

## APPENDIX A

<b>Committee/Meeting:</b> Cabinet	<b>Date:</b> 11 <sup>th</sup> January 2012	<b>Classification:</b> Unrestricted	<b>Report No:</b> CAB 060/112
<b>Report of:</b> Steve Halsey, Corporate Director Communities, Localities, and Culture  <b>Originating officer(s):</b> Azizul Goni Special Projects Officer		<b>Title:</b> London Local Authorities and Transport for London Act 2003 – Section 16  <b>Wards Affected:</b> All	

<b>Lead Member</b>	Councillor Shahed Ali, Cabinet member for Environment
<b>Community Plan Theme</b>	A Great Place to Live -
<b>Strategic Priority</b>	Improving the public realm

### 1. **SUMMARY**

- 1.1. Section 16 of the London Local Authorities and Transport for London Act 2003 grants additional power to the Highway Authority to serve a notice on an occupier, who takes or allows someone else to take a motor vehicle across a verge or footway where no vehicle crossing (crossover) has been constructed and requiring them to stop doing it. Ultimately, if they do not comply with the notice, this section allows the Authority to take steps to stop it being possible to take a vehicle across the footway (e.g. erect bollards) and to charge the owner or occupier of the premises for the works.
- 1.2. In order for this part of the legislation to be used by the London Borough of Tower Hamlets it is necessary for a resolution to be passed by Full Council and for a date to be published for implementation. The date of implementation can not be less than 3 months from the date of publication of the passing of such a resolution.
- 1.3. Most provisions of the London Local Authorities and Transport for London Act 2003 came into effect from 1st January 2004. Sections 4, 5, 7 and 16 of the Act were expressly excluded from the general commencement and, instead, provision was made for local authorities to determine individually whether the sections should come into effect in their areas and, if so, to fix the date or dates on which the sections would come into operation.
- 1.4. In 2005 a report was made to Cabinet in order to adopt sections 4, 5 and 7 of the London Local Authorities and Transport for London Act 2003 but section 16 was not included in that report. This part of the legislation cannot be used until a resolution has been passed by the Council.

## **2. DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- 2.1 Note the enhanced powers available to the Council as Highway Authority under section 16 of the London Local Authorities and Transport for London Act 2003, concerning vehicles driving over the footway. The enhanced enforcement powers are an addition to existing powers contained in section 184 of the Highways Act 1980.
- 2.2 Agree that a report should go forward to Full Council with a recommendation that Full Council fixes a day on which section 16 of the London Local Authorities and Transport for London Act 2003 will come into operation.

## **3. REASONS FOR THE DECISIONS**

- 3.1 To enable the provisions of the London Local Authorities and Transport for London Act 2003 to be implemented providing necessary enhancements to existing enforcement powers in relation to Vehicle Crossings over footways and verges to the benefit of public safety.

## **4. ALTERNATIVE OPTIONS**

- 4.1 The proposal is to adopt Section 16 of the London Local Authorities and Transport for London Act 2003 to enhance the Council's enforcement options in relation to habitual crossings across kerbed footways or verges to access the highway.
- 4.2 The alternative is to do nothing and continue to use the powers and penalties under the Highways Act 1980. If the Highways Act notice is ignored, this gives the Council powers to install a vehicle crossover and recover its costs, either by taking the resident to Court or putting a land charge against the property. The downside to this course of action is that it can tie up a significant amount of Council resources, either in terms of money or officer time and if the matter is putting pedestrians or other highway users at risk the delays may be put lives at risk. Section 16 offers the opportunity to issue a notice requiring the crossings to cease and to back that up with prosecution.

## **5. BACKGROUND and BODY OF REPORT**

- 5.1 Section 3 of the Act allows each authority to introduce the sections of the Act specified in section 1 of the Act on different dates, subject to the necessary

notification and publication requirement. The 'appointed day' has to be set by a resolution of the Full Council and the making of the resolution and the day chosen have to be advertised in the London Gazette and in a local newspaper with a gap of at least 3 months between publication and the day itself.

5.2 The current legislative powers under the Highways Act 1980 are limited with regard to enforcement provision and the expanded powers under the London Local Authorities and Transport for London Act 2003 will allow more robust enforcement and ensure the protection of our highways and highway users.

### 5.3 **Current Powers:**

5.3.1 The Highways Act 1980 (S.184) empowers the local authority to serve notice upon the occupier of any premises adjoining or having access to a highway maintainable at the public expense who habitually takes or permits to be taken a mechanically propelled vehicle across a kerbed footway or a verge in the highway to or from those premises.

5.3.2 The notice allows the local authority to either execute such works for the construction of a vehicle crossing over the footway or verge as may be specified in the notice or impose such reasonable conditions on the use of the footway or verge as a crossing as may be so specified.

5.3.3 The costs of the construction of such a crossing can be recharged to the occupier. A person who contravenes any condition imposed by the notice, or knowingly permits it to be so used; he is guilty of an offence and liable to a fine not exceeding £20 or, in the case of a second or subsequent offence, to a fine not exceeding £50.

5.3.4 A policy and procedure on Vehicle Crossovers already exists, and can be found on the Council's website:  
<http://www.towerhamlets.gov.uk/default.aspx?page=754>

### 5.4 **New Enhanced Powers:**

5.4.1 The London Local Authorities and Transport for London Act 2003 (S.16) introduced expanded powers with regard to the cessation of taking or permitting to be taken mechanically propelled vehicles across the kerbed footway or verge.

5.4.2 The notice that can be served under this legislation allows for the execution of works by the local authority to prevent such vehicles being taken across the footway or verge.

5.4.3 This differs from the Highways Act notice with regard to the preventative measures, which in many cases would be the preferred option, but all works are still able to be recharged to the occupier without the need to take the matter to court.

- 5.4.4 The maximum fine under the London Local Authorities and Transport for London Act 2003 is also £1000 but covers the offences of:
- (a) knowingly uses a footway or verge as a crossing in contravention of a notice; or
  - (b) knowingly permits it to be so used; or
  - (c) without reasonable excuse removes, damages, alters or defaces any works executed under subsection 10 (prevention measures)
- 5.4.5 Vehicles crossing the footway without the benefit of a duly constructed vehicle crossover can cause a safety hazard to pedestrians and vehicles as sight lines may be inadequate, pedestrians and other vehicle users will have no visual references to prompt an expectation that a vehicle may emerge from the premises and it can also damage to the public highway. This damage also results in risk to pedestrians and vehicles and is an additional cost burden on residents of the Borough as it has to be repaired.
- 5.4.6 Under Section 41 of the Highways Act 1980 the Highway Authority has a duty to maintain the highway. If the Council is aware of vehicles crossing the footway without a duly constructed vehicle crossover and an accident occurs to someone due to damage caused by such action, then the Council could be deemed at least partially liable if it had not acted.
- 5.4.7 The adoption of this legislation would ensure that more effective enforcement can take place regarding vehicles crossing the footway or verge, the reducing risk to residents and other road users by allowing preventative action and reducing incidents of damage to our highways. It is therefore proposed that the London Local Authorities and Transport for London Act 2003 (S.16) be resolved to be adopted.
- 5.4.8 It should be noted that these powers will not be applied with regard to motorcycles or motability scooters.

## **7. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 7.1 The report requires the Council to pass a resolution to adopt Section 16 of the London Local Authorities and Transport for London Act 2003 with regard to Vehicle Crossings over footways and verges'. The cost of advertising the resolution is provided for within the Transportation and Highways budget. There are no specific financial implications emanating from this report as cost can be recharged to the occupier or fines imposed for offences.

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

- 8.2. The report correctly identifies the need for a council resolution in order for section 16 of the London Local Authorities and Transport for London Act 2003 (“**the 2003 Act**”) to come into effect. Following such resolution, the Council must cause a notice of the resolution to be published in a local newspaper circulating in Tower Hamlets and in the London Gazette, specifying the day fixed as the day on which the resolution will take effect. The commencement day must not be earlier than three months from publication of the notice.
- 8.3. When in operation, section 16 of the 2003 Act will enable the Council to take action to prevent an occupier of premises from habitually taking or permitting a mechanically propelled vehicle to be taken across a kerbed footway or a verge in the highway to or from the premises. The section 16 power will apply in circumstances where the Council has not, as highway authority, constructed a vehicle crossing for the premises or served a notice under section 184 of the Highways Act 1980.
- 8.4. Section 16 of the 2003 Act permits the Council to serve a notice on the occupier of the premises to cease taking or permitting mechanically propelled vehicles to be taken across the kerbed footway or verge. Before issuing a notice, the council must have regard to specified matters, namely –
- The need to prevent damage to a footway or verge.
  - The need to ensure safe access to and egress from premises (so far as practicable)
  - The need to facilitate passage of vehicular traffic in and parking of vehicles on the highway (so far as practicable)
  - The need to prevent obstruction of the highway or verge.
- 8.5. A notice served by the Council under section 16 of the 2003 Act must give at least 28 days before it takes effect. The occupier has two opportunities to challenge a notice. First, the occupier may object in writing to the notice and the Council is required to consider whether it will maintain or withdraw the notice. Secondly, if the Council does not withdraw the notice, the occupier may appeal against the notice to the county court.
- 8.6. If a section 16 notice takes effect, then two consequences follow. First, the Council may carry out works to prevent vehicles crossing the highway or verge. Secondly, the Act imposes criminal sanctions relating to contravention of the notice or interference with the Council’s works. Section 16 of the 2003 Act creates three specific offences –
- Knowingly permitting a footway or verge to be used as a crossing in contravention of a notice served under section 16.
  - Knowingly using a footway or verge as a crossing in contravention of a notice served under section 16.

- Removing, damaging, altering or defacing works executed by the Council, following a notice becoming effective, to prevent mechanically propelled vehicles from crossing (without reasonable excuse).
- 8.7. The Council may take criminal proceedings against not only the recipient of the Notice but also the driver of a mechanically propelled vehicle or a person who interferes with works.
- 8.8. A section 16 notice will not, however, operate to prohibit an occupier from enjoying the benefit of: a planning permission (made at least 8 weeks before section 16 comes into operation); works covered by a certificate of lawfulness under section 191 or 192 of the Town and Country Planning Act 1990, or permitted development under the Town and Country Planning (General Permitted Development) Order 1995.
- 8.9. As the service of a section 16 notice is classed as enforcement action, then the decision to serve the Notice and any subsequent action taken in breach of the Notice should be undertaken in accordance with the Council's Enforcement Policy. The Enforcement Policy provides that the Council's approach to enforcement is to be founded on firm but fair regulation, around the principles of –
- **raising awareness** of the law and its requirements
  - **proportionality** in applying the law and securing compliance
  - **consistency** of approach
  - **transparency** about the actions of the Council and its officers
  - **targeting** of enforcement action.”
- 8.10. Before making a resolution to appoint a day for commencement of section 16, 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 don't. The equality analysis that has been carried out is referred to in section 9 of the report and in the appendix.

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

- 9.1 Any enforcement carried out under section 16 of the London Local Authorities and Transport for London Act 2003 will be done according to the Council's enforcement policy. The enforcement policy was subject to an equality impact assessment prior to its adoption by Cabinet in September 2010.
- 9.2 Enforcement action that complies with the five principles expressed in the Enforcement Policy and summarised in paragraph 8.9 above should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

- 9.3 The Enforcement Policy sets out clear principles to guide officers in determining the appropriate level of enforcement action. It actively seeks to promote transparency in decision-making. To the extent that the policy provides officers with relevant considerations, it works against enforcement decisions being taken on irrelevant and unlawful considerations such as those based on protected characteristics (gender, race, disability, sexuality, age, religion or belief).
- 9.4 Targeted enforcement may in some circumstances fall disproportionately heavily on groups with protected characteristics. However, an analysis of the potential impacts of enforcement under section 16 is set out in Appendix 1 and it is not considered that there are likely to be any such impacts. The analysis makes reference to the provisions in the enforcement policy which allow officers to take into account the particular vulnerability of an individual when determining the appropriate level of enforcement.

## **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1 N/A

## **11. RISK MANAGEMENT IMPLICATIONS**

- 11.1 The risks of damage to the highway, accidents and associated financial costs may be reduced if the Council is able to take effective action against crossings of kerbed footways and verges. By utilising the full powers contained in section 16 of the London Local Authorities and Transport for London Act 2003, the Council will increase its options for taking action.

## **12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 12.1 The Offence of knowingly using a footway or verge as a crossing in contravention of any condition imposed is criminal in nature.
- 12.2 The adoption of section 16 of the London Local Authorities and Transport for London Act 2003 will allow the Council more options for enforcement. Potential offenders should be discouraged by the fines that can be handed down by a magistrate under the London Local Authorities and Transport for London Act.
- 12.3 Those that persist on breaking the law can be prevented from doing so through the ability to put in preventative measures.

**13. EFFICIENCY STATEMENT**

- 13.1 Being able to stop people driving over pavement where a crossover does not exist will reduce damage to the pavement structure thus reducing the cost of maintenance on the Council.
- 13.2 The ability to take action without the need to go to court will reduce the Council's cost in legal fees, and save officer time in dealing with individual cases.
- 13.3 Damage to the pavements can lead to accidents occurring, not only causing injury to residents but causing liability issues for the Council. Our ability deal with offences reported to the Council or identified by officers will reduce insurance claims arising as a result of people driving over pavements.

**14. APPENDICES**

Appendix 1 – EqIA Test of Relevance and Initial Screening Document

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**Local Government Act, 1972 Section 100D (As amended)  
List of "Background Papers" used in the preparation of this report**

**None**

**N/A**



## Appendix 1:

### Test of Relevance and Initial Screening Document

#### Equalities Analysis

#### Combined Test of Relevance and Initial Screening Document

This document is to be used for:-

- Establishing whether an EQIA needs to be undertaken for the policy, function or strategy. *(Based on Section 4 around Impacts)*
- Reviewing existing equality analysis (eqia) to ascertain whether the original EQIA needs revising. *(N.B the revision of an equality analysis (eqia) is proportionate to the amount of change in relation to the policy, function, strategy. It is good practice that an analysis is reviewed every three years)*

#### **Section 1 – General Information**

Name of the Policy or Function London Local Authorities and Transport for London Act 2003 – Section 16
Service area Public Realm
Team name Clean and Green
Service manager Simon Baxter
Name and role of the officer completing the TOR <i>(Explain why these people were selected i.e. the knowledge and experience they bring to the process)</i> Azizul Goni, Special Projects Officer, author of the report. Previously attended EqIA training

#### **Section 2 - Information about the Policy or Function**

Is this a policy or function?	Policy <input type="checkbox"/>	Function [X]
Is the policy or function strategic or developmental?	Strategic <input type="checkbox"/> Developmental [X]	
Is this a new or existing policy or function?	New <input type="checkbox"/>	Existing [X]
If for a new policy or function, please indicate the date this form was undertaken		
If for an existing policy or function, what was the original date(s) the equality analysis (TOR or EQIA) was undertaken <i>(please attach a copy of any previous equality analysis)</i> Issuing of Statutory Notices is covered in the Council's Enforcement Policy.		
<b>What are the main aims and objectives of the Policy or Function</b> The London Local Authorities and Transport for London Act 2003 introduced a power to the highway authority to prevent the use of kerbs and verges to gain access to private property, i.e.		

as if the verge/kerb were a crossover. A Notice will be served requiring the owner/occupier to stop taking motor vehicles across the verge or footway. The Act also makes provision for the appropriate authority to undertake works preventing the use of the kerb or verge as a vehicle crossing and to charge the owner or occupier for such works. This means that the Council will now be able to prevent drivers driving over a footway to park on a forecourt in circumstances where permission for a vehicle crossing (footway crossover) has been refused.

Who are the main stakeholders

Authorised Enforcement Officers within the Communities, Localities, and Culture Directorate.  
Residents and users of the Borough's highways.

Is this policy/function associated with any other policy or function of the Council  
(i.e. *Community Plan, One Tower Hamlets etc*)

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### Section 3 – Information about Existing Policies and, or Changes to Functions.

Has there been any 'significant' change to the Policy or Function?

Yes  No

If yes, Please indicate what the change will be and what has brought about this change to the policy or function?



## Section 4 – The Impact

*(Briefly assess the potential impact that the policy/function could have on each of the target groups. The potential impact could be negative, positive or neutral. If you have assessed negative potential impact for any of the target groups you will need to also assess whether that negative potential impact is high, medium or low). Please also indicate if there is any link to Community Cohesion.*

Identify the potential impact on the following groups and:

<b>Gender</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Neutral:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy.
<b>Trans Gender</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Neutral:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy.
<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Neutral:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy.
<b>Disability</b>	<b>Positive</b>	<b>Negative</b> <b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Low:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy. It should be noted that these powers will not be applied with regard to motorcycles or motability scooters as the pavements are built to withstand the weight of these vehicles. A driver with disability has the option to apply for a dropped curve to the Highways department. If an application was to be rejected and they have chosen to ignore any warning issued by the Council, ultimately the driver is knowingly breaking the law. Should adverse impact be evident in relation to disability or older people with reduced mobility, enforcement officers are likely to choose not to take enforcement action and this would be supported by the enforcement policy.

<b>Age</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Neutral:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy.
<b>Sexual Orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Neutral:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy.
<b>Religious Belief</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Neutral:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy.
<b>Socio-economic status</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Low:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy. Opportunity to comply without punitive action is the first process; compliance at this stage will not incur any socio-economic problem.
<b>Community Cohesion</b>	<b>Positive</b>	<b>Negative</b>	<b>Reason (inc any brief initial evidence)</b> <b>Low:</b> The offences are criminal in nature and apply to all. Reasonable defence is contained within the legislation. Any issuing of Notice or subsequent enforcement action will be carried out in accordance to the Council's Enforcement Policy. The Council's ability to take effective enforcement action will lead to improved community cohesion.



**If you have identified a LOW impact or, there has been NO SIGNIFICANT amendments to an existing policy/function there is no need to continue to a full equalities analysis (full EQIA). This must be agreed by the One Tower Hamlets team**  
*(If a full equalities analysis is not to be undertaken the Relevance Form must be signed off by the relevant Head of Service to show Equality and Diversity has been considered. Please send this form to the One Tower Hamlets team*

Please explain why an EQIA is NA

The Council co-sponsored the London Local Authorities and Transport for London Act 2003 in 2002. The Act, received royal assent on 30 October 2003, and the powers contained in the Act generally came into force two months after Royal Assent, on 30 December 2003. However, some of the powers, specifically relating to enforcement of vehicular crossing, need to be introduced on an "appointed day" with an associated public notice process. It is the responsibility of individual local authorities to set this "appointed day" when these specific provisions will be introduced.

The Council's enforcement teams already have powers under section 184 of the Highways Act 1980, the London Local Authorities and Transport for London Act 2003 enhances the enforcement powers contained in the Highways Act.

**If you have assessed the potential impact as MEDIUM or HIGH you will now need to complete a full equalities analysis (full EQIA) - building upon the findings of the initial impact assessment (section 4)**

Signed – Lead Officer – date

Azizul Goni  
16/06/2011



Signed – Service Head – date



16/11/11