

**South Lakeland District Council  
Lake Administration Committee**

**Friday, 5 October 2018**

**Proposal to offer extended residential encroachment agreements**

---

**Portfolio:** Cllr David Williams – Chairman of Lake Administration Committee  
**Report from:** Debbie Storr - Director of Policy and Resources  
**Report Author:** Anthea Lowe – Solicitor to the Council  
**Wards:** Ambleside & Grasmere; Windermere;  
**Forward Plan:** Not applicable

---

**1.0 Expected Outcome**

1.1 It is anticipated that, if the proposal is approved, the Council will be able to offer agreements for a term of up to 9 years to those users who have, or would like to have, a residential encroachment. This, in turn, will result in a more effective use of Council resources in administering the agreements.

**2.0 Recommendation**

**2.1 It is recommended that Lake Administration Committee:-**

- (1) Approve the proposal to offer residential encroachment agreements to customers for a term of up to 9 years subject to customers having an up to date lake encroachment account; and**
- (2) Delegate authority to Lambert Smith Hampton to agree the granting of such agreement.**

**3.0 Background and Proposals**

3.1 Members will be aware that, currently, the Council offers a number of different encroachment agreements, as follows:-

- Annual Residential
- Annual Commercial
- Longer term Commercial

3.2 Currently, annual residential encroachment agreements are granted for a period of one year but continue on a rolling yearly basis. They take the form of a licence agreement which provides very little security to the customer.

3.3 It is considered that there may be benefit in granting longer-term agreements, in the form of a lease, to customers for residential encroachments. This is due to the fact that customers are likely to appreciate the security that a longer term agreement can offer which, in turn, may result in an improved customer experience and relationship between the Council and the customer.

- 3.4 The proposal is to offer a lease agreement for a period of up to nine years; this is in line with Lambert Smith Hampton's current delegations.
- 3.5 It is proposed that the rent reviews will follow the same format as currently in that Lake Administration Committee will approve the charges for each financial year as part of the fees and charges process which will then be notified to each customer in advance of 1 April each year.
- 3.5 If approved, the Council will offer the new agreements with effect from 1 April 2019 having written to customers in October/November 2018 to set out the terms of the offer.
- 3.6 In offering a lease, it is proposed that the relationship between Council and customer will take the basis of a formal landlord/tenant relationship and that this will enable a better understanding of each party's obligations.

#### **4.0 Consultation**

- 4.1 Lambert Smith Hampton have been consulted in relation to this proposal and are in agreement with the proposal. The proposal will not result in any greater burdens in terms of workload.

#### **5.0 Alternative Options**

- 5.1 It is open to Members of Lake Administration Committee not to approve this proposal. This is not recommended for the reasons set out in this report.

#### **6.0 Links to Council Priorities**

- 6.1 This proposal links to the overarching aim of the Council to make South Lakeland the best place to live, work and explore.

#### **7.0 Implications**

##### **Financial, Resources and Procurement**

- 7.1 The proposal will have a neutral financial impact as the encroachment charges will remain unchanged and will be subject to an annual review in accordance with the current process.

##### **Human Resources**

- 7.2 There are no human resources impacts associated with this report.

##### **Legal**

- 7.3 The proposal will result in a Lease being offered to customers instead of a Licence agreement. A Lease will provide the customer with exclusive occupation of the encroachment. Furthermore, a Lease can only be terminated in certain circumstances, usually by exercising a break clause or due to a breach of the lease obligations. A Licence, however, can be terminated for any reason subject to appropriate notice being given to the customer.

##### **Health, Social, Economic and Environmental**

- 7.4 Have you completed a Health, Social, Economic and Environmental Impact Assessment? No
- 7.5 If you have not completed an Impact Assessment, please explain your reasons: There are no HSEE impacts associated with this report due to the fact that the proposal is simply in relation to the nature of an agreement.

##### **Equality and Diversity**

- 7.7 Have you completed an Equality Impact Analysis? No

7.8 If you have not completed an Impact Assessment, please explain your reasons:  
There is a neutral impact arising out of this report.

**Risk**

<b>Risk</b>	<b>Consequence</b>	<b>Controls required</b>
That the Council is tied in to agreements regarding its ownership of the bed of Windermere.	The Council will be restricted as to the dealings it can enter into in relation to its asset.	Appropriate break clause provisions can be drafted into the template agreement.

**Contact Officers**

Anthea Lowe – Solicitor to the Council, 01539 793305, anthea.lowe@southlakeland.gov.uk

**Tracking Information**

<b>Signed off by</b>	<b>Date sent</b>
Legal Services	Report author
Section 151 Officer	18 September 2018
Monitoring Officer	18 September 2018
SMT	N/A

<b>Circulated to</b>	<b>Date sent</b>
Assistant Director	N/A
Human Resources Manager	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	18 September 2018
Portfolio Holder	N/A
Ward Councillor(s)	N/A
Committee	5 October 2018
Executive (Cabinet)	N/A
Council	N/A