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<b>Subject:</b>	<b>Subject</b>
<b>Meeting and Date:</b>	<b>Cabinet – 1 October 2018</b>
<b>Report of:</b>	<b>Diane Croucher, Head of Regulatory Services</b>
<b>Portfolio Holder:</b>	<b>Councillor Nigel Collor, Portfolio Holder for Access and Licensing</b>
<b>Decision Type:</b>	<b>Key Decision</b>
<b>Classification:</b>	<b>Unrestricted</b>

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<b>Purpose of the report:</b>	To consider the report of LVSA (Licensed Vehicle Surveys & Assessment) in respect of the Unmet Demand Survey.
<b>Recommendation:</b>	That Cabinet resolves to retain the current limit of 69 Hackney Carriage Licences issued by the authority.

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## 1. Summary

### Reasons why a decision is required

- 1.1 Under the Town Police Clauses Act 1847, a licensing authority had an unfettered discretion to limit the number of hackney carriage licences as it thought fit. It was a power, which was widely used by many authorities, to restrict the numbers of hackney carriages for the purpose of exercising control and supervision over them. Under the Transport Act 1985, the position in law changed and the 1847 Act, as now amended by Section 16, provides as follows:
- “the grant of a licence may be refused for purposes of limiting the number of hackney carriages..., if but only if, the person authorised to grant a licence is satisfied that there is no significant demand for the services of hackney carriages... which is unmet”.
- 1.2 Related legislation also provides a procedure whereby unsuccessful applicants for hackney carriage licences may appeal directly to the Crown Court. The Authority would then need to demonstrate that it is satisfied that no significant unmet demand exists. If the Authority fails to meet this requirement, the appeal against the refusal to issue a licence will be successful.
- 1.3 The Department of Transport guidance published in 2010 advises that licensing authorities may continue to choose to limit the number of hackney carriage licenses provided that, in order to justify the imposition of quantity restrictions, they conduct an unmet demand survey at least every three years to assess any significant unmet demand. Prior to the recent survey carried out in 2017, Dover District Council last commissioned an unmet demand survey in 2014.
- 1.4 The Council engaged consultants to carry out an unmet demand survey in order to ascertain if the hackney carriage provision within the District was sufficient. The cost of the survey is to be met by the hackney carriage trade over a 3 year period as part of their hackney carriage licence fee.

- 1.5 The survey has now been completed and a copy of it can be seen at Appendix A. It is necessary for Cabinet to determine whether to delimit the number of hackney carriages licences issued by this authority or to retain a limit on numbers. If the latter is determined the Authority may retain the current limit on numbers or may set a new limit based on the evidence contained within the survey report.
- 1.6. Cabinet will no doubt be aware that some previous decisions in relation to limit of hackney carriages had been made by full Council. Since this time, there has been a very significant decision in the Court of Appeal in relation to the discharge of local authority functions. In the case of *R. (on the application of 007 Stratford Taxis Ltd) – v- Stratford on Avon DC [2011] EWCA Civ.160* the Court adopted a very restrictive view of the interpretation of the Local Authorities (Functions & Responsibilities) (England) Regulations 2000. The effect of this decision is that some decisions which had previously been widely regarded as being decisions to the ‘council side’ of the authority must now be discharged by the executive – even though they appear to underpin regulatory functions.

## 2. Introduction and Background

- 2.1 Hackney carriages are permitted to ‘ply for hire’ as well as taking bookings. As such they can be ‘flagged down’ by customers and may also use the hackney carriage ranks in the district. Private hire vehicles must be pre-booked and are not permitted to ply for hire, or to wait at hackney carriage ranks for fares.
- 2.2 One of the difficulties associated with delimitation is that there are a limited number of ranks available for use in the district, currently just 21 spaces are provided for a total of 69 hackney carriages. Dover Town is in a slightly better position than most areas of the district given the additional, concessionary ranks provided at Dover Priory Station, the Eastern Docks, and the Western Docks Cruise Terminal. Any delimitation of Hackney Carriage vehicle licenses would undoubtedly result in an exponential increase in hackney carriage licence applications resulting in an unsustainable demand for rank space.
- 2.3. Any delimitation would also have a commercial effect on the current owners of hackney carriage plates because each vehicle licence has a residual value. Any removal of limits would mean that vehicle licenses no longer held any commercial value for their holders.
- 2.4 Delimitation would, however, benefit Private Hire Vehicle drivers as they could apply for a Hackney Carriage Licence which would enable them to ply for hire and wait on the ranks, potentially increasing their business. It could also be argued that delimitation would have a positive effect on the service provided to the public, as people would potentially be able to ‘flag down’ an increased number of Hackney Carriage vehicles in the district.
- 2.5 The unmet demand survey commissioned by Dover District Council has now been completed and the conclusion of the report (Appendix A paragraph 8, p.31) shows that there is no significant unmet demand for hackney carriages in the district.
- 2.6 The results of the unmet demand survey show that the supply of Hackney Carriages appears to be well balanced and responsive to varying levels of demand at different ranks at different times. A significant increase in hackney carriage provision would therefore have little benefit to the travelling public in terms of waiting times and meeting unmet demand.

- 2.7 It is worthy of note, however, that Members are not required to follow the conclusions of the report. The fact that the report has not identified any significant unmet demand means that the current limit can be retained, if Members so wish. There is no statutory obligation to retain the limit.

### **3. Identification of Options**

- 3.1 To consider the LVSA report and agree to **retain** the existing limit on Hackney Carriage Vehicle Licences.
- 3.2 To consider the LVSA report and agree an alternative limit on Hackney Carriage Vehicle Licences.
- 3.3 To consider the LVSA report and agree to **remove** the existing limit on Hackney Carriage Vehicle Licence. This option would require a further period of consultation with the trade.

### **4. Evaluation of Options**

- 4.1 The option at 3.1 is the preferred option. Retention of the existing limit is in line with the recommendations within the report and the results of the consultation. This would prevent the potential for an exponential increase in the number of Hackney Carriage Vehicles in the District. A decision which goes against the recommendations of the report of the results could lead to a Judicial Review from the Taxi trade.

### **5. Resource Implications**

- 5.1 There are no resource implications. The cost of the survey is met by the hackney carriage trade over a 3 year period as part of the hackney carriage licence fee.

### **6. Corporate Implications**

- 6.1 Comment from the Section 151 Officer: Finance has been consulted and has nothing further to add (SB).
- 6.2 Comment from the Solicitor to the Council: The Head of Legal Services has been consulted during the preparation of this report and has no further comment to make.
- 6.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications, however in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>.

### **7. Appendices**

Appendix A – Copy of the LVSA Unmet Demand Survey dated March 2018

### **8. Background Papers**

The Office of Fair Trading Report 2003  
Department of Transport Best Practice Guidance 2010

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