

**LICENSING COMMITTEE - 4 OCTOBER 2021**

<b>Title of paper:</b>	<b>Cumulative Impact Assessment</b>	
<b>Director(s)/ Corporate Director(s):</b>	Andrew Errington Director Community Protection	<b>Wards affected:</b> ALL
<b>Report author(s) and contact details:</b>	Melanie Bird Licensing Compliance Manager melanie.bird@nottinghamcity.gov.uk 07903702608 Paul Dales Chief Environmental Health Officer 07983 334708 paul.dales@nottinghamcity.gov.uk	
<b>Other colleagues who have provided input:</b>	Ann Barrett, Team Leader, Legal Services 0115 8764411 ann.barrett@nottinghamcity.gov.uk	
<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	N/A	
<b>Relevant Council Plan Key Theme:</b>		
Strategic Regeneration and Development		<input checked="" type="checkbox"/>
Schools		<input type="checkbox"/>
Planning and Housing		<input type="checkbox"/>
Community Services		<input type="checkbox"/>
Energy, Sustainability and Customer		<input type="checkbox"/>
Jobs, Growth and Transport		<input type="checkbox"/>
Adults, Health and Community Sector		<input type="checkbox"/>
Children, Early Intervention and Early Years		<input type="checkbox"/>
Leisure and Culture		<input checked="" type="checkbox"/>
Resources and Neighbourhood Regeneration		<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>		
<p>To advise the Licensing Committee of the responses received (appendix 2) during the statutory consultation process conducted in respect of the draft Cumulative Impact Assessment (CIA) (appendix 1) in respect of the City Centre and Radford, Berridge and Arboretum areas.</p> <p>To seek a final decision as to whether or not to publish the draft CIA and if so in what terms in light of the consultation responses and advice given.</p> <p>A list of respondents is also attached at appendix 3</p>		
<b>Recommendation(s):</b>		
<b>1</b>	To consider the consultation responses and the Officers comments at Appendix 2	
<b>2</b>	That the Committee determine not to publish the CIA at this time.	
<b>3</b>	That Committee amend its terms of reference as set out in Appendix 4	

## **1 Reasons for Recommendations**

- 1.1. Having published a Cumulative Impact Assessment (CIA) in October 2018 the Council as Licensing Authority is now under a statutory duty to review that Cumulative Impact Assessment and consider whether it still holds the same opinion.
- 1.2. Licensing officers had sought evidence from Responsible Authorities and prepared the attached draft Cumulative Impact Assessment which had been updated to reflect current statistical data and information.
- 1.3. The retention of the existing Saturation Zones had been requested, and evidenced, by both Nottinghamshire Police and the Council's Community Protection Team and a draft Cumulative Impact Assessment was approved by this Committee for consultation on 10 August 2021. The results of the consultation have now been collated and assessed.
- 1.4. A common theme throughout the responses was that insufficient weight had been placed on the effects of the pandemic on businesses and that more general consideration ought to be given to the benefits and effects that the hospitality industry has on the wider economy and vitality of the city centre in particular. It has also transpired that the plans and statistical information provided and contained in the draft CIA were incorrectly based on the City Centre area and Radford, Berridge and Arboretum area in their entirety as opposed to the delineated cumulative impact zones designated by the current CIA and previous policies. Taking all of this into account it is recommended that the Committee does not adopt the proposed CIA at the time and that officers re-focus their considerations and evidence gathering to look at a more holistic picture including the effects of such policies on the hospitality industry and the economy alongside updated evidence of the problems having a large concentration of licensed premises can have not only in terms of crime and anti-social behaviour but also in terms of health related statistics .

## **2 Background (Including Outcomes of Consultation)**

- 2.1 As outlined above and in the report to this Committee of 10 August 2021, CIAs may only remain in force for a period of three years from publication prior to which the Licensing Authority must review the CIA and consider whether it still holds the same opinion. The Authority's current CIA is due to expire on 9 October 2021.
- 2.2 Licensing officers sought evidence and views from Responsible Authorities on whether it might be appropriate to maintain a CIA which tended to indicate that renewal of the CIA might be appropriate. A consultative draft Cumulative Impact Assessment was therefore approved by this Committee on 10 August 2021 and consultation took place between 11 August 2021 and 8 September 2021 with both public and statutory consultees. A summary of consultation responses, the officer assessment of them appear at appendix 2.
- 2.3 The CIA at Appendix 1 is in the same form as the consultative draft and has not been amended following the responses received. However, in light of some of the comments clarification has been sought in respect of the plans and statistical information provided and unfortunately it has transpired that the plans attached at

appendix 1 and 2 of the draft CIA and the statistical information, in particular at Sections 3 and 4 is incorrectly based on a wider areas than was intended.

- 2.4 Given the legitimate concerns expressed about the wider effects of the CIA (and the City Centre Saturation Zone in particular) in the current economic climate and the evidential discrepancies It is recommended that the current draft CIA proceed no further at this time. The existing CIA will lapse on 9<sup>th</sup> October 2021 but this will not prevent either Responsible Authorities or any other person from making representations against applications where they feel appropriate. Whilst CIAs set down a strong statement of intent they do not change the fundamental way that licensing decisions are made and each application still has to be considered on its own merits against the information provided by those making representations. The absence of a CIA does not prevent representations being made that an application premises will give rise to a negative cumulative impact on one or more of the licensing objectives. It will however remain incumbent on the person making such representations to provide the relevant evidence of cumulative impact.
- 2.5 It is proposed that officers will carry out further evidence gathering which it is envisaged will be brought to this Committee in Spring/Summer 2022 allowing further time to investigate the impact on the business sector, in particular in the City Centre and Radford, Berridge and Arboretum areas of the City and to allow for further views to be made from a wider sector of stakeholders including Public Health. This period of time will also allow statistical data to be reviewed and permit further analysis of each of the existing and previous boundaries relevant to the City Centre and Radford, Berridge and Arboretum Saturation Zones.
- 2.6 The lapse of the current Cumulative Impact Assessment Policy will allow a natural hiatus whereby the Licensing Authority may consider further analysis of the available data and of the current business sector climate, particularly the impact that the Covid-19 pandemic has had on the hospitality industry within Nottingham. This issue was prevalent within the responses received from the consultation. Further consideration will confirm with interested parties that Nottingham's Licensing Authority takes their views into account and that there is a commitment to apply a further period of analysis to the issues raised. The re-consideration of a CIA in r 2022 will allow an approach that can tailor the assessment to the needs of the city as it adapts to a "new normal".
- 2.7 The lapse of the current CIA will however have implications for this Committees Terms of Reference, those of its Licensing Panels and the Statement of Licensing Policy. Currently any application which raises Cumulative Impact for premises which are outside one of the adopted Cumulative Impact Zones has to be considered by a full meeting of this Committee rather than a panel. As such zones will no longer exist and for the sake of efficiency it is recommended that any application where representations are received relating to Cumulative Impact now be referred to a Panel to consider. If an authority has a CIA it is also required to be summarised in the Councils statement of Licensing Policy. The current CIA is summarised in the Council's statement of Licensing Policy from paragraphs 6.33-6.40. Once the current CIA lapses these paragraphs will no longer be relevant. The Statement of Policy cannot be changed to remove these paragraphs without going through a consultation process. Given that work will be taking place which may result in a further CIA in the future it is not proposed to make such amendments at this time rather the matter will be re-considered alongside re-consideration of the CIA. Appropriate information will however be placed on the Council's website to inform the public that those parts of the Policy are in effect no longer applicable.

### **3 Other Options Considered in Making Recommendations**

- 3.1 Adopting the consultative draft CIA would pose a risk of legal challenge and it is felt more appropriate that further consideration is given to the wider issues raised by the public consultation

### **4 Finance Colleague Comments (Including Implications And Value For Money/VAT)**

- 4.1 The statutory fees levied for the regime are intended to cover the cost of the creation and consultation of a Cumulative Impact Assessment.

### **5 Legal and Procurement Colleague Comments (Including Risk Management Issues, and Legal, Crime And Disorder Act and Procurement Implications)**

- 5.1 Section 5A of the Licensing Act allows an Authority to publish a CIA “stating that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority’s duty under section 4(1) to grant any further relevant authorisations in respect of premises in those parts”

- 5.2. The adoption of a CIA is a power not a duty and should be based on robust evidence which is required to be set out in the CIA. As indicated in the body of the report there have been some legitimate challenges to the evidential base and plans contained within the draft CIA and the recommendation not to adopt that CIA is appropriate in these circumstances. Paragraph 2.4 of the report correctly reflects that statutory Guidance that the absence of a CIA does not prevent issues of Cumulative impact from being raised in representations nor fundamentally affect the way that applications are considered. Those making such representations however will need to ensure that they are supported by appropriate evidence.

- 5.3 The lapse of the CIA will have an effect both on the Council’s statement of Licensing Policy and on the Committee’s terms of reference. proposals in relation to the Licensing Policy are set out in paragraph 2.7 above and seem reasonable at this time. In relation to the Committee’s terms of reference section 6 of the Licensing Act 2003 requires Council (as Licensing Authority) to establish a Licensing Committee however section 7 then refers all matters relating to the discharge of the Licensing Authority’s functions (with some limited exceptions) to the Licensing Committee. On this basis this Committee can set it’s own terms of reference and amendments to those currently contained in the Constitution are proposed in appendix 4. These effectively mean that if issues of cumulative impact are raised in representations the relevant applications can be considered by a panel rather than needing to convene a full meeting of this Committee. the existing terms of reference for Licensing Panels do not require any amendment to reflect these proposed changes. If approved a report will be taken to Council requesting that the relevant changes be reflected in the Constitution.

**6 Strategic Assets & Property Colleague Comments (For Decision Relating to all Property Assets and Associated Infrastructure)**

6.1 None

**7 Equality Impact Assessment**

7.1 Has the equality impact of the proposals in this report been assessed?

No



The Cumulative Impact Assessment has been prepared to enable fairness to all parties.

**8 List of Background Papers Other Than Published Works or Those Disclosing Confidential or Exempt Information**

8.1 None

**9 Published Documents Referred to in Compiling This Report**

9.1 Licensing Act 2003  
Section 182 Guidance  
Policing & Crime Act 2017