CABINET



Report subject	Protecting our Coastal and Open Spaces	
Meeting date	26 July 2023	
Status	Public Report	
Executive summary	On 14 December 2022, Cabinet resolved to proceed to public consultation for three Public Spaces Protection Orders (PSPO's.) The public consultation was launched on 23 January 2023 and ran until 19 February 2023;	
	i) Coastal areas including beaches, pier approaches and up to cliff tops from Ham Common peninsula to Highcliffe - Prohibiting playing of loud music, acting in an antisocial manner, overnight camping/sleeping, lighting of open fires and BBQs.	
	ii) Highways and car parks, a defined area from the coast inland up to the major roads boundary road - Prohibiting overnight sleeping in vehicles, loud music and acting in a manner which has a detrimental impact on others in the vicinity.	
	iii) Opens spaces as identified – prohibiting overnight camping, fires and BBQ's	
	Following detailed consideration of the consultation results and further examination of the evidence, the proposals have been significantly refined as outlined in this report and the options appraisal within the appendices.	
	It is recommended that two PSPOs, and the behaviours within, are designated:	
	Coastal areas PSPO including beaches, pier approaches and up to cliff tops from Ham Common peninsula to Highcliffe	
	No person shall be, or encourage others to be, aggressive towards other persons or be verbally abusive, including swearing in an aggressive manner in the "Designated Area"	
	2. A person or persons shall reduce the volume of music of which they have control, when asked to do so by an Authorised Officer within the "Designated Area."	
	3. A person or persons must not urinate or defecate anywhere other than public toilets in the "Designated Area"	

	 4. No person(s) shall light an open fire in the "Designated Area" at any time. 5. No person(s) shall use a BBQ between the hours of 07:00 - 18:00 in the "Designated Area," except with written permission from the Council or through the use of Council owned electric hotplates." 		
	Open Spaces		
	 No person shall place, throw or drop in the "Designated Area", anything likely to cause a fire. No person shall light a fire, and/or barbeque (including a disposable barbecue) in the Designated Area". No person shall use any item in the Designated Area" which either 		
	(i) causes a naked flame or		
	(ii) poses a risk of fire.		
Recommendations	It is RECOMMENDED that Cabinet:		
	 i) consider the consultation response, options appraisal, Equality Impact Assessment and updated proposed Orders. ii) approve the implementation of the following PSPOs and behaviours: Coastal PSPO – to address a loud music, intimidating and aggressive behaviour, urination and defecation and open fires and BBQs on all beach areas from Hamworthy to Highcliffe Open spaces PSPO – to address open fires including BBQs over twenty sites including heathland, parks and recreational areas iii) commission a feasibility study for a designated space for vehicular sleeping, caravanning and camping 		
Reason for recommendations	Public Spaces Protection Orders (PSPO's) have been identified as a means of preventing and resolving negative behaviours seen throughout the last two years of the Seasonal Response programme, delivered at peak visitor periods. Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 permits a Local Authority to designate a PSPO if it is satisfied on reasonable grounds that conditions prescribed by the Act are met. Following an evidence assessment, it was concluded that these conditions were met in relation to identified behaviours and as a result, three PSPO's were proposed for consultation.		

A public consultation was conducted for 4 weeks from 23 January 2023 to 19 February 2023, which set out the evidence, areas to be covered by the proposed Orders and timescales for application.

Following detailed further consideration of the evidence and the consultation responses, an options appraisal has concluded that the Council should proceed with two of the proposed PSPO's outlined within the report, covering fires, BBQ's and anti-social behaviour and to implement them as soon as legislatively and operationally possible.

Portfolio Holder(s):	Councillor Kieron Wilson, Portfolio Holder for Housing and Regulation
Corporate Director	Jess Gibbons, Chief Operating Officer
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Wards	Council-wide
Classification	For Decision

Background

- 1. On 14 December 2022, Cabinet resolved to approve public consultation of potential Public Spaces Protection Orders (PSPO's) in relation to coastal and open spaces following an initial feasibility assessment. The report considered by Cabinet outlined six behaviours which the assessment concluded had met the relevant legislative criteria. Cabinet resolved to delegate authority to the Director of Communities, in consultation with the Portfolio Holder for Community Safety and Regulation, to approve the final proposals and consultation documents. BCP Council Democracy.
- 2. The public consultation commenced for a period of four weeks from 23 January 2023, to implement PSPO's in relation to the following behaviours (see Appendix 1);
 - Playing loud music to include amplified or acoustic instruments or singing at levels which has a detrimental impact on others.
 - To act in a manner which has a detrimental impact on others in the locality which includes but is not limited to, the irresponsible lighting of fires or BBQ's, swearing, spitting, and causing intimidation either by an individual or a group.
 - Overnight camping, staying or sleeping with or without a tent or gazebo, on beaches or open spaces.
 - Overnight staying or sleeping within vehicles in car parks and other open spaces.
 - On beaches and coastal areas a person or persons are prohibited from having open fires at any time. In addition BBQ's on the beach or coastal areas can only be used/lit between the hours of 18:00 – 07:00.
 - In open spaces a person or persons are prohibited from the following activities: the lighting of fires; lighting any barbecues; or using any article/object which causes a naked flame, and which poses a risk of fire.
- 3. This report and its appendices outline the legislative requirements for the making of a PSPO, summarises the evidence assessment, details the public consultation undertaken and the responses received, the options as a result of the consultation, and the recommendations following these responses. It also provides an enforcement protocol for the implementation of the proposed PSPO's.

Legislation

4. Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 permits a Local Authority to make a Public Spaces Protection Order (PSPO) if it is satisfied on reasonable grounds that two conditions are met as follows:

First Condition

- activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or;
- it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

AND Second Condition

- The activity/activities is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, such as to make the activities unreasonable; and
- justifies the restrictions imposed.
- 5. Section 59 (5) states that 'the only prohibitions or requirements that may be imposed are ones that are reasonable to impose in the order
 - a) To prevent the detrimental effect referred to above for continuing, occurring or recurring, or
 - b) To reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.'
- 6. The Council must undertake the necessary consultation and publicity before making or extending any Order, and in order to ensure that the Conditions as set out in S59 are met. It is critical that there is sufficient evidence to support the behaviours the Council intends to target.
- 7. Failing to comply with the terms of a PSPO is a criminal offence that can be actioned by either the issuing of a Fixed Penalty Notice (FPN) or a prosecution through the Magistrates Court. It should be noted that FPN's cannot be issued to anyone under the age of 18 or those who have no fixed abode. Where anti-social behaviour is demonstrated by those under 18, informal and early intervention can be successful in changing behaviour and protecting communities. Several measures are available to both the Police and the Council, including Verbal or written warnings, Acceptable Behaviour Contracts, and the Community Consequence Scheme. Further legislative powers are available to those without a fixed abode, where negative behaviours are displayed, however, this is in conjunction with a range of support services. A multiagency approach to anti-social behaviour is taken by the Council's anti-social behaviour team.

Public Consultation

8. A public consultation was launched on 23 January 2023 and ran until 19 February 2023. A consultation document provided information about the proposals and the rationale for consideration. Detailed maps, including interactive maps online, were provided so consultees were able to clearly see the areas the proposed PSPOs would cover. The online interactive map included a search facility and option to drop a pin to indicate where the consultee felt such an Order may be beneficial outside of the proposed locations. Hard copies were available in libraries, seafront offices and visitor centres. The consultation document included an email address for people to email if

- they required a different format or language version of the consultation material or support with completing the consultation.
- 9. The consultation response questionnaire sought residents, visitors, businesses and other stakeholders' views about each of the three proposed PSPO areas and each proposed prohibition. Respondents were also able to provide comments via free text questions. A full list of equality questions was asked in the consultation to allow full consideration of how the proposals affect different groups of people and this has informed the Equality Impact Assessment for these proposals.
- 10. Seafront services engaged with the four beach hut associations: Friars Cliff, Mudeford, Bournemouth and Poole, and asked them to share the consultation with their members.
- 11. Direct links to the online consultation documents were issued directly to the statutory consultees; Dorset Police and Crime Commissioner and Dorset Police, as well as Elected Members and key stakeholders including Dorset and Wiltshire Fire Service, Town and Parish Councils, Beach Huts Associations, Camping and Caravan Association, Gypsy and Traveller Advocacy Service Kushti Bok and private land owners where the Council are contracted to manage the land.
- 12. The consultation documentation can be found at Appendix 2 and on the Council's webpages here.
- 13. 1,564 responses were received and a detailed report setting out all public consultation responses is attached at Appendix 3. All comments received relating to the interactive map where respondents could drop a pin are available to view.
- 14. An options appraisal document which discusses the feedback received for each proposed PSPO and the behaviour to be addressed is set out together with recommendations at Appendix 4. This document considers meetings held with the service leads who will be responsible for the delivery of the PSPO's as well as equalities impacts as identified.
- 15. An overriding concern within the consultation feedback related to how the PSPOs would be enforced. Where enforcement is necessary, existing front-line staff within the relevant services such as seafront and parks will be given training and guidance to deliver any necessary engagement, education and enforcement action. An enforcement protocol is attached at Appendix 5.
- 16. All officers responsible for actions under these proposals will have the benefit of Community Safety Accreditation Scheme (CSAS) delegated powers from Dorset Police, to empower them to require names and addresses for an offence, of which a breach of the PSPO is included. Full training and support will be given to these officers.
- 17. As a result of the public consultation, Counsel feedback and formal responses, amended proposed orders are attached at Appendix 6.

Enforcement Protocol

- 18. An Enforcement Protocol has been developed, in line with Government Guidance in relation to implementation of PSPO's. The protocol at Appendix 5 considers;
 - the practical application of the proposed Orders
 - steps to be taken in the event of a breach including circumstances where there may be a 'reasonable excuse' for the breach

- support to be offered where vulnerability and safeguarding may require consideration (including referral pathways)
- who is responsible for enforcement.
- training to be provided to enforcing officers.

Options Appraisal Recommendations

19. Following consideration of public consultation feedback, further evidence assessment and advice from legal Counsel, the initial proposed clauses have been revised as follows:

Coastal PSPO		
Initial Clause	Revised, proposed, clause	Reason
A person or persons shall not play loud music to include, but not limited to, amplified or acoustic instruments or sing at levels which has or is likely to have a detrimental impact on others within "the Designated Area."	To reduce the volume of music when requested by an authorised officer within "the Designated Area."	The notion of "loud" is subjective, meaning enforcement is challenging. Singing is not seen to be detrimental to the level that would justify a blanket ban and could have equalities implications in regard to religious festivals and protests.
		86% of respondents in favour of the clause.
No person shall behave in a manner which has a detrimental impact on others in the locality in the "Designated Area". Such	No person shall be, or encourage others to be, aggressive towards other persons or be verbally abusive, including swearing in an aggressive manner in the "Designated Area."	A lack of specific evidence regarding spitting, however significant evidence around abusive and aggressive behaviour.
behaviour includes but is not limited to, fighting, swearing, spitting, and causing intimidation either		The revised clause is enforceable, specific and reflects feedback.
by an individual or a group. No person who has		89% of respondents in favour of an ASB clause.
previously been warned regarding their behaviour under subsection 2.4 shall refuse to leave a designated area when requested to do		Police powers can be utilised to disperse those committing ASB if required, therefore a dispersal clause is not proposed.
so by an Authorised Person.	A person or persons must not urinate or defecate anywhere other than public toilets in the "Designated Area"	There is a significant amount of evidence of this issue within the wider ASB evidence presented. This is a visible issue that is of concern to the public and the revision considers

		consultation feedback and evidence reassessment. 86% of respondents in favour of an ASB clause.
No person(s) shall light an open fire in the "Designated Area" at any time. No person(s) shall use a BBQ between the hours of 07:00 - 18:00 in the "Designated Area".	No person(s) shall light an open fire in the "Designated Area" at any time. No person(s) shall use a BBQ between the hours of 07:00 - 18:00 in the "Designated Area".	This clause was widely supported by consultation feedback as well as evidence of detriment. The clauses have been revised to be prohibitions in their own right so that they are robust.
No person(s) must erect a tent or gazebo or sleep within the "Designated Area" between the hours of 21.00 and 06.00.	Not proceeding with this prohibition	There was a lack of evidence to support that the behaviour was significantly detrimental enough to warrant the prohibition. Furthermore, only 60% in favour of the clause, with 75% residents against and overall those aged under 65 less than half supported this ban. Substantial equalities concerns also raised regarding homelessness.
Open Spaces PSPO No person must erect any tent or gazebo between the hours of 21:00 – 06:00 in the "Designated Area". A person must not sleep between the hours of 21:00 – 06:00 in the "Designated Area".	Not proceeding with this prohibition	There was a lack of evidence to support that the behaviour was significantly detrimental enough to warrant the prohibition. Furthermore, only 54% respondents in favour, 46% against. 92% visitors against. Ages 16-64 had less than 60% in favour. Substantial equalities concerns also raised regarding homelessness.
No person shall place, throw or drop in the "Designated Area", anything likely to cause a fire. No person shall light a fire, and/or barbeque (including	No person shall place, throw or drop in the "Designated Area", anything likely to cause a fire. No person shall light a fire, and/or barbeque (including	There is a significant amount of evidence showing the damage and detriment from fires and BBQs in open spaces. The frequency of these incidents is high and since consultation has increased

a disposable barbecue) in the Designated Area". No person shall use any item in the Designated Area" which either (i) causes a naked flame or (ii) poses a risk of fire.	a disposable barbecue) in the Designated Area". No person shall use any item in the Designated Area" which either (i) causes a naked flame or (ii) poses a risk of fire.	further. The damage and risk relating to this behaviour is substantial. Furthermore, 91% respondents were in favour of the prohibitions in their original form.
Highways PSPO		
A person must not sleep and/or stay overnight in their vehicle between the hours of 21.00 and 07.00 in any vehicle in the "Designated Area". (Vehicles include but are not limited to cars, vans and mobile homes.)	Not proceeding with this prohibition or this PSPO	Consultation responses had only 51% of respondents in favour, with 93% of visitors against the prohibition. Those aged 16-64 had less than half respondents support the prohibition. Evidence did not show a sufficient detrimental impact of the behaviour to warrant the prohibition and significant challenge was received in regard to equality impact on those that are homeless.
No person shall behave in a manner which has a detrimental impact on others in the locality in the "Designated Area". Such behaviour includes but is not limited to, fighting, swearing, spitting, and causing intimidation either by an individual or a group.	Not proceeding with this prohibition or this PSPO	No evidence was produced to support the requirement for the prohibition.
No person who has previously been warned regarding their behaviour under subsection 2.4 shall refuse to leave a designated area when requested to do so by an Authorised Person.		
A person or persons shall not play loud music to include, but not limited to, amplified or acoustic instruments or sing at levels which has or is likely to have a detrimental impact	Not proceeding with this prohibition or this PSPO	No evidence was produced to support the requirement for the prohibition.

on others within "the	
Designated Area."	

- 20. Members are asked to consider the following recommendations which are set out within the table above and the options appraisal report at Appendix 4;
 - Proceed with the proposed Coastal and Open Spaces PSPOs.
 - Approve the revised proposed PSPO clauses within the table at section 20.
 - Not to proceed with the highways PSPO at this time. Officers will continue to collate evidence around negative behaviours and re-assess legislative options in Winter 2022.
 - Extend the designated area for Coastal PSPO to include Poole Inner Harbour (kite beach)
 - Detail an exemption to allow and encourage the use of gas stoves instead of BBQ's in the Mudeford Spit area within the Coastal PSPO, within the general exemption in the proposed order. Licence holders of relevant beach huts will have amended conditions.
 - Commission a feasibility study to explore options for the provision of camping facilities for vans/campers and tents within the conurbation through seafront services/highways. A cost of £10,000 is required for this work.
 - To approve the recommendation that all enforcement outcomes of FPN issued and any prosecutions undertaken as a result of these PSPO are reported to and collated by the multi-agency Partnership Co-ordination Group (PCG) which forms part of the BCP Community Safety Partnership.

Summary of financial implications

- 21. The 14 December 2022 Cabinet report anticipated that the costs of consultation and implementation would be £40,000 to include legal advice, consultation costs and signage. To date £4,750 has been spent on the consultation. The final costs of implementation are predicted to be £15,000 to include sufficient signage and the implementation of a communications plan.
- 22. A further cost of £10,000 is predicted to commission a feasibility study for a designated space for vehicular sleeping, caravanning and camping.
- 23. The costs of consulting and implementing the PSPO are to be funded from a Communities reserve fund.

Summary of legal implications

24. For a PSPO to be considered, it must meet both the evidential test as set out in Section 59 of the Anti-social behaviour, Crime and Policing Act 2014 and the statutory consultation as set out in Section 72 of the Antisocial Behaviour, Crime and Policing Act 2014 and must also have regard to any Statutory Guidance issued by The Secretary of State in accordance with Section 73 of the Anti-Social Behaviour, Crime and Policing Act 2014.

The evidential test is laid out in Section 6 of this report.

Consultation test:

Section 72 (3+4) of the Anti- Social Behaviour, Crime and Policing Act 2014.

A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before—

- (a)making a public spaces protection order,
- (b) extending the period for which a public spaces protection order has effect, or
- (c)varying or discharging a public spaces protection order.

(4) In subsection (3)—

- "the necessary consultation" means consulting with—
 - (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
 - (b) whatever community representatives the local authority thinks it appropriate to consult:
 - (c) the owner or occupier of land within the restricted
- 25. There are provisions for a Statutory Challenge by way of a High Court Application under section 66 of the ASB, Crime and Policing Act 2014. Such challenge can be brought by an Interested Person on the grounds that:
 - The Council did not have the power to make the PSPO or variation, or to include particular prohibition or requirements under the PSPO.
 - That the requirement to consult, including a challenge on whether the consultation was adequate, and the provisions of publication have not been complied with
- 26. If such a challenge were made there would be costs implications to the Council. in addition, by virtue of Section 66 (4) of ASB, Crime and Policing Act 2014, if such a challenge were made, the Court has the power to suspend a PSPO until the final determination of the challenge.
- 27. This report provides details of the consultation that was carried out. Where a duty to consult is triggered the law requires that the consultation is taken at a time when proposals are at a formative stage, that sufficient information is provided in the consultation to allow those consulted to make informed responses and that sufficient time to allow consultees to respond must be given. Responses of consultation must be given due regard.
- 28. Counsel advice and guidance has been sought in relation to the proposal to consult, evidence base, the results of the consultation, relevant recommendations and any amendment to proposed orders. Such advice and guidance has been duly considered and acted upon.

Summary of human resources implications

29. The Enforcement Protocol at Appendix 5 provides information detailing how the PSPO will be enforced by Council Officers who will receive training as required. Costs for payment for additional duties have been considered and staff implicated have been identified. Consultation has taken place with service managers and union representatives.

Summary of sustainability impact

- 30. It is anticipated that the prohibition of the behaviours within the proposed Orders will reduce environmental damage and better protect our beaches and open spaces.
- 31. Wildfires on open spaces are usually the result of campfires or BBQ's spreading to surrounding vegetation, whether by accident or as an act of arson. Heathlands in particular are very susceptible to wildfires owing to the type of vegetation cover they have, typically dry woody flora such as Gorse and Heather. This means that fires can spread very quickly and cause damage over large areas, creating risk to people and surrounding infrastructure (often residential areas) but primarily to the habitat itself.
- 32. Heathland fires will cause damage that takes decades to recover from, but also often kills many reptiles, ground-nesting birds and invertebrates that are specialist heathland species that do not survive in other habitats. Reducing the incidences of wildfires through enforcement of a PSPO will reduce the damage caused and protect these sensitive habitats.

Summary of public health implications

33. It is anticipated that the prohibition of the behaviours within the proposed Orders will make a positive contribution to public health by protecting our beaches and open spaces from negative behaviours which have an impact on visitors and residents and therefore encourages safe usage.

Summary of equality implications

- 34. An Equality Impact Assessment has been developed throughout the consideration of the Orders proposed.
- 35. The Equalities Panel reviewed the documentation on 6 April 2023 and 8 June 2023. The panel recommended amendments which have been made. As decision makers Members must also have regard for the Public Sector Equality Duty as set out in the EIA.
- 36. The assessment concludes that the purpose of the PSPO's is to address the minority of persons who behave in manner that has a negative impact on our residents, visitors and environment at very busy times of the year when Council and partner resources are already busy. Overall, the proposals will have a positive impact to support seasonal responses in our seafronts, parks and open spaces.
- 37. Breach of a PSPO without a reasonable excuse is an offence, a reasonable excuse clause is proposed to be added within the prohibited activity, which will allow Authorised Officers to consider legitimate reasons why someone is possibly behaving in a certain way due to a reasonable excuse, such as to celebrate a religious festival or holiday.
- 38. It was identified that possible negative impacts on rough sleepers with regard to fires are mitigated by including exemptions within any final orders to ensure anyone who is or appears to fall within these categories of protected characteristic are not subject to enforcement and are provided with signposting to support services as needed.
- 39. As it is recommended that the behaviours around sleeping on the beaches and highways are not included within any PSPO, a number of equalities impacts

- around those that are homeless, veterans and the gypsy and traveller community, are mitigated.
- 40. Possible social economic impacts for those who live in accommodation without access to an outside space, can still access the open spaces and beaches for picnics and alternative hot plate provision at key locations, will still enable family gatherings with hot food provision.
- 41. Front line staff who already work within the areas of the proposed PSPOs will be able to use these stronger powers in the minority of cases where active engagement and education have failed to address poor behaviour, and either those responsible are failing to move on or are continuing to act in a manner that is adversely impacting on others. The culture around enforcement of the PSPO will centre around education and encouragement to comply with acceptable standards of behaviour.
- 42. Before any formal action is taken the evidence will be assessed. Monitoring and assessment of actions will be overseen by the PCG who will review on a quarterly basis. The review will focus on the outcomes of the PSPO, actions taken and identify any trends in who is being impacted and why.

Summary of risk assessment

43. Failure to follow the legal process and consult, or not to do so adequately, will make any decision thereafter unlawful and will open the Council up to a High Court challenge under Section 66 of the ASB, Crime and Policing Act 2014. If such a challenge were made there would be costs implications to the Council. In mitigation of this risk, proposals have been developed in close consultation with Legal Services.

Background papers

Anti-social behaviour powers (publishing.service.gov.uk)

Cabinet - Report Protecting our coastal and open spaces – 14 December 2022 BCP Council – Democracy

Corporate Overview and Scrutiny Seasonal Response report - 25 October 2022 BCP Council - Democracy

Overview and Security Summer Response Report – 15 November 2021 <u>BCP Council – Democracy</u>

Appendices

Appendix 1 - Officer Decision Record 20 January 2023 https://democracy.bcpcouncil.gov.uk/ieDecisionDetails.aspx?ID=604

Appendix 2 - Consultation documentation <u>Public Space Protection Order (PSPO) | Have Your Say Bournemouth</u>, Christchurch and <u>Poole (bcpcouncil.gov.uk)</u>

Appendix 3 – Consultation report

Appendix 4 – Options appraisal

Appendix 5 – Enforcement protocol

Appendix 6 – Proposed Orders (as amended)

Appendix 7 – Equalities Impact Assessment