate for analysing the impact of sexual establishments. The Expert submissions also argued from a legal perspective that the localities should be application specific not pre-determined. Home Office guidance does not specify how localities should be defined, but highlights the potential for challenge in the event that the areas defined are unreasonable.
- 6.16 Adoption of the policy as drafted for consultation purposes would be likely to result in the non-renewal of licenses for existing businesses. The existing businesses have stated that they would seek to legally challenge a 'Nil' policy. The Council needs to ensure that any policy that it adopts is robust, proportionate and fair.

- 6.17 Analysis of the representations made through the consultation indicate that key issues for those who oppose the policy are the legitimacy of the locality definitions and the suggestion of bias in the approach (specific examples are set out in the SMSR report Appendix Four), although these are not the only concerns raised.
- 6.18 Whilst there is a small majority in favour of the 'Nil' policy, when the sampling error factor is taken in to account it represents a two percent margin of difference. This means that the consultation may be viewed as demonstrating strong public support for tighter controls but falling short of overwhelming public support for a blanket 'Nil' policy.
- 6.19 Careful consideration has therefore been given to the proposed policy response given the balance of the Consultation returns and the fact that there are a significant number of consultation responses that do not support a 'Nil' policy position.

Human Rights Act considerations

- 6.20 The grant or refusal of a licence is a matter which may arguably engage rights under Article 1 of the First Protocol of the European Convention on Human Rights (ECHR). A Premises Licence under the Licensing Act 2003 is considered to be a property right within the meaning of Article 1 Protocol 1.
- 6.21 Article 1 of the First Protocol of the ECHR entitles individuals to the peaceful enjoyment of their possessions, however, the Council can deprive individuals of the same where it would be in the public interest to do so.
- 6.22 Public interest must be considered within the framework of a 'fair balance' test. This requires that a balance be struck between the protection of the right of property and the general interests of the community. Further the consideration must also satisfy the test of proportionality.
- 6.23 Essentially therefore by adopting a nil policy that applies to all premises within the area of the Council all existing premises licensed under the 2003 Act will forfeit the ability to trade. This may be argued by those who currently operate premises to be incompatible with the ECHR. Such premises have traded for a number of years under the auspices of a Premises Licence pursuant to the 2003 Act. Such Act allows for the review of a Premises Licence where the operation fails to promote one (1) or more of the four (4) licensing objectives. Where a review is triggered then a potential sanction is the revocation of the Licence. The existing premises have operated in such a way that there has been no revocation of Licences. It is possible that if any premises should now lose its licence due to application of a nil policy then this may be argued to be disproportionate and incompatible with the ECHR.

Equalities and Cohesion considerations

- 6.24 The Council is required to have due regard to any changes to policy that might have a differential impact upon people who share a protected characteristic's.

A full Equalities Analysis of the final policy proposals has been undertaken in relation to the proposed policy position. This clarifies that there is evidence that the SEV Policy could have differential impacts on women, lesbian, gay and bisexual people, people from specific religious and ethnic minority communities.

- 6.25 The consultation findings show that there are notably divided views across some groups or characteristics. The findings also provide some evidence to underpin the assessment of how the policy might impact groups in different ways.
- 6.26 The organisations OBJECT (a human rights organisation specifically set up to challenge the sexual objectification of women) and CAPE (Communities Against People Exploitation) presented written responses to the consultation supporting a nil policy on the basis that SEV's have a negative impact on the safety of women. OBJECT argued associations with prostitution and trafficking, along with the negative impact on attitudes towards women and the negative impact on aspirations of young women and girls as key drivers for their support.
- 6.27 Rainbow Hamlets (RH) made representation to the consultation on behalf of the LGBT community and in particular expressed the view that the draft policy was not balanced, that proposals were based on a particular moral viewpoint and that there was no evidence that existing establishments were problematic to the surrounding community. RH asserts that claims regarding the impact of sex establishments are unsubstantiated. Just 37% of bisexual respondents and 12% of gay or lesbian respondents were in favour of the nil policy.
- 6.28 In the period leading up to and following the 2009 Act there has been a range of research relating to the impact of SEV's on particular groups and on locations. The clearest evidence arising from this is the negative impact on people and particularly women living close to such establishments. Research has shown that the areas around the clubs provoke negative feelings amongst some women in particular; making women feel less safe and changing or restricting their movement due to negative safety perceptions.
- 6.29 Concerns relating to the objectification of women are raised on the basis that SEV's promote the idea that it is acceptable to view women merely as sex objects and this links to broader issues around how women and girls are portrayed in society.
- 6.30 There appears to be little substantive empirical and unbiased research available to date to support suggested links between SEVs and the trafficking of women. Evidence from a 2003 LILITH report that SEV's were the specific cause of increased levels of rape in Camden has been challenged and subsequently re-evaluated. Whilst it is important to note that this does not mean such links do not exist, it is equally important to base core policy on sound research rather than hearsay or perception.
- 6.31 The Council also has a responsibility to proactively:

- i) Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- ii) Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- iii) Foster good relations between people who share a protected characteristic and people who do not share it.

6.32 The policy position forming the recommendations to Cabinet accord with its strategic approach and plans for promoting gender equality. It is consistent with its Safe & Cohesive theme priorities to reduce the fear of crime and to foster greater community cohesion. It also takes in to consideration the views of all consultees.

Summary

6.33 The consultation on the proposed “nil” policy yielded divided views. The modified proposal, whilst having due regard to human rights, the legal requirement to consider every application on its merits and the assorted views of those who do not support a nil policy, remains one that puts the Councils responsibilities set out in 6.31 and concerns about the women’s safety first. Whilst remaining a robust Nil policy it directly addresses the concerns raised by providing a restricted exception that recognises ~~in favour of~~ existing sexual entertainment venues ability to remain provided they continue to abide by the terms of their licence. It is considered that this strikes the appropriate balance between the various considerations outlined above. It is important to note that whilst the law requires that new applications must be determined on their merits the proposed Nil Policy with limited exemption only for existing venues is the most robust option available to the Council substantially restricting opportunities in the Borough for Sex Entertainment Venues to get a foot hold.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 The adoption of the provision will introduce a new fee structure for Sexual Entertainment Venues premises. They will need to hold two licences one for alcohol and another for the venue. The new fees for the SEV’s are set out in Appendix 3. The number of SEV’s that would be affected by the adoption of the new licensing regime is currently 11. If all apply and were granted SEV licenses this would achieve £99,000 in fees. This is the maximum that could be achieved and would be dependent on the relative number of refusals for which there is a partial return of the fee paid. The fee will need to be utilised to fund the administration of the new regime process and any potential legal challenge upon refusal.
- 7.2 With the threat of any legal challenge arising from adoption of the policy considerably reduced, the service will need to ensure that the policy can be adopted within existing budgeted resources

**8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE
(LEGAL SERVICES)**

- 8.1. On 6 April 2010, amendments to the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) came into effect which permitted local authorities to regulate sexual entertainment venues (“the SEV amendments”) in addition to other sex establishments.
- 8.2. For the purposes of the 1982 Act a sexual entertainment venue (“SEV”) means any premises at which entertainment of the following kind is provided before a live audience for the financial gain of the organiser or the entertainer –
- A live performance or a live display of nudity
 - Which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- 8.3. The following are not SEVs for the purposes of the 1982 Act –
- Sex cinemas and sex shops (which come within the more general definition of sex establishments).
 - Premises at which the relevant entertainment has been provided no more than 11 times in a 12 month period, provided that on each occasion the entertainment has not been provided for more than 24 hours and the occasions are at least a month apart.
- 8.4. Under section 2 of the 1982 Act the Council may decide that Schedule 3 to the Act, which contains a regime for controlling sex establishments, is to apply in Tower Hamlets. If the Schedule 3 regime is applied in Tower Hamlets, then no person may operate a sex establishment (including an SEV) in the borough without first obtaining a licence from the Council. The requirement for a licence is backed up by provision for offences, each of which carry a maximum penalty of £20,000.
- 8.5. If premises obtain a sex establishment licence under the Schedule 3 licensing regime, those premises will not also require a licence under the Licensing Act 2003 in respect of entertainment permitted by the sex establishment licence. The premises would still, however, require permission under the Licensing Act 2003 in respect of other licensable activities conducted at the premises (e.g. the sale of alcohol or the provision of regulated entertainment that is not permitted by the sex establishment licence).
- 8.6. Prior to the SEV amendments in 2010, the Council had determined that the scheme for licensing sex establishments in Schedule 3 of the 1982 Act should apply in Tower Hamlets. However, at the time of introducing the

SEV amendments in 2010, the Policing and Crime Act 2009 put in place transitional arrangements (“the Transitional Arrangements”), which specified that a new resolution is required if a local authority wants the Schedule 3 licensing scheme to extend to SEVs in addition to other types of sex establishments such as sex cinemas and sex shops.

8.7. The procedure for deciding that Schedule 3 of the 1982 Act should apply in Tower Hamlets is as follows –

- The Council must consult local people about whether or not to apply the SEV licensing regime in Tower Hamlets. The Transitional Arrangements set up an initial 12-month period in which local authorities might resolve that the SEV amendments would apply in their areas. If an authority did not resolve to adopt the SEV amendments within the timeframe (i.e. by 5 April 2011), then the authority was then required to consult local people about whether to adopt the SEV amendments. The Council has to comply with this requirement to consult and the report sets out the results of that consultation.
- The Council must pass a resolution specifying that the Schedule shall apply in Tower Hamlets. The resolution must specify the day on which the Schedule shall come into force (“the Specified Day”), which must be more than one month after the day on which the resolution is passed.
- The Council must then publish a notice that it is adopting the Schedule 3 regime. This must be published for two consecutive weeks in a local newspaper which is circulated in Tower Hamlets. The first publication of the notice must be at least 28 days before the Specified Day. The notice must state the general effect of Schedule 3.

8.8. The Council should have a rational basis for any resolution to adopt the sex establishment (including SEV) licensing regime in Tower Hamlets. The results of the consultation exercise must be taken into account. In this respect, the consultation conducted in relation to whether or not to adopt the sex establishment licensing regime (the 2013 consultation), is the more relevant of the two consultation exercises referred to in the report. If the Council intends to take a different approach than that indicated by the preponderance of views expressed in the 2013 consultation, then it will need to be satisfied there are good reasons for taking that approach. There is material in the report both in favour of and against the adoption of the SEV licensing regime. Before adopting the regime, the Council will have to be satisfied that the reasons in favour of adoption are sufficiently cogent.

8.9. As to the adoption of the legislation, Regulation 2(1) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and Schedule 1 to the Regulations provide that the functions relating to sex establishments under section 2 of and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 cannot be a function of the executive. Pursuant to the Council’s Constitution, this function has been delegated to

the Council's Licensing Committee. The power to resolve that schedule 3 of the 1982 Act applies to the Council's area is therefore a matter for the Licensing Committee.

- 8.10. The Home Office has published guidance in relation to the regulation of sexual entertainment venues following the 2010 amendments ("the SEV Guidance"). The Council is not bound to follow the SEV Guidance, but should take it into account as an indication of best practice. The SEV Guidance makes clear that the Council is not required to publish a licensing policy relating to sex establishments. The Council may, however, publish a licensing policy for sex establishments if it wishes and may publish a policy that applies only to particular types of sex establishments such as SEVs. If the Council publishes a licensing policy, it must take care that the policy does not prevent any individual application from being considered on its merits at the time the application is made. The report sets out the justification for adopting a policy, rather than having no policy, and the Mayor may reasonably take the view that a policy is required if he adopts the SEV licensing regime.
- 8.11. The actual policy proposed in the report is set out in Appendix 1. According to the SEV Guidance, the matters that the Council might include in a licensing policy include statements about –
- Locations the Council is likely to consider being appropriate or inappropriate for sex establishments.
 - How many sex establishments, or sex establishments of a particular kind, the Council considers to be appropriate for a particular locality.
- 8.12. The Council should have a rational basis for any content included in an SEV policy that it seeks to implement. The Council conducted consultation in 2011 on what its SEV policy should be. The results of that consultation are relevant considerations and should be taken into account before the Mayor determines a policy. The numbers of people in favour of or against any particular element of the policy may be one consideration. If an element is to be included in the policy it would be preferable for there to be an evidence base to support its inclusion. This may emerge from the content of submissions, studies and other evidence. There is material in the report which may be taken in support of the policy set out in Appendix 1, but this must be balanced carefully against any contrary material. Before adopting the proposed policy, the Mayor should be satisfied that it is the correct approach having regard to the competing considerations.
- 8.13. The Council is at risk of legal action, whether or not it adopts the SEV licensing regime and whether or not it adopts the policy in the form proposed in Appendix 1. It is critical that any decision taken properly weighs the results of consultation and the available evidence, giving

appropriate weight to any weaknesses in the supporting evidence and to any contrary material.

- 8.14. Section 6 of the Human Rights Act 1998 makes it unlawful for the Council to act inconsistently with a right under the European Convention on Human Rights (“ECHR”). Relevant rights for the purposes of SEV licensing are as follows –
- Article 1 of Protocol 1 to the ECHR entitles every person to the peaceful enjoyment of their possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
 - Article 10 to the ECHR provides a qualified right to freedom of expression. The freedom of expression may be subject to necessary restrictions, prescribed by law (e.g. the requirement for a licence under Schedule 3 of the 1982 Act) which are, relevantly, for public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the reputation or rights of others.
- 8.15. The Government has indicated in the SEV Guidance that provided a local authority exercises its powers rationally and in accordance with the purposes of the 1982 Act, it is unlikely there will be a disproportionate restriction on ECHR rights. However, the SEV Guidance also indicates that it would be prudent for local authorities to consider whether any interference with an applicant’s ECHR rights is necessary and proportionate (in relation to freedom of expression) or can be justified in the public interest (in relation to peaceful enjoyment of possessions). Such impacts may be considered when determining licensing applications, but it would assist if any policy adopted by the Council is necessary, proportionate or justifiable in the public interest. The report seeks to demonstrate how the proposed policy meets these requirements.
- 8.16. SEV Licences are renewable yearly and although the council has discretion not to renew where it has granted a licence, it would have to consider whether there was a change of circumstances from when the licence was previously granted or last renewed, sufficient to warrant the changed approach. A transfer of an existing licence is not a “new” application, however similar considerations will apply and it is unlikely that the mere fact of a change in proprietor would be a proper reason for refusing the transfer (although it is possible that there may be particular characteristics of the new applicant for transfer which may support a different approach).
- 8.17. The Policy recognises that, despite the council considering that a nil limit applies, each application from applicants for new licences (i.e. not existing premises) must still be considered on its own merit. New applicants, however, will be required to demonstrate why the Council should

depart from its policy. The Policy also provides that if existing premises were to cease trading then there is no presumption that the Council will consider any new applications for those premises more favourably.

- 8.18. The making of such a policy is not a matter that is required under the Local Government Act 2000 and the 2000 Regulations not to be the responsibility of the Executive and, therefore in the absence of any resolution to the contrary (and there is none) it falls to the Executive to make this policy.
- 8.19. It is proposed to introduce application fees as set out in Appendix 3. Paragraph 1 of Schedule 3 to the 1982 Act allows the Council to set a fee. Such fee must be reasonable and should properly reflect the anticipated costs for the Council in administering the application, holding a hearing to consider the application (including legal costs) and the costs associated with licensing visits should a licence be granted. Fees should not therefore be set at an unreasonably high level to dissuade applications.
- 8.20. As to setting fees, again as this is a specific function under Schedule 3 of the 1982 Act and as this function is a function that cannot be the responsibility of the executive and as this function has been delegated to the Licensing Committee then the setting of the fees is for the Licensing Committee.
- 8.21. Standard conditions have been proposed that will be applied to all licensed SEVs. Paragraph 13(1) of Schedule 3 to the 1982 Act gives the Council power to make regulations prescribing standard conditions (i.e. the terms, conditions and restrictions on or subject to which licences under Schedule 3 to the 1982 Act are in general to be granted, renewed or transferred by the Council). Such conditions must be proportionate and must be precise so that everyone (Premises Licence holder, those charged with enforcing the conditions, and local residents) would know where they stand. These proposed conditions meet those criteria.
- 8.22. As to the setting standard conditions, again as this is a specific function under Schedule 3 of the 1982 Act and as this function is a function that cannot be the responsibility of the executive and as this function has been delegated to the Licensing Committee then the setting of the conditions is for the Licensing Committee.
- 8.23. Before taking the proposed decisions in relation to the licensing of SEVs, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not. An equality analysis has been conducted and is set out in Appendix 5

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 The Sexual Entertainment Venue Policy has been developed with “One Tower Hamlets” as being a key part of its rationale. The Policy intends to contribute to retaining the richness in Tower Hamlets’ diversity, recognise the importance of place shaping and ensuring connected and cohesive communities through planning and design and encourage respect among communities.
- 9.2 Legislation gives local authorities the opportunity to control SEV’s. The legislation was drafted to allow communities to have a say about whether sex establishments should be allowed to operate in their community and it gives the local authority the power to determine limits on numbers and localities.
- 9.3 Cabinet has previously agreed that consultation should be undertaken on the draft policy. Strong views were expressed by the businesses (venues) and pressure groups regarding the impact of SEV’s in relation to employment, crime and anti-social behaviour and the specific impact upon some groups; in particular women and girls. Consultation was therefore designed to ensure that views were gathered from the wider community in order to provide a clearer understanding of what the community feels about the impact of this industry in the borough.
- 9.4 The consultation was analysed by an independent company SMSR. They conclude that the consultation does not provide a clear mandate for implementation of the policy as currently set out.
- 9.5 The group Rainbow Hamlets has identified that there are a declining number of places and venues for LGBT people to meet in the Borough– from 20 in the 1980s to 4 now. It has stated that these spaces provide a community function for people to meet and offer a centre point for information and services as well as a safe space for individuals who are out and not out. If these were to close there could prospectively be no safe spaces for LGBT people in the borough. More detailed analysis of the breakdown by equalities groups is set out elsewhere in this paper including the specific issues that relate to the White Swan venue and associated detrimental impact on community cohesion that might arise should a nil policy be implemented.
- 9.6 The principles guiding the draft Policy were founded on a belief that overall SEV’s have a negative impact on communities and in particular upon women and girls, and that a nil option is the optimum approach to negate this impact. The consultation suggests that a different view is held by a significant proportion of the community, that well managed premises are not perceived

as a particular problem by this group, and that the proposal for a nil a policy is perceived by them as not being justified

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

10.1 There are no SAGE implications for this report

11. RISK MANAGEMENT IMPLICATIONS

11.1 The adoption of legislation and a 'Nil' policy may lead to a Legal challenge from businesses that are currently operating within the Borough. The policy and approach have been developed with the best available advice and opinion in order to reduce the likelihood of challenge and to ensure that the Council is in a position to resist any such legal challenge should it be made.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

12.1 The Sexual Entertainment Venue Policy has been developed to complement Crime and Drug Reduction Partnership Plan. The Policy has also taken into consideration the concerns about the levels of crime and the fear of crime in the Borough.

13. EFFICIENCY STATEMENT

13.1 This report is not concerned with expenditure, reviewing or changing service delivery or the use of resources

14. APPENDICES

Appendix 1 – The Sexual Entertainment Venue Policy

Appendix 2 – Standard Conditions for Sexual Entertainment Venues

Appendix 3 – Fee Structure

Appendix 4 – Socialand Market Strategic Research Analysis

Appendix 5 – Equalities Impact Assessment

Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012

List of “Background Papers” used in the preparation of this report

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
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None

N/A