

## POLICY REVIEW AND DEVELOPMENT PANEL REPORT

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| REPORT TO:      | CORPORATE PERFORMANCE PANEL  |   |    |
| DATE:           | 8 November 2021  |   |    |
| TITLE:          | Performance and Policy relating to Waste related matters on Hunstanton Promenade |   |    |
| TYPE OF REPORT: | Monitoring   |   |    |
| PORTFOLIO(S):   |  |   |    |
| REPORT AUTHOR:  | Barry Brandford & Matthew Henry  |   |    |
| OPEN/EXEMPT     | Open   | WILL BE SUBJECT TO A FUTURE CABINET REPORT: | No |

### **REPORT SUMMARY/COVER PAGE**

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| <b>PURPOSE OF REPORT/SUMMARY:</b><br>A Councillor request for a report addressing the points raised as they relate to the work of the Panel with specific reference to waste related matters on the Promenade at Hunstanton  |
| <b>KEY ISSUES:</b><br>The Promenade is a focal point for tourism in Hunstanton the allocation of resources and implementation of policy is key to the continued success of Hunstanton as a destination.  |
| <b>OPTIONS CONSIDERED:</b><br><ol style="list-style-type: none"><li>1. Note that the application of the resources and implementation of policies provides for an acceptable outcome within existing policy and legal constraints</li><li>2. Provide for revisions to policies and changing resource allocations to achieve alternative outcomes.</li></ol> |
| Members are invited to note the report and the outcomes which are compliant with the law and provide for the delivery of the Corporate Plan and Policies of the Council.   |
| <b>REASONS FOR RECOMMENDATIONS:</b><br>Alternative or additional use of powers available to the council would reduce the visitor experience and be counter productive or be subject of both internal and external challenge which would be hard to resist.   |

## **REPORT DETAIL**

### **1. Introduction**

Report requested to be presented to the panel on performance and policies of the council in respect to waste related matters on the Promenade at Hunstanton. This report sets out the key policies, constraints and performance outcomes as requested. It offers insights in to the allocation of resources and opportunities for change which could most impact waste on the Promenade.

### **2. Monitoring Report.**

The Council owns the Promenade and beach at Hunstanton. The promenade forms part of the sea defences which protect Hunstanton and the communities around west Norfolk. The size and scale of the Promenade is set out for this primary purpose. As an owner of the land the council leases out parts of the Promenade for activities, the sale of goods and refreshments and the provision of services to visitors and residents. The Promenade is a key feature of the resort at Hunstanton acting as the gateway to the beach and a thoroughfare along the shorefront and an access point to business and facilities adjacent. In addition the Promenade provides cycling and walking access between Heacham and Hunstanton.

The council supports the vibrancy of Hunstanton and the benefits this brings in economic, social and health whilst protecting its environment. This is demonstrated in the Priorities of the Council.

It is accepted that most activities from visitors and businesses will produce waste. This report identifies policies and performance matters which deliver the councils priorities and the constraints which have to be applied.

The report identifies the most significant points that effect performance and options for action.

### **3. Issues for the Panel to Consider**

#### **Borough Council commercial lettings on the promenade and beach**

The council leases a number of sites (21) for the purposes of siting kiosks that undertake a variety of trading activities that mainly operate during the tourist and visitor “season” as well as a variety of other periods during the calendar year. The kiosks sites are leased out on commercial business tenancies and the kiosks are operated by independent, private sector traders. In addition, a number of licences/concessions are (or have been) issued for activities on the beach, such as pony rides, kite surfing tuition etc.

The kiosk operators deliver different trading activities, some of which include food and drink preparation and sale.

As mentioned above the council grants commercial business tenancies for the kiosk sites. Insofar as “waste” is concerned, the kiosk leases now contain the following provisions :

*Not to form any dump or rubbish or scrap heap on the Property or Promenade or any adjoining land of the Landlord and in any event at least once a week to remove therefrom all refuse rubbish and scrap and generally to keep the Property clean and tidy and free from weeds deposits of materials or refuse*

*Not to do or suffer in or upon the Property any wilful or voluntary waste or spoil*

#### *Damage to the Conduits and environment*

*Not permit any oil or grease or any deleterious, objectionable, dangerous, poisonous or explosive matter or substance to be discharged into any of the drains or conduits or channels on or within the Promenade or other adjoining land of the Landlord does not harm the environment, or corrode or otherwise harm the drains or conduits or channels on or within the Promenade or other adjoining land of the Landlord or cause any obstruction or deposit in them.*

#### *Poisons and pollutants*

*Not permit the discharge into any of the drains or conduits or channels on or within the Promenade or other adjoining land of the Landlord of any fluid of a poisonous or noxious nature or of a kind likely to sicken or injure the fish or other aquatic life, or that does in fact destroy them, or likely to contaminate or pollute the water of any stream or river.*

#### *Spillages and contamination*

*To take all practicable precautions to ensure that no noxious substances are spilled or deposited on the Property and that contamination does not occur.*

#### *Controlled, special or radioactive waste*

*Not to deposit on the Property or any adjoining land of the Landlord any controlled or special waste as defined in the Environmental Protection Act 1990, or radioactive waste as defined in the Radioactive Substances Act 1993 Section 18, or any other substance that may produce concentrations or accumulations of noxious gasses or noxious liquids that may cause pollution of the environment or harm to human health.*

#### *Notice of spillages and inspection*

*Within 14 days of the spilling or deposit on the Property of any noxious substance in a quantity that may cause serious damage to or pollution of the environment or serious damage to property or serious harm to human health, the Tenant must inform the Landlord of this and permit him to enter and inspect the Property*

#### *Indemnity for damage and pollution*

*To indemnify the Landlord, and keep him indemnified, against any losses in respect of damage to, or pollution of, the environment or damage to property or harm to human health caused by the Property or any substance on them whether in liquid or solid form or in the form of gas or vapour.*

The abovementioned lease provisions clearly sets out tenant requirements in respect of waste and pollution issues and does provide the council, as landlord, some protection. It is important to note that the kiosk operators do not operate on a large scale and most of the waste issues arising will potentially relate to waste water from cleaning, potentially oils and fats from frying food, product packaging and litter once purchases have been made by visiting members of the public. The majority of the clauses set out above are perhaps constructed more to deal with larger scale waste/pollution events rather than small-scale issues that are currently perceived to happen.

A business tenancy is a contractual arrangement between the landlord and the tenant and both parties should comply with the terms of this contract. If informal management/discussion between the parties does not remedy the identified lease breach(es) legislation (Law of Property Act 1925 (s146)) provides that if there is a breach of a lease term/clause (by the tenant) the landlord can seek formal recourse, via the courts, for the tenant to remedy the breach. This process can be convoluted as it involves court appearances and often the judge will afford the tenant (in potential breach) the opportunity to remedy the breach – sometimes (often) on several occasions. If the landlord goes through this process and the tenant fails to remedy the breach(es) of the lease term(s) then the court may allow the lease to be forfeited i.e. the lease will be terminated (forfeiture) and the landlord takes back the “property”.

It is important to note that the landlord seeking such recourse via the courts would need to evidence persistent, and on-going, breach(es) of the lease covenants

One Local Ward Member has raised concern about the activities of some of the businesses trading from the kiosk sites leased out by the borough council, particularly relating to waste issues, including pouring waste water into drains on the promenade. Managing this situation is extremely difficult as it is not possible to continually monitor the activities of the kiosk operators on a daily basis - particularly such sporadic (alleged) activities. If the council was minded to take formal action (forfeiture) as outlined above it would need to formally evidence the purported breaches which is not achievable.

### Litter

Litter is the visible consequence of poorly managed waste. Uncontained it is visible as single items or as it accumulates. The evidence is that the most common littered items on the Promenade and nationally is smoking related litter and the item of litter that creates the largest volume is single use drinks bottles with a capacity of less than 750 ml.

It is an offence to discard litter and given the large number of litter bins on the Promenade such behaviour is entirely unnecessary. Smoking related litter predominates litter issues on the Promenade.

It is possible for the council to enforce the law on this matter and issue Fixed Penalty Notices for the offence. However, enforcement in a public place in what can be a crowded environment creates perception risks and health and safety risks to the enforcement officer. Low level interventions such as verbal warnings fall with the Corporate Enforcement Policy and key points from this are set out under Constraints.

### Litter Bins

The council adopted a Policy on Litter Bins in Parished Areas in 2008 which details the policy on the provision of litter bins on the Promenade. There are 50 240 ltr litter bins on the Promenade set as either single or double bins between the Power Boat Ramp and the end of the North Promenade near the cliffs.

The emptying of these bins forms part of the outsourced Waste and Related Services Contract provided by Serco Ltd.

The contract specification requires that a demand based emptying service is provided so that a litter bin should not become full. This is constrained on the Promenade by the limited access available. No vehicle is permitted on the Promenade for waste related service after 10 am. Services may commence at 6 am.

In North Norfolk District Council's area Serco are permitted to access the Promenade at Cromer through the day with vehicles, including a small refuse collection vehicle, during the day. Parts of the Promenade are wider at Cromer but still creates risk of accidents. This council considers the risk of access to the Promenade after 10 am is too high to be acceptable. Litter bins are emptied daily during the Easter, Whitsun and Summer Holidays with the summer period extended during good weather. During the months with lesser demand litter bins are emptied daily during weekends and 2 or 3 times during the week.

### Trade Waste

Businesses which create waste are obliged by law to contain, transfer and have treated their waste. The council offers a trade waste service as part of its suite of waste management and recycling operations. The council is part of a competitive market which contains both national and local service providers.

Businesses will determine their particular need, based upon their business type and anticipated demand. Business waste removal is a cost to businesses. It is for businesses to forecast their requirements and make appropriate arrangements. Where businesses on the Promenade fail to anticipate appropriately this can lead to waste being inadequately contained.



The Waste Duty of Care Code of Practice requires that a waste producer must limit access to the waste to only those that are authorised to handle it. This will help prevent accidents, pests, incidents of vandalism and theft. Failure to anticipate and manage waste can lead to this not being complied with on the Promenade. Failure to comply with the Code of Practice can be used as evidence as to the offence under Section 34 of the Environmental Protection Act.

The council assists businesses with compliance with the law by providing a Trade Waste Collection service for both residual waste and mixed recyclable waste with collections up to 6 days of the week (Mon-Sat). The council manages its trade waste accounts through a computerised system which is used to provide Serco with requirements for trade waste collections.

The collection of trade waste forms part of the outsourced Waste and Related Services Contract provided by Serco Ltd. The requirements of the contract are for Serco to collect waste where it is contained within the bin, without overloading. An overloaded bin is where

the lid is raised so that the clenched hand is not touching the lid when the elbow is paced on the front edge of the bin. Safety requirements are that the collection crew must have safe access to the bin without having to move waste or other material to enable it to be safely transferred to the collection vehicle.

Traders are able to book, in advance, additional empties of their bins as long as this is sufficiently in advance to allow the transfer of the request to Serco. It is anticipated that this may be automated in the future with online ordering of additional collections being possible.

The council has the ability to take enforcement action against non-compliant traders. Having due regard to the councils Enforcement Policy and the resources available the actions have been targeted to ensuring that all businesses on the Promenade have evidence of their arrangements as to the containment and transfer of waste to Registered Carriers through the checking of Controlled Waste Transfer Notes. In respect of these checks there is no evidence of transgression.

### Cleansing

The Promenade in Hunstanton is maintained by the council through the duty imposed by the Environmental Protection Act 1990. Cleansing operations are designed to remove litter and detritus. However, in relation to the Promenade detritus is predominantly sand originating from the beach which is deposited, and removed, by wave action, accidental deposit as people move between the beach and the Promenade. Detritus in terms of small deposits of sand is not treated as a cleansing waste and natural wave action during high tides also removes sand from the Promenade. If sand were removed from the Promenade to the highest available standards the cost of collection and disposal would be substantial and would not be sustainable in terms of the removal of natural beach material.

The council operates to the standards of the Code of Practice on Litter and Refuse issued by Defra (September 2019). Cleansing during the summer months is provided by Resort Services and during the winter by Public Open Space.

The Promenade has a high intensity of use and therefore the response of the council is to seek to maintain the area generally free of litter during the day and to cleanse the area so that litter is absent before the start of normal activities. The presence of a few small items of litter and refuse, not yet accumulating, are regarded by the public as acceptable for short periods of time.

Before 10 am the council will seek to achieve the absence of litter and refuse  
During the day after 10 am the council will seek to ensure that the area is predominantly litter free apart from some small items.

Due to the high number of visitors it is not always possible to maintain that standard where only some small items may be visible but the Promenade is thoroughly cleansed before 10 am each morning during the summer period when it is most heavily used.

### Constraints

The performance of the council in delivering its objectives is not unfettered. A number of important constraints apply including the availability of resources and their appropriate application.

#### Operational inc Health and Safety

Operations such which involve the use of plant and vehicles creates risks of collision and the presence of children, animals and elderly or infirm increases the risk of collision. The nature of Resort visits reduces the attention to certain risks by the public. Therefore it is prudent to

exclude vehicles from the Promenade when the risk is greatest. This limits operations such as litter bin and trade waste collections.

Cleansing operations are also more difficult to undertake when the Promenade is very busy with visitors due to the difficulty of working around large numbers of walking people. Therefore the priority is to cleanse the Promenade each morning by litter picking.

#### Enforcement and Enforcement Policies

Where there are matters which may provide some evidence of transgression because the council is a landowner who leases sites to traders and is a provider of waste services to many of the businesses there is a careful choice to be made as to whom should regulate to avoid conflict of interests.

Issues associated with water and waste water such as washing of equipment or washing of premises is capable of effective independent regulation by the Environment Agency. The Environment Agency have previously presented to the Environment and Community Panel on issues relating to water quality in Hunstanton. The Environment Agency have considered that the waste water is not a significant issue based upon the examples provided at that time. Therefore they did not propose any intervention. The use of lease terms and private action by the council under Landlord and Tenant Acts would be inappropriate. Similarly for waste related matters where the council is a service provider as well an enforcer it is possible to use a lighter touch which delivers the desired outcomes. This approach is taken to trade waste matters across the borough.

Ultimately the council has a duty to enforce and we will have full regard to our policies.

The councils Enforcement Policy sets out five principles of Good Regulation. These are:

- Transparency;
- Accountability;
- Proportionality;
- Consistency; and
- Targeted only at cases for which action is needed or where it is expedient to take action.

All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organised crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns and public concerns.

The work in terms of enforcement needs to be proportional in terms of the risk and equitable across the service. The approach taken is further explained in the Enforcement Policy.

Any action required will be proportionate to the seriousness of the breach and the risk to people, property, the community or the environment. The most serious formal action, including prosecution, will be for breaches of the law where there is a significant risk to people, public health, safety, amenity or the environment, or where there has been a flagrant disregard for the requirements of the law.

When arriving at a point at which sufficient evidence available to determine if any matter needs further intervention in a structured way, which is a long list from a written letter to prosecution, the following applies.

The Council will consider taking formal action for serious breaches, which may include, but is not limited to, any of the following circumstances:

- Where there is a risk to people, property, land, the community or the environment;
- For matters where there has been recklessness or negligence.

- A deliberate or persistent failure to comply with advice, warnings or legal requirements.
- Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
- Obstruction or assault (including verbal assault) of an officer in the execution of their duties.
- Emergency action where there is an imminent serious risk to people, property, land, the community or the environment.

#### **4. Corporate Priorities**

The provision of keys services to create a vibrant Promenade are identified in the Corporate Priorities.

##### One - Focusing on delivery

The objectives are:

- delivery of value for money services

##### Two - Delivering growth in the economy and with local housing

The objectives are to:

- promote the borough as a vibrant place in which to live, to do business and as a leading visitor and cultural destination

##### Three - Protecting and enhancing the environment including tackling climate change

The objectives are to:

- develop and implement the council's carbon reduction strategy and encourage our partners, communities and local businesses to reduce their environmental impact
- improve recycling levels

##### Five - Creating and maintaining good quality places that make a positive difference to people's lives

The objectives are to:

- protect, promote and enhance the borough's natural and built environment
- maintain accessible, clean, pleasant and safe public places and communities

##### Six - Helping to improve the health and wellbeing of our communities

The objectives are to:

- support our local communities to be healthy and more active

There are additional council policies which support these outcomes including the Parish Litter Bin Policy which identifies that the council will be responsible for the provision and emptying of litter bins in Hunstanton as a tourism asset as a way of maintaining the area as an attractive place to visit.

The council has a number of powers available to it to deal with the harm that waste creates. However, the actions of the council are tempered by its own Enforcement Policy. The council in dealing with any potential issue of non compliance must have regard to this policy as well as the Crown Prosecutors Guide at all stages where they apply.

#### **5. Financial Implications**

The costs of servicing Litter Bins on the Promenade is £21,000 per annum. Provision of trade waste and related services is self financing and makes a contribution to the overall Waste Management Budget. Cleansing of the Promenade is provided for by the Resort Services and Public Open Space budgets.

The Council receives rent for the leases on the Promenade and forms part of the Property Services budget.

## **6. Any other Implications/Risks**

The most common form of waste found uncontained on the Promenade is smoking related litter. This litter has long term deleterious effects on the environment and the dropping of smoking related litter is an offence. However, the application of the law in a consistent and formal way could have negative impacts on the perception of Hunstanton as a place visit and stay. The council do not wish to appear hostile in its approach to infringements of the law in Hunstanton which it does not similarly enforce elsewhere in the borough.

## **7. Equal Opportunity Considerations**

None

## **8. Environmental Considerations**

Waste generated on the Promenade can if uncontrolled lead to pollution of the environment including the sea. Some of the wastes are long lived and capable of breaking down in to micro plastics or causing harm before breaking down.

Uncontrolled waste includes waste outside of bins in sacks which can be scavenged by seagulls.

## **9. Consultation**

This report was produced following consultation with the Assistant Director – Commercial Services.

## **10. Conclusion**

Although available as an option the robust enforcement of the law in terms of litter and waste is constrained by the Enforcement Policy and operational resources to monitor issues of compliance. The option of increased enforcement on the most common waste type smoking related litter could have considerable negative impacts on the perception of the council and Hunstanton as a resort destination and is therefore discounted.

## **11. Background Papers**

*List all papers referred to in compiling the report.*