

THE INTRODUCTION OF PUBLIC SPACE PROTECTION ORDERS

1. RECOMMENDATIONS

- 1.1 To approve, in principle, the proposal to make two Public Spaces Protection Orders in respect of the lighting of fires and the use of barbeques, and the feeding and petting of ponies, horses, mules and donkeys in the form set out at Appendix 1 and 2 respectively to this report.
- 1.2 To authorise Officers to publicise the proposed Public Spaces Protection Orders and to carry out consultation as required by the Anti-Social Behaviour Crime and Policing Act 2014 ('the Act') and to report back to Cabinet with the outcome of the consultation.

2. INTRODUCTION

- 2.1 This report deals with the proposed introduction of two Public Space Protection Orders ('PSPOs') under the Act to prohibit certain anti-social behaviours, namely the lighting of fires and the use of barbeques ('BBQs'), and the feeding and petting of ponies, horses, mules and donkeys in prescribed areas of the New Forest. A draft of the two proposed PSPOs is attached at Appendix 1 and 2 to this report.
- 2.2 If a PSPO is made, it is a criminal offence for a person, without reasonable excuse, to fail to comply with its requirements. A failure to comply with a PSPO can result in either a Fixed Penalty Notice being issued (maximum penalty of £100) or prosecution through the Magistrates' Court with a maximum fine of £1000.
- 2.3 This report sets out the steps involved in making a PSPO, the legal tests that need to be satisfied and the consultation process to be followed, before any final decision can be made, on the introduction of a PSPO.

3. BACKGROUND

- 3.1 For some years now, discussions have been on-going within the New Forest Recreation Management Strategy Steering Group, of which the Council is a member, in respect of the need to deal with certain anti-social behaviours within the Forest, by members of the public.
- 3.2 The range of behaviours that have been discussed by the Council and its partners is varied and significant in number; they include the parking of vehicles on verges within the Forest, out of control dogs, wild camping, wildfires and the use of BBQs, and the feeding and petting of roaming animals.
- 3.3 Partners have requested the Council to consider utilising its powers under the Act to restrict certain behaviours which have a detrimental effect on the quality of life of those in the locality, through the making of a PSPO.

- 3.4 Over the last 6 months, senior Officers of the Council have been working with partners, including representatives from the National Park Authority, Forestry England ('FE'), the Verderers, Hampshire County Council and the Police, to explore the types of activities that might be appropriate for including in a PSPO.
- 3.5 The process involved in considering the introduction of a PSPO requires there to be an evidence base to demonstrate the extent of the problem, including being satisfied of the detrimental impacts on the local community arising from the anti-social behaviours.
- 3.6 Whilst a number of activities are still the subject of on-going discussions with partners, it is considered that sufficient evidence is in existence at the present time to progress the activity relating to the lighting of fires and the use of BBQs and the feeding and petting of animals within the Forest. Any proposal to make a PSPO will be subject to statutory consultation, with a final decision on whether to proceed only being taken following a review of the responses to that consultation.
- 3.7 PSPOs are orders which prohibit certain things or impose requirements in order to prevent detrimental effects on communities. There are strict legal tests that have to apply before a PSPO can be made. Further information on the legal tests for a PSPO is set out at section 4 below.
- 3.8 Section 5 of this reports sets out the evidence base and justification for a PSPO to cover the activities relating to the lighting of fires and the use of BBQs as well as the feeding and petting of ponies, horses, mules and donkeys.

4. ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 (THE ACT) – THE LAW AND THE LEGAL TESTS FOR THE MAKING OF A PSPO

- 4.1 Section 59 of the Act gives the Council the power to make a PSPO. These orders are intended to deal with a nuisance or problems in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of the area. They are designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 4.2 The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 4.3 The purpose of a PSPO is to stop individuals or groups committing anti-social behaviour in a public place. Councils can make a single PSPO or multiple PSPOs, if the evidence base exists to demonstrate the legal tests are met. PSPOs can have a duration of a maximum of 3 years and can be extended.
- 4.4 The legal tests that have to be satisfied focus on the impact that anti-social behaviour is having on communities. A PSPO can be made by the Council if it is satisfied on reasonable grounds that two conditions are met. The first condition is that:-
 - (a) the activities carried on in a public place within the Council's area have had a detrimental effect on the quality of life of those in the locality, or
 - (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities:-

- (a) is, or is likely to be, of a persistent or continuing nature,
- (b) is, or is likely to be, such as to make the activities unreasonable, and
- (c) justifies the restrictions imposed by the notice.

4.5 A PSPO is an order that identifies the public space and

- (a) prohibits specified things being done in that public space,
- (b) requires specified things to be done by persons carrying on specified activities in that place, or
- (c) does both of those things.

4.6 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring.

4.7 Local Government Association Guidance accompanying the legislation states that *“Used proportionately and in the right circumstances, PSPOs allow local areas to counter unreasonable and persistent behaviour that affects the quality of life of its residents. They can send a clear message that certain behaviours will not be tolerated, and help reassure residents that unreasonable conduct is being addressed. However, PSPOs will not be suitable or effective in all circumstances, and it is important to consider carefully the right approach for identifying and addressing the problem behaviour”*. Guidance also states that *“PSPOs should be used responsibly and proportionately only in response to issues that cause anti-social behaviour and only where necessary to protect the public”*.

4.8 In deciding whether to make a PSPO and if so, what it should include, the Council must have particular regard to the rights for freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights. It will also be necessary for the Council to consider the proportionality of any proposed restrictions to the specific harm or nuisance that is being caused.

5. ACTIVITIES WITHIN SCOPE FOR A PSPO AND EVIDENCE

5.1 Wildfires and BBQs

5.1.1 The proposed form of the PSPO covering this activity is set out at Appendix 1 and is referred to as The New Forest Public Spaces Protection Order 2022 (No.1) (‘PSPO No 1’). It deals with the lighting of fires and the use of BBQs in certain parts of the Forest. It proposes a specific prohibition on the following activities in the Restricted Area*:-

- (a) placing, throwing or dropping items likely to cause a fire;
- (b) lighting fires (of any type) or BBQs (including disposable BBQs and any outdoor temporary cooking facilities or equipment);

- (c) using items which either (i) cause a naked flame or (ii) pose a risk of fire.

*References to the 'Restricted Area' for the purposes of proposed PSPO No 1 means any public space within the land shown outlined and hatched in blue on the maps accompanying Schedule 1 to that proposed PSPO at Appendix 1. This principally covers all land managed and controlled by FE and roads within this area, this being land that is open to the air and to which the public are entitled or permitted to have access.

- 5.1.2 There is a requirement within the proposed PSPO No 1 for any person (within the Restricted Area) who has an item(s), which a constable or authorised person has reasonable grounds to believe has been, is being, or is likely to be used in connection with the prohibited activities, to extinguish and /or surrender the item(s) to the constable or authorised person, on request. There is also a requirement that if a person has acted contrary to the PSPO, they shall terminate their activities.
- 5.1.3 There is an exception contained within proposed PSPO No 1 relating **ONLY** to FE owned campsites at Aldridge Hill, Ashurst, Denny Wood, Hollands Wood, Holmsley, Longbeech, Matley, Ocknell, Roundhill, and Setthorns shown outlined and hatched red on the maps accompanying Schedule 1 to that proposed PSPO), where BBQs and stoves that are purpose built and raised off the ground, can be used. These campsites are managed and patrolled areas and have a series of fire measures in place including metal containers for hot coals to ensure their correct and safe disposal, water points and fire-fighting equipment, and regular patrols by campsite staff.

Evidence base for wildfires/BBQs

- 5.1.4 Despite a series of high profile campaigns in and around the Forest about the dangers of fires on the open Forest, including an operational ban on disposable BBQs on FE land in 2020, significant numbers of incidents caused by BBQs and campfires, continue to be recorded by FE, New Forest National Park Authority ('NPA') and Hampshire and Isle of Wight Fire and Rescue Service ('HIWFRS').
- 5.1.5 The Council has been provided with statements from FE, the NPA and HIWFRS about the incidents caused by fires and the use of BBQ in recent years. A summary of the evidence is set out below. The full evidence submitted by Partners in support of this activity can be found at the following link:

www.newforest.gov.uk/PublicSpaceProtectionOrders

- 5.1.6 FE's Recreation Programme and Duty Manager, has produced a statement explaining the increase in numbers of direct contacts being made to FE, by members of the public about groups of visitors setting up campfires and using BBQs on their land. In his statement, the Duty Manager states: *'I have personally attended some of these incidents and had to extinguish campfires that had burnt into the ground whilst the occupants of the wild camp sat and watched me'*. He states that incidents of visitors having BBQs and setting up campfires on the FE land is *'happening continuously and repeatedly'*. This is despite recent campaigns and a ban on BBQs. He explains that there are reports of members of the public refusing requests not to light BBQs, in the presence of Rangers. During the weekend of 6/7 August 2022, he explains that FE dealt with 7 significant fires in the Forest that were a result of discarded BBQs and campfires, and during the 7 day period between 1 and 8 August

2022, he spent 29 hours over and above his regular 37 hour week dealing with unauthorised campfires, BBQs and resulting wildfires.

- 5.1.7 FE have produced evidence setting out approximately 140 campsite and BBQ recorded incidents between August 2020 and August 2022 (recorded during normal working hours) and approximately 150 'out of hours' incidents, from the end of July 2020 to end of August 2022. Whilst not all these incidents resulted in wildfires, it demonstrates the extent of the problem associated with members of the public setting up campfires and using BBQs, which have the potential to cause significant damage and threat to life. From the evidence provided, it is clear that Forest staff often have to intervene to ensure that smouldering campfires and BBQs are fully extinguished. The Duty Manager states that *'Seldom do wildfires start by lightning strikes or discarded glass in the UK. In the New Forest in my considerable experience in this subject all our wildfires excepting those caused deliberately by arson are caused in some way by BBQs and campfires'*. Photographic evidence of fires and their aftermath have been provided by the FE and these can be observed in the link referred to in paragraph 5.1.5.
- 5.1.8 The FE's Duty Manager also explains in his statement the impact that fires have on the Forest and the organisations that have to deal with them. He states that staff, local volunteers and the Fire Service, are often called out during evenings and weekends to deal with fires, often putting themselves at risk. He cites that during the weekend of 6/7 August 2022, the wildfires that occurred took repeated visits to fully extinguish them with one area of the Forest, approximately a hectare in size, taking 9 Fire Service appliances, 2 FE tractor tankers, and 2 FE small fire appliances to deal with that fire over a 20 hour period and, even then, follow up visits were required by HIWFRS and FE staff to damp the fire down again the following Monday morning.
- 5.1.9 A statement has also been received from FE's Community Manager who is responsible for managing the New Forest Recreation Ranger team and Volunteer Service. She explains that the fire related devices used by members of the public on the Forest *'range from a small disposable BBQ on the ground, to a full sized hog roast, firepits, open campfires directly on the ground burning wood from the Forest and eating into the forest floor, causing lasting environmental damage'*. She explains that often FE and other Forest staff are required to put out smouldering BBQs which are left by members of the public and that staff are met with abuse sometimes when they try and talk to those using these devices about the dangers that can result.
- 5.1.10 The Community Manager cites a specific example of a wildfire starting over the weekend of 6/7 August 2022 in the inclosures between Hollands Wood and Denny Wood campsites. This is an area of woodland. She explains that the fire was initially hard to pinpoint and therefore went unnoticed for some time. When it was eventually located and the emergency services were called, a significant area of the Forest was alight. A water carrier was required to be brought in from Bordon (over an hour away) and significant HIWFRS resources were spent putting the fire out. A team of Rangers had to remain in situ overnight as well as the following day, to ensure it did not reignite. She also explains that there were further incidents that same following day in the Fawley Inclosure and separately, in Burley, resulting in Forest staff managing, along with HIWFRS, 3 concurrent fires. She explains how Forest staff resources were severely stretched and tested during this challenging time.
- 5.1.11 The Community Manager explains another incident on 11 August 2022 when she saw smoke coming from a location between Kings Hat and Dibden Inclosures. She and HIWFRS attended, where it was discovered that a smouldering deserted campfire, within a copse of trees, had set an area of heathland alight. She explains

that had this not been detected at a relatively early stage, it could have spread to the Inclosure, which was a great concern. The Community Manager also explains the impact on staff who are on 'high alert' and 'dread the sight and smell of smoke'. She says in her statement that *'It isn't something that can be ignored, the risk of not responding and a large fire breaking out is too much for anybody to accept and so often there will be staff working all hours of the day and night to try and avoid such a situation; proactively patrolling for lunchtime BBQs, responding to tea-time BBQs, patrolling known problem areas out of hours, attempting to track down wild campers late into the evening when vehicles are spotted in car parks after dusk; investigating reports early morning from dawn dog walkers, or returning to previous fire sites multiple times to ensure there is no chance of reignition'*.

5.1.12 The Community Manager summarises the impacts that increasing numbers of wildfires are having, as follows:-

- Forest staff are being pushed to their limits dealing with these incidents
- Core business is affected, with so much resource tied up on wildfires, there are difficulties delivering normal work programmes
- Lasting damage to fragile habitats and ecosystems with negative implications for wildlife
- Community anxiety concerning the threat to life and properties

5.1.13 The Community Manager explains the steps that forest organisations have taken in recent years to try and curb members of the public starting fires and using BBQs. She says that whilst public campaigns and the increase in signage warning of the dangers has helped to reduce the number of incidents, *'it is astounding that there are still people using BBQs or having campfires, some in blatant view of signage and despite engagement from officials.'* She also makes the point that visitor patterns have also changed with more sustained levels of visitors to the Forest throughout the whole year, rather than just at peak time.

5.1.14 There is also a statement from the NPA's Lead Ranger who explains the problems associated with campfires and BBQs on the Crown Lands. On one day alone during 2020, she explains that Rangers and other New Forest staff had to deal with 50 BBQ and campfire incidents. She states that *'One of the impacts of climate change on the New Forest is hotter, drier summers - as experienced this year with successive heatwaves and an extraordinary dry spell. The risk of a wildfire is at all time high and just one discarded bbq or abandoned campfire could have devastating impacts, putting people and their livelihoods at risk'*. She explains that *'all the NPA rangers come across sites where disposable BBQs or campfires have been used and abandoned posing huge fire risks and a danger to livestock and the public'*.

5.1.15 The Lead Ranger states that *'It is no longer enough to simply rely on educational and awareness raising campaigns to tackle the threat of wildfires and inappropriate interactions with Forest livestock. We need greater sanctions to tackle these persistent antisocial behaviours on the open Forest and that is why the National Park Authority supports the New Forest District Council in making a Public Space Protection Order'*.

5.1.16 HIWFRS have also submitted a letter of support of a PSPO dealing with open fires and the use of BBQs in the Forest. They state *'Every year HIWFRS responds to a significant number of wildfires in the New Forest District Council area. There is*

evidence that a significant number of these are caused by either open fires or disposable BBQs. This year has seen a dramatic rise in the number and seriousness of rural fires attended, due to a combination of factors, including the changing climate.’ They also add that ‘HIWFRS fully support the concept of a PSPO restricting the use of BBQs and open fires. Whilst we do not wish to encroach on the enjoyment of people who visit the New Forest, our current level of activity to incidents in the open is not sustainable’.

5.1.17 The evidence relating to lighting of fires and the use of BBQs, summarised above, sets out the detrimental effects that this activity has caused, and continues to cause, to the community, both in terms of the dangers to the public through the increased threat of fire, but also to those organisations and staff who play a lead role in dealing with the fires and the threat of such fires. It is considered that the effects of these activities are persistent and are such to make the activities unreasonable. It is also considered that the proposed restrictions and requirements within PSPO No 1 (noting the exception relating to purpose built BBQs raised off the ground on the named campsites referred to therein), are reasonable and proportionate to the harm that has been identified. Senior Officers of the Council consider that the legal tests are met in respect of this activity and recommend that the matter progresses to public consultation stage to enable landowners, occupiers, wider community representatives and the Police, to give their views.

5.2 Feeding and petting of Forest animals

5.2.1 The proposed form of the PSPO covering this activity is set out at Appendix 2 and is referred to as The New Forest Public Spaces Protection Order 2022 (No.2) (‘PSPO No 2’). It deals with the feeding and petting of ponies, horses, mules and donkeys. It proposes a specific prohibition on the following activities in the Restricted Area*:-

(a) feeding or providing or depositing food for consumption by any New Forest Pony, Horse, Mule or Donkey; or

(b) petting or touching any New Forest Pony, Horse, Mule or Donkey.

5.2.2 *References to the ‘Restricted Area’ for the purposes of proposed PSPO No 2 means any public space within the land shown outlined and hatched in blue on the maps accompanying Schedule 1 to that proposed PSPO at Appendix 2. This comprises land within the Perambulation of the New Forest, that is open to the air and to which the public are entitled or permitted to have access.

5.2.3 There is a requirement within the proposed PSPO No 2 for any person (within the Restricted Area) who has an item, which a constable or authorised person has reasonable grounds to believe has been, is being, or is likely to be used in connection with the prohibited activities, to surrender the item to the constable or authorised person, on request.

5.2.4 There is also a requirement that if a person has acted contrary to the PSPO, they shall terminate their activities.

5.2.5 There is an exception contained within proposed PSPO No 2 that states that the prohibition and requirements outlined above will not apply to any person who is a New Forest Commoner and owner of a New Forest Pony, Horse, Mule or Donkey, or their duly authorised servant or agent or an agister.

5.3 Evidence base relating to the feeding and petting of Forest animals

- 5.3.1 Over the years, the dangers associated with members of the public feeding and petting roaming Forest animals, have been well documented, publicised and the subject of numerous high profile campaigns, all with the aim of discouraging such behaviour. It is evident from the evidence produced by partners that such behaviour continues on a large scale.
- 5.3.2 Partners including FE, NPA, the Verderers and the New Forest Association have produced significant evidence to demonstrate the scale of the problem that is associated with the feeding and petting of Forest animals, particularly ponies and donkeys and the detrimental effects to the community that this is causing. A summary of the evidence is set out below. The full evidence received by the Council, in support of this activity, is contained within the following link:

www.newforest.gov.uk/PublicSpaceProtectionOrders

- 5.3.3 The Head Agister has produced a statement which provides valuable background information as to how animals come to pasture on the Forest and the role of the Agisters, both in dealing with commoners and interested groups in the local community. The statement also explains the harm and danger caused to both members of the public and the animals, when humans feed them. The Head Agister explains that in feeding Forest animals, they learn to associate humans with food and as a result, will approach members of the public, including children, and ask for food. He states that *'Unfortunately, ponies can and do get aggressive around food. This leads to competition between the ponies, including kicking and biting, and that aggression can and often is directed at members of the public. As a result, members of the public get knocked over, bitten and even kicked. A direct result of humans feeding the ponies is therefore danger to members of the public.'*
- 5.3.4 In his statement, the Head Agister also explains the problems for the animals, if fed by members of the public. They can lose their ability to survive on the Forest and become dependent on human food, which can be extremely detrimental for them. He states *'Feeding of the ponies can harm the ponies in other ways. Members of the public often carry food in plastic bags which if ingested by a pony can cause choking. People quite often dump windfall apples on the Forest, mistakenly believing that they are of benefit to the ponies. On the contrary, apples can not only cause choking but also, if they eat too many, colic which can be fatal to ponies. Carrots can also cause choking. Grass cuttings pose a particular danger. When eaten they ferment in the stomach of the animal, creating gas and that can sometimes lead to a ruptured stomach. Dumping of hedge clippings from gardens can contain material such as yew that is poisonous. Any of these activities can result in a large vet's bill for the Commoner and in some cases loss of the animal altogether. Feeding the animals is therefore harmful both to the welfare of the animal and its owner.'*
- 5.3.5 The Head Agister also states that *'When a pony involved in an incident can be identified, all the circumstances of the incident are taken into consideration. If there are any safety concerns in relation to members of the public, the Agisters will inform the owner and the Verderers, who have the power to insist the animal is removed from the Forest, or moved away from a specific area. It can sometimes be difficult to balance the ancient right of the Commoner to graze their ponies in the Forest, against the safety of the public. Ponies may have to be moved if they go into tents on*

open campsites as a result of visitors not keeping their food secure. However, ponies are permanently removed from the Forest if they pose a danger to the public because they have learned to be aggressive. Once permanently removed from the Forest, ponies face an uncertain future as they are not riding ponies- they are semi feral accustomed to living on the Forest’.

- 5.3.6 The Head Agister also explains that feeding the ponies encourages them to hang around the roads and car parks, as many visitors do not stray far from these areas. He further states that *‘As many of the Forest roads are unfenced this increases the likelihood of a pony being injured or killed by a motor vehicle. This is of course a tragedy both for the animal itself and the owner. For example, in 2021, 44 animals were killed and 15 injured in road accidents.’*
- 5.3.7 Two logs have been received from the Verderers Office which set out information, including recorded feeding and petting incidents during 2020, 2021 and 2022. For the purposes of the particular activities which are the subject of PSPO No. 2, the Council has relied on only those incidents relating to public feeding and interaction with stock as supporting evidence, and not incidents relating to dogs.
- 5.3.8 There is also a report from Dr Jo Ivey, a veterinary surgeon on *‘Interactions between the public and depasturised stock in the New Forest in 2018’*. This was commissioned by the New Forest Association. Whilst that report, in part, deals with the interactions between dogs and roaming animals, it also provides evidence that feeding and petting of animals causes them to become over- familiar and aggressive towards humans. Dr Ivey’s report looks at reported incidents across campsites, information from Rangers and the Verderers. It sets out descriptions of incidents involving human interaction with ponies, with numerous examples of ponies raiding campsites and tents, stealing food, including where members of the public have been injured or ‘near misses’ have occurred. In one example, Dr Ivey’s report records a report from a Ranger relating to Boltons Bench which states *‘20-30 incidents of pony and donkey petting/close photography within sight of middle car park. In many cases the animals were over- friendly and approached people first. Saw one incident of possible pony aggression (it turned away with ears back as if to kick). Almost all of the people were spoken to and given leaflets, but in a few cases, they had moved on before I could reach them. Many said they thought it was ok to stroke the animals but would not feed them’.*
- 5.3.9 Evidence has also been provided by the NPA’s Lead Ranger relating to the activity of feeding and petting animals. In her statement, she states *‘In the last two years, all three Area Rangers have reported having to speak to people about livestock feeding and petting on a daily basis across all areas of the New Forest. Some additional hotspots such as Bolton’s Bench are known to have persistent issues, despite new and prominent signage around the site. A one hour visit to Bolton’s Bench during the 2020 Easter holidays saw 37 petting incidents on the site including one lady being bitten whilst trying to feed a pony crisps. My team have all had times when members of the public have been asked to keep their distance from the livestock but their requests have been ignored and people have persisted or waited until they believed rangers were out of sight and continued.’* The Lead Ranger also states *‘Furthermore, this constant feeding and petting of ponies is already leading ponies to adopt some ‘learned behaviours’ by closely associating visitors with food. It is increasingly common to see ponies congregating around parked cars, harassing and ‘begging’ the car’s occupants for food. Not only is this bad for the ponies and the future of commoning in the New Forest, it spoils people’s enjoyment of the areas and in a few cases, people can feel quite intimidated’.* Examples of 119 feeding and petting

incidents recorded by the NPA Ranger Team over a 6 month period in 2021 has been provided to the Council.

- 5.3.10 FE's Community Manager has also produced a statement in support of the proposed PSPO No 2 covering the feeding and petting of ponies. In it, she describes livestock petting and feeding as '*widespread across the Crown Lands*' and that '*it happens so frequently it is impossible to report every instance of this type of activity. We also get calls from concerned members of the public reporting petting and feeding and frequent calls for action from partner agencies, local communities and stakeholders*'.
- 5.3.11 The Community Manager, whilst explaining the risks to the animals through eating inappropriate food, which can cause choking, also sets out the dangers to people in that the animals then pursue people or raid their bags in the hope of finding food. She states that '*I have witnessed several incidents where people or dogs are injured as a result of this, and many more whereby people have had their belongings thrashed and picnics eaten.*' She also explains the impact on Forest staff '*who explain and educate to the best of our abilities but some people refuse to listen and believe it is their right to come to the New Forest to see, touch and feed the animals..... It frequently is mentioned at Verderers Court due to the impact on the local Commoning community as their animals may become sick, or die, as a result of these activities. This directly impacts their way of life and heritage and is something many people are very passionate about. There is also the impact on people in terms of their safety, there have of course been incidents where people have been kicked or bitten and this can potentially lead to serious lasting injuries or in the worst case fatality*'.
- 5.3.12 FE have produced data in respect of recorded incidents of feeding and petting of animals during 2021 and 2022. Some of the examples included in this data relate to dogs, which are not relevant for the purposes of PSPO No.2. These can be observed in the link referred to in paragraph 5.3.2 above.
- 5.3.13 There are also a number of statements from Commoners in support of the proposed PSPO relating to the feeding and petting of ponies, horses, donkeys and mules. One of these statements gives details of an incident on 14 November 2020 in which a Commoner's mare, which had become trapped by an open car door, '*jumps it .. and becomes straddled at her stifle and lands across the bonnet, breaking the window seal, the door mirror and denting the bonnet*'. It would appear that there was food inside the car which the mare was attempting to get at. The Commoner, whose mare was involved in this incident, commented '*Changes to our mare's behaviour as a consequence of public interaction is depressing and has negative consequences for our commoning practises.*'
- 5.3.14 Officers have carefully assessed all the evidence in respect of the activity relating to the feeding and petting of ponies, horses, donkeys and mules. The evidence gives a clear picture of the detrimental effect on the quality of life of the local community, arising from this activity. There is evidence that the feeding of ponies teaches them to associate humans with food, causing the animals to become overfamiliar and aggressive if they don't get what they want. There is evidence demonstrating the dangers to the public, including incidents which have resulted in injuries, as well as damage to people's goods and belongings. There is also the detriment to the local Commoners' quality of life. Not only do they suffer financially if their animals are injured or killed (through the carrying on of this activity), they also suffer distress if their animals are harmed.

5.3.15 It is clear from the evidence that the activities relating to the feeding and petting of ponies, horses, donkeys and mules has a detrimental effect on the quality of life of those in the area and that the effect of these activities is persistent and, due to the harm that is being caused, it is considered that these activities are unreasonable. It is also considered that the proposed restrictions and requirements within the proposed PSPO No 2 (noting the exception relating to the ability for commoners, their agents and an agister to carry out the restricted activities referred to in the proposed PSPO No 2) are reasonable and proportionate to the harm that has been identified. Senior Officers of the Council consider that the legal tests are met in respect of this activity and recommend that the matter progresses to public consultation stage to enable landowners, occupiers, wider community representatives and the Police to give their views.

6. PROCESS FOR INTRODUCING A PSPO

6.1 Before making an Order, the Council is legally obliged to carry out statutory consultation, publicity and notification in accordance with Section 72(3) of the Act. The following bodies are required to be consulted before the making of an order:-

- The local Chief Officer of Police, and the local policing body for the area that includes the Restricted Area (this will include the Police and Crime Commissioner). For both PSPO No 1 and PSPO No 2, this will involve consulting with Hampshire Constabulary.
- Owners and occupiers of land within the Restricted Area, the subject of the PSPO (this applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land).
- Community representatives that the local authority thinks it appropriate to consult.

6.2 With regards to the community representatives category, it is proposed that the following are consulted in relation to both PSPO No 1 and PSPO No 2:-

- Safer New Forest Partnership
- Scouts New Forest
- Head Teachers' Forum (secondary schools including colleges)
- Head Teachers' Forum (primary schools)
- The Verderers
- Commoners' Defence Association
- National Park Authority
- Royal Society for the Protection of Birds
- Campaign for National Parks Charity
- Hampshire and IOW Wildlife Trust
- Go New Forest Community Interest Company
- New Forest Association
- Town and Parish Councils
- Hampshire County Council
- Open Spaces Society
- The Ramblers
- The Camping and Caravanning Club
- The Caravan and Motorhome Club
- The New Forest Dog Owners' Club
- Health and Wellbeing Board

- New Forest Access Forum
- New Forest Equestrian Association
- Community First
- Girl Guiding Hampshire West
- National Trust
- The Duke of Edinburgh Award Scheme

- 6.3 If Members consider that others should be added to this list, arrangements can be made in this regard.
- 6.4 With regard to consulting owners and occupiers within the Restricted Areas, it has to be recognised that the proposed two PSPOs, particularly PSPO No 2, cover a wide geographical area of the Forest. The areas covered, particularly by PSPO No 2, which has the Perambulation as the Restricted Area, will have a significant number of people who fall within the category of *'owner and occupier of land within the Restricted Area'*. There is only a requirement to consult with owners and occupiers of land when it is reasonably practicable to do so. It is not considered reasonably practicable to consult each and every landowner and occupier of land covered by both PSPO No 1 and No 2. However, the Council will consult the following specific bodies for both: FE, Hampshire County Council, as Highway Authority and the Highways Agency.
- 6.5 To ensure that as many people as possible, falling within this category, become aware of the proposed PSPOs, the Council will publish a press notice in two newspapers circulating in the District, for 2 consecutive weeks. This is in addition to the proposed orders being published on the Council's website which meets the 'necessary publicity' requirements of the legislation.
- 6.6 In addition to the above, the statutory Home Office guidance accompanying the legislation, states that Councils should consider a wider consultation if land subject to a proposed PSPO, includes registered common land, town or village greens or open access land. As the land the subject of the 2 proposed PSPOs will include land falling within these categories, it will be appropriate to consult bodies such as the New Forest Access Forum, the British Horse Society and Ramblers (the latter being included already, in the list set out at paragraph 6.2 above). The Council will work closely with FE to identify any further appropriate bodies to consult in light of the particular designations that cover the land the subject of the two proposed PSPOs.
- 6.7 It is proposed that the Consultation will involve a questionnaire for those wishing to respond. This will be available as an electronic questionnaire and there will be an option for paper copies also to be completed. The two proposed PSPOs will also be published on the Council's website for the benefit of the wider public, with a link to the questionnaire. It is proposed that the Consultation will run for a period of 6 weeks.
- 6.8 The consultation is an extremely important part of the process and the Council will only be in a position to decide whether to proceed to make the PSPOs, following that consultation process.
- 6.9 It is expected that a report will be brought back to Cabinet with the outcome of the Consultation in Spring 2023.
- 6.10 Under the legislation, there are additional requirements to ensure that the *'necessary notification'* is carried out before making an order and the legislation cites 2 bodies that require such notification; namely parish or community councils for the area that includes the Restricted Area, and the County Council. It is intended, in any event,

that all Town and Parish Councils in the District, and Hampshire County Council, will be formally consulted on the proposed PSPOs, as set out in paragraph 6.2 and 6.4 above.

7. ENFORCING THE PSPO

7.1 It is an offence under the Act to, without reasonable excuse, breach the terms of a PSPO. This can result in the following formal action:-

- Prosecution in the Magistrates' Court with a maximum fine of £1000; or
- The issuing of a Fixed Penalty Notice with a maximum penalty of £100.

7.2 Under the Act, a Police Officer or an authorised person (so authorised by the Council) may issue a Fixed Penalty Notice to anyone whom they believe has breached the terms of the PSPO.

7.3 A Fixed Penalty Notice is a notice offering the person to whom it is issued the opportunity of discharging any criminal liability for the offence by payment of a fixed penalty to the Council. If the fixed penalty is paid, no prosecution proceedings can be taken. However, if it is not paid, prosecution proceedings may follow.

7.4 Under the Act, there are particular rules to follow when issuing a Fixed Penalty Notice.

7.5 Discussions have taken place with partners as to the role they will play in assisting the Council discharging its functions in respect of the two proposed PSPOs. It is considered that if either of the PSPOs is made, the Council would look to partners to enforce the PSPO on its behalf as those partners have a range of existing resources, such as Rangers, who are present in and around the Forest ensuring its good management. Discussions are on-going at present and further information about the enforcement of the PSPOs will be brought before Cabinet when it considers the outcome of the Consultation exercise.

8. OTHER LEGAL IMPLICATIONS

8.1 Legal Challenge

8.1.1 Under section 66 of the Act an interested person, which is someone who lives in the area covered by the PSPO or who regularly works in or visits that area, may apply to the High Court to challenge the validity of a PSPO.

8.1.2 An interested person who wishes to challenge a PSPO must make an application to the High Court within 6 weeks of a PSPO being made by a local authority.

8.1.3 The grounds on which an application may be made are:-

- a) that the authority did not have power to make an order, or to include particular prohibitions or requirements imposed by the order;
- b) that a requirement in the process of the making of an order was not complied with.

8.1.4 The High Court can uphold, quash or vary the PSPO and may decide to suspend the operation of a PSPO pending the verdict. Additionally, as with all decisions, the making of a PSPO can be challenged by judicial review by any other person on public law grounds within three months of the decision or action subject to challenge.

8.2 **Convention rights**

8.2.1 In deciding whether to make a PSPO and what to include in any such PSPO, the Council must have regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In respect of proposed PSPO No 1 and PSPO No 2, it is not considered, that these rights are engaged.

8.3 **Byelaws**

8.3.1 In accordance with section 70 of the Act, a byelaw that prohibits, by the creation of an offence, an activity regulated by a PSPO is of no effect in relation to the relevant Restricted Area during the currency of that PSPO.

8.3.2 For the purposes the proposed PSPOs, this will mean that, if either are brought into force, the following will not apply to the respective Restricted Areas for the time that they are in force:

- byelaw 5. iv of the Forestry Commission Byelaws SI 1982 No 648 (PSPO No 1)
- byelaw 16 (1) of the New Forest (Confirmation of the Byelaws of the Verderers of the New Forest) Order 2010 SI 2010 No 993 (PSPO No 2)

9 **FINANCIAL IMPLICATIONS**

9.1 The making of the two proposed PSPOs will have some financial implications for the Council. At this stage, where the Council is agreeing, in principle, to make the PSPOs, subject to public consultation, it will be necessary to agree a budget for the consultation exercise. In addition to using existing in-house resources for this purpose, it is intended to employ the services of an external consultation and analysis expert, who will provide support for the consultation process. It is proposed that costs of £15,000 are set aside for the consultation process.

9.2 If the Council decide, following the consultation process, to proceed with the making of the PSPOs, then further costs are likely to arise associated with administering the PSPOs as well as enforcing them; these costs would be off set from any payments received from the Fixed Penalty Notice process or costs, following a successful prosecution for breaches of the Orders. The Council is in discussions with relevant partners who have indicated, in principle, that they will take a lead role in enforcing the PSPOs.

9.3 If the decision is made to proceed with making the PSPOs, after consideration of the consultation results, the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 ('the Regulations') made under the Act require the Council to erect suitable signage on or adjacent to the applicable Restricted Areas to draw attention to the fact that a PSPO has been made and its effect. As the size of the areas covered by the proposed PSPOs is large, this will require multiple signs of sufficient quality to make them weatherproof. Similarly, there is a requirement under the Regulations that where a PSPO is

discharged similar signage must be erected identifying that it has been discharged and the date it ceases to have effect. Officers will work with partners regarding the number of signs required, locations and costs involved.

- 9.4 Further details about the arrangements for enforcement of the PSPOs and signage will be brought before Cabinet when it considers the results of the consultation exercise.

10. ENVIRONMENTAL IMPLICATIONS

- 10.1 PSPO No 1 relating to wildfires and BBQs, if made, would have positive environmental implications, through a reduction in carbon dioxide and other pollutants into the atmosphere, which have an impact on climate change. Additionally, taking measures to prevent fires will help preserve the natural habitat and longevity of the woods, forests and heathlands within the Forest, all of which will have positive effects in terms of climate change.
- 10.2 PSPO No 2 relating to the feeding and petting of Forest animals, if made, will have positive implications for the Forest; Commoners' animals are less likely to suffer illness or death through being fed the wrong food stuffs, which could have an impact on the biodiversity (the variety of natural life) of the Forest, which is one of the most valuable areas for wildlife in Europe. Historic land uses such as commoning has shaped the Forest landscape over many centuries and human activity can interfere with these important practices, to the detriment of the Forest, as a whole. If the activities that PSPO No 2 seeks to address continue, this could lead to a threat to the viability of commoning in the Forest and the withdrawal of these animals, which could have significant environmental implications for the future of the Forest. Additionally, commoners often have to deal with sick animals, which have been fed inappropriate foods by humans, instead of relying on their natural habitat for food and ultimately, animals can lose their ability to survive on the Forest as a result of these feeding activities.

11. CRIME AND DISORDER IMPLICATIONS

- 11.1 Anyone breaching the terms of the PSPOs, without reasonable excuse, will be committing a criminal offence, punishable by prosecution with a maximum fine of £1000, or by the issue of a Fixed Penalty Notice, with a maximum penalty of £100.
- 11.2 It is expected that by including the activities set out in this report within the proposed PSPOs, there will be a reduction in the anti-social behaviour associated with wildfires and the use of BBQs on the Forest and the feeding and petting of Forest animals, all of which are detrimental to the local community, as set out in this report.

12. EQUALITY AND DIVERSITY IMPLICATIONS

- 12.1 The impact that the proposed PSPOs have on the community, as well as those with protected characteristics under the Equality Act 2010, have been carefully considered. The Council has also had due regard to the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010.

- 12.2 It is considered that the particular PSPOs, the subject of this report, do not target those with any of the protected characteristics and it is not considered that they will have a negative impact on those with protected characteristics.
- 12.3 The Council will ensure that the consultation is accessible to those with protected characteristics by making it available through a variety of mediums with appropriate support provided, as required.
- 12.4 As far as the wider community is concerned, there may be some who may be resistant to the prohibitions and requirements set out in the proposed PSPOs and it is important that the Council retains an open mind in terms of any final decision, until the outcome of the consultation process is known.
- 12.5 Statutory Guidance additionally states that '*Consideration should be given to how the use of this power might impact on the most vulnerable in our society*' and '*Consideration should also be given to any risks associated with displacement, including to where people may be dispersed to*'. The Council or those that the Council authorises to enforce any PSPO that is made, will have particular discretion over the issuing of Fixed Penalty Notices or the decision to prosecute over breaches of the PSPO. Decisions to issue Fixed Penalty Notices or to instigate prosecution proceedings will be subject to careful and proportionate decision making. The Council will also carefully consider whether there is any displacement activity relating to PSPO No 1 which deals with wildfires and BBQs and may consider additional areas to include at a later stage. This will be kept under review.

13. CONCLUSION

- 13.1 PSPOs, if used proportionately and in the right circumstances, allow local areas to counter unreasonable and persistent behaviour that affects the quality of life of residents.
- 13.2 There is substantial evidence to support the two PSPOs proposed in this report and Officers are satisfied that the legal tests are met to enable the Council to move to a formal consultation of its proposals. It is important that the Council retains an open mind until the outcome of the consultation is known. A decision will only be taken on whether to proceed to make the orders, at that time.

14. PORTFOLIO HOLDER COMMENTS

- 14.1 The overwhelming majority of those living, working and visiting the open areas of the New Forest do so in a way that respects the New Forest Code (<https://www.newforestnpa.gov.uk/visiting/help-care-for-the-forest/new-forest-code/>) and of those that don't, most fail to do so due to a lack of awareness, which can be addressed through better signage and engagement. However, evidence shows that there is small percentage who, despite engagement, continue to light fires and BBQs or feed and pet depastured livestock. As the number of people enjoying the open Forest has increased, while continuing to be a small percentage, the number of people who continue with these damaging activities despite requests to cease, has also risen.

The report sets out why the Council is consulting on the potential introduction of two PSPOs, the harm the activities covered cause, the measures that have already been taken to try and reduce risk and mitigate harm, and why this step is now considered

to be required to protect the open Forest and the depastured livestock which maintain the landscape and its unique ecology.

For the reasons set out in the report, I support the recommendations and would encourage all those with a view on the proposed PSPOs, whether supportive or opposed, to respond to the consultation.

For Further Information Please Contact:	Background Papers:
<p>Grainne O'Rourke Executive Head of Governance & Housing and Monitoring Officer Tel: (023) 8028 5076 E-mail: grainne.orourke@nfdc.gov.uk</p> <p>Amanda Wilson Information Governance & Complaints Manager Tel: (023) 8028 5306 E-mail: amanda.wilson@nfdc.gov.uk</p>	<p>Published Documents: www.newforest.gov.uk/PublicSpace ProtectionOrders</p>