

South Lakeland District Council
Council

Tuesday, 27 July 2021

Change in Policy for New Lake Encroachments

Portfolio: Customer and Locality Services Portfolio Holder
Report from: Director of Customer and Commercial Services
Report Author: Sion Thomas – Operational Lead Delivery and Commercial Services
Wards: All
Forward Plan: N/A

Links to Council Plan Priorities: The actions in this report are relevant to the Council Plan requirement to ensure the Council is equipped to provide the best, most cost effective services.

1.0 Expected Outcome and Measures of Success

1.1 To approve the policy as set out in Section 3 of this report to provide officers and applicants with clarity around encroachment applications where applicants have outstanding debts or are failing to meet with lease conditions.

2.0 Recommendation

2.1 It is recommended that Council;

- (1) Gives approval to change the policy in accordance with the agreement dated 21st April 1975 between South Lakeland District Council, Windermere Parish Council and Lakes Parish Council.
- (2) Delegates authority the Monitoring Officer to make the required amendments to the Councils Constitution and Scheme of Delegation to implement the Committees decision.
- (3) Delegates authority to the Director for Customer and Commercial Services in conjunction with the Lead Specialist for Legal, Governance and Democracy and Lead Specialist for Finance to review all encroachment applications to consider them against the Policy to determine which applications can be taken to Lake Administration Committee for consideration and in cases considered to not meet the policy requirements to reject them.

3.0 Background and Proposals

3.1 When an application for a new jetty, replacement jetty or any development proposed for the Lake is received, the Delivery and Commercial manager completes a report which is then brought to Lake Administration Committee for consideration and is then approved or rejected.

- 3.2 The Council has worked hard over the last few years to reduce encroachment debts, however there are times when officers may take an encroachment application to the Committee knowing that the applicant may owe significant sums of money to the Council and may not be adhering to the lease or licence conditions of existing encroachments. Whilst the actual design and proposal of any new encroachment may be reasonable in terms of scale and design, there is concern of reputational damage and financial impact if the Committee approves a new encroachment whilst the applicant is in arrears from other existing encroachments. This also raises concern of inconsistency by the committee when dealing with jetty encroachments.
- 3.4 It is therefore proposed to delegate authority to the Director for Customer and Commercial Services in conjunction with the Lead Specialist for Legal, Governance and Democracy and Lead Specialist for Finance to review all encroachment applications prior to submitting to Lake Administration Committee for consideration, to ensure that the applicant is not in arrears with other encroachments on the Lake and is complying with all lease/licence conditions. It is felt that to enter into a new agreement with an existing debtor, it could lead to further debt and therefore more time would be needed from the Council to deal with debtors. Reputationally and financially, this could also impact upon the Council. A Revised policy for Encroachment Applications is attached for consideration at Appendix 1.
- 3.5 Where applicants seek to replace an encroachment on a like for like basis and where there may be a dispute with the calculation of the encroachment fees, this is to be viewed differently to the above and a report will be brought forward to the committee for consideration. A like for like basis is deemed to be an encroachment which replaces an existing encroachment, therefore one encroachment remains following completion of the new jetty or structure. Applicants will be allowed to increase the length of the jetty/ structure but the old encroachment must fall within the footprint of the new encroachment.
- 3.6 Officers took the report to Lake Administration Committee on 2nd July 2021 and Overview & Scrutiny Committee on 09th July 2021 for approval. Officers are seeking approval from full Council for approval to change the policy due to reasons as set out in paragraph 7.4 below.

4.0 Appendices Attached to this Report

Appendix No.	Name of Appendix
1	New Encroachment Application Policy.

5.0 Consultation

- 5.1 Officers have consulted with the Portfolio holder for Customer and Commercial services, Legal Services, Finance Services and the Director for Customer and Commercial Services.
- 5.2 All applicants for new encroachments will be made aware of the policy as part of the application process.
- 5.3 All existing encroachment holders will be made aware of the Policy following approval by Council.
- 5.4 This proposed change in policy has been approved by the Lake Administration Committee and Overview and Scrutiny Committee prior to bringing this report to Council.

6.0 Alternative Options

- 6.1 To not accept the proposed policy and continue to take encroachment applications to Lake Administration Committee and highlight any debt as part of a Part II report in order for the committee to make an informed decision. Officers feel that this could lead to inconsistency as to how encroachment applications are dealt with.

7.0 Implications

Financial, Resources and Procurement

- 7.1 The Council's Finance team are working closely with Legal to recover the outstanding debts as requested by the Committee. There are implications for the Council when we fail to recover debts. Therefore it seems appropriate to protect the position of the Council when agreeing new encroachments.

Human Resources

- 7.2 There are no Human Resource implications with this report.

Legal

- 7.3 The Council is required to pay for Council Services and debt recovery is an important part of its work. The Council is required to have a transparent, consistent and equitable approach to both debt recovery and the processing of applications for encroachments on the Lake. In reaching any decision the Council may be required to access information from debtors on their financial position. Failure to provide such information will be an important part of the assessment of applications and whether they will proceed to the Committee. The approval of the policy will ensure that all customers are aware of the Councils approach to applications when there are existing debts.
- 7.4 The agreement for the constitution of a sub-committee or the Administration of Lake Windermere between SLDC and Windermere Parish Council and Lakes Parish Council dated 21st April 1975 provides in Clause 3 that before acting on any matter involving the adoption of a new policy the sub-committee shall report to the Councils Policy and Finance Committee and obtain approval of the Council to the proposed course of action. The Council no longer has a Policy and Finance Committee and therefore it is considered that a report to Full Council is required.

Health and Sustainability Impact Assessment

- 7.5 Have you completed a Health and Sustainability Impact Assessment? No.
- 7.6 If you have not completed an Impact Assessment, please explain your reasons: N/A

Equality and Diversity

- 7.7 Have you completed an Equality Impact Analysis? No
- 7.8 If you have not completed an Impact Analysis, please explain your reasons: N/A

Risk Management	Consequence	Controls required
Lack of clarity around management of new encroachments.	Reputational impact for the Council and Committee.	Approves the policy which gives absolute clarity to officers and applicants regarding conditions which must be met prior to encroachment applications being submitted.

Contact Officers

Sion Thomas, Operational Lead for Delivery and Commercial Services, 01539 793192,
sion.thomas@southlakeand.gov.uk

Tracking Information

Signed off by	Date sent	Date Signed off
Section 151 Officer	11.06.21	21.06.21
Monitoring Officer	11.06.21	21.06.21
CMT	11.06.21	N/A

Circulated to	Date sent
Lead Specialist	N/A
Human Resources Lead Specialist	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	11.06.21
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	N/A