

## PUBLIC SPACES PROTECTION ORDERS

### 1. RECOMMENDATIONS

**It is recommended that Cabinet:-**

- 1.1 Notes the results of the public consultation exercise carried out relating to the proposals to make Public Space Protection Orders ('PSPOs') in respect of the lighting of fires and BBQs in the open Forest, and the feeding and petting of Forest animals;
- 1.2 Agrees to make The New Forest Public Spaces Protection Order 2023 (No.1) ('PSPO No 1') and The New Forest Public Spaces Protection Order 2023 (No.2) ('PSPO No 2') in the form set out in Appendices 5 and 6, noting the levels of the Fixed Penalties that will be incurred for breaches;
- 1.3 Agrees that PSPO No 1 and PSPO No 2 will come into force on 1 July 2023;
- 1.4 Authorises the Strategic Director for Housing, Communities and Governance, following the Cabinet meeting on 5 April 2023, to affix the Common Seal of the Council to PSPO No 1 and PSPO No 2 and sign accordingly, to make the Orders;
- 1.5 Authorises the publishing of PSPO No 1 and PSPO No 2 on the Council's website and giving public notice of their making and effect in accordance with the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014;
- 1.6 Authorises the Strategic Director for Housing, Communities and Governance to finalise all necessary arrangements with Partners, including the signage arrangements, entering into the necessary agreements with Partners and arranging training of proposed Authorised Officers; and
- 1.7 Authorises the postholders employed by Partners set out at Appendix 7 to be 'authorised persons' for the purposes of section 68 of the Anti-Social Behaviour, Crime and Policing Act 2014 in respect of the Public Spaces Protection Orders (defined in the PSPOs as Authorised Officers), the subject of this report.

### 2. INTRODUCTION

- 2.1 This report sets out the results of the consultation that was carried out following Cabinet's decision on 2 November 2022 to approve two draft Public Spaces Protection Orders ('PSPOs') for consultation purposes. The report also provides further information on the arrangements that have been agreed between the Council and its partners on enforcement responsibilities, signage provisions and training should the PSPOs be made and also explains the next steps before the PSPOs go live in the Summer of 2023.
- 2.2 The report to Cabinet in November 2022 can be found here [The Introduction of Public Space Protection Orders - Report to Cabinet, 2 November 2022](#) ('November Cabinet Report').

### 3. BACKGROUND

3.1 The proposals, in principle, to make two PSPOs stem from discussions that have been on-going for a number of years within the New Forest Recreation Management Strategy Steering Group, of which the Council is a member, to deal with certain anti-social behaviours within the Forest, by members of the public. Partners requested the Council to consider utilising its powers under the Anti-Social Behaviour, Crime and Policing Act 2014 ('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(s).

3.2 Cabinet, at its meeting on 2 November 2022, agreed the following recommendations:-

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 of the report to Cabinet.***
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 ('the Act') and to report back to Cabinet with the outcome of the consultation.***

3.3 At its meeting in November 2022, Cabinet was presented with a large evidence base demonstrating the extent of problems associated with the lighting of fires/ BBQs and the feeding and petting of Forest animals and the detrimental effect that such activities have on the quality of life of those in the locality.

3.4 The following is an extract taken from the November Cabinet Report in respect of the conclusion drawn by officers of the evidence base relating to the lighting of fires and BBQs, the subject of PSPO No 1:-

***"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."*** [para 5.1.17 of November Cabinet Report]

3.5 Set out below is a further extract from the November Cabinet Report in respect of the conclusion drawn by officers of the evidence base relating to the feeding and petting of Forest animals, the subject of PSPO No 2:-

***"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***". [para 5.3.14 of November Cabinet Report]

***"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***". [para 5.3.15 of November Cabinet Report]

- 3.6 At its November 2022 meeting, Cabinet was satisfied that the legal tests for making the two proposed PSPOs were met to enable the Council to move to a formal consultation of its proposals. The Council was clear that a final decision could only be taken on whether or not to proceed with the making of the PSPOs, once the outcome of the formal consultation was known.

#### **4. PUBLIC CONSULTATION RESPONSE AND ANALYSIS**

- 4.1 The consultation period commenced on 5 December 2022 and ended on 27 January 2023. The consultation was carried out in accordance with paragraph 6 of the November Cabinet Report. This included consulting with the Police and Crime Commissioner, Hampshire Constabulary, owners and occupiers of land within the Restricted Areas (where reasonably practicable to do so) and community representatives that it was considered appropriate to consult. Further, notice of the consultation was published on the Council's website and in two newspapers circulating in the district for 2 consecutive weeks.
- 4.2 Members of the public and the bodies/organisations that were required to be consulted/ notified of the proposals were directed to two separate surveys (relating to PSPO No 1 and PSPO No 2) which were accessed through the Council's website. Paper copies were also available on request. The consultations included questions aimed at identifying the issues that had been experienced by the respondents, how concerned respondents were about the activities and whether respondents were in support of the proposed PSPOs.
- 4.3 The Council employed a research company, Market Measures, to host and analyse the results of the consultations. Market Measures' reports of the outcome of the consultations in respect of PSPO No 1 and PSPO No 2 are set out in Appendices 1 and 2 respectively. These reports are summarised in paragraph 4.4 and 4.6 below.

#### 4.4 PSPO No 1 (relating to wildfires/BBQs)

- 4.4.1 A total of 771 responses were received about PSPO No 1. The report at Appendix 1 details the demographic of the respondents to the consultation and 85% of those who responded identified themselves as living in the local area.
- 4.4.2 In response to the question '*Have you had any personal experience of problems with fires in the proposed Restricted Area in the last 2 years?*' 26% answered that they had. Of those that answered positively, they were then asked the follow up 'open' question '*Please can you give us some more detail about the problems you have personally experienced with wildfires in the proposed Restricted Areas in the last 2 years?*'. These open responses are viewable online at <https://newforest.gov.uk/PSPOcomments>. There have been some redactions made to this document, and the other 'open' responses referred to below, to ensure that potentially identifying information has been removed. The responses to this question indicate that, of those that have experienced problems, the majority relate to seeing fires, open fires and wild camping fires in the Restricted Area.
- 4.4.3 In response to the question '*How concerned are you about wildfires in the proposed Restricted Area?*' 96% of respondents were either concerned (13%) or extremely concerned (83%).
- 4.4.4 Similarly, in response to the question '*How much do you agree or disagree that the use of BBQs & the lighting of fires in the proposed Restricted Area is currently a danger to public safety?*' 95% of respondents either agreed (14%) or strongly agreed (81%).
- 4.4.5 The question '*How much do you agree or disagree that the use of BBQs & the lighting of fires in the proposed restricted area is currently a danger to the local ecology?*' was responded to with 96% either agreeing (8%) or strongly agreeing (88%).
- 4.4.6 Importantly, of those who responded to this consultation, 95% stated that they agreed with the Council's proposal to introduce PSPO No 1.
- 4.4.7 In addition to the above information, there were a range of issues raised in response to an 'open' question within the survey which enabled consultees to comment more generally on the proposals. Of the 771 respondents, over 350 used this opportunity to make additional comments. These open responses are viewable online at <https://newforest.gov.uk/PSPOcomments>. Where possible, the main issues raised have been grouped together into themes and these have been summarised, along with officers' responses, in a table which can be found in Appendix 3.
- 4.4.8 Some of the issues raised have highlighted areas where, officers consider, amendments to the proposed PSPO No 1 should be made. If Members agree with the officers' responses, they are asked to consider the proposed changes to PSPO No 1 set out in para 4.5 below, being the only changes that are being recommended following the outcome of the consultation.

#### 4.5 Changes Proposed to PSPO No1 following outcome of consultation

- 4.5.1 To ensure that PSPO No 1 does not have the effect of prohibiting activities such as smoking, it is proposed to remove the following category from the definition of 'Activities' within PSPO NO 1:-

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

- 4.5.2 This is shown as a red strike through in the current draft of PSPO No 1 included at Appendix 4. The remaining definition of 'Activities' within this PSPO are wide enough to cover the anti-social activities that Members are principally concerned about, namely, the lighting of fires and the use of BBQs in the Forest. However, it is important to make clear that if a person throws down a lit match or cigarette/cigar, then they will be breaching the PSPO and, therefore, committing an offence.

- 4.5.3 Further, to make it clear that PSPO No 1 does not include a prohibition in respect of the use of fireworks or the use of lanterns (at this time), it is proposed to add new wording to the 'Exceptions' part of PSPO No 1 by the insertion of a new paragraph (3) as follows:-

*'(3)-This Order does not apply to the acts of setting off fireworks or lit lanterns'*

- 4.5.4 These words are shown marked coloured red on the proposed PSPO No 1 at Appendix 4.

- 4.5.5 Whilst the setting off of fireworks/lanterns in the Forest may be considered by some, to be anti-social in their own right, they are not proposed to be included within the PSPO at the present time. These matters may form part of subsequent review. This is a position supported by Hampshire and Isle of Wight Fire and Rescue Service.

- 4.5.6 The version of PSPO No 1 to be approved, and taking into consideration all of the proposed amendments outlined in this paragraph 4.5 is included in Appendix 5.

#### 4.6 PSPO No 2 (relating to the feeding and petting of Forest animals)

- 4.6.1 A total of 769 responses were received about PSPO No 2. The report at Appendix 2 details the demographic of the respondents to the consultation and 86% of those who responded identified themselves as living in the local area.

- 4.6.2 In response to the question '*Have you had any personal experience of problems with the feeding & petting of New Forest Ponies, Horses, Donkeys & Mules in the proposed Restricted Area in the last 2 years?*' 43% answered that they had. Of those that answered positively, they were then asked the follow up 'open' question '*Please can you give us some more detail about the problems you have personally experienced with the feeding & petting of New Forest Ponies, Horses, Donkeys & Mules in the proposed Restricted Area in the last 2 years?*'. These open responses are viewable online at <https://newforest.gov.uk/PSPOcomments>. There have been some redactions made to this document, and the other 'open' responses referred to below, to ensure that potentially identifying information has been removed. The

responses to this question indicate that, of those that have experienced problems, the majority had witnessed the feeding and petting on ponies in the Restricted Area.

- 4.6.3 In response to the question '*How concerned are you about the feeding & petting of New Forest Ponies, Horses, Donkeys & Mules in the proposed Restricted Area?*' 92% of respondents were either concerned (24%) or extremely concerned (68%).
- 4.6.4 Similarly, in response to the question '*How much do you agree or disagree that the feeding & petting of New Forest Ponies, Horses, Donkeys & Mules in the proposed Restricted Area is a danger to public safety?*' 88% of respondents either agreed (24%) or strongly agreed (64%).
- 4.6.5 The question '*If New Forest Ponies, Horses, Donkeys & Mules are withdrawn from the Restricted Area, how do you think the New Forest would be impacted?*' was responded to with 84% stating there would be a negative impact.
- 4.6.6 Importantly, of those who responded to this consultation, 91% stated that they agreed with the Council's proposal to introduce PSPO No 2.
- 4.6.7 As with the consultation on PSPO No 1, in addition to the above information, there were a range of issues raised in response to an 'open' question within the survey which enabled consultees to comment more generally on the proposals. Of the 769 respondents, over 400 used this opportunity to make additional comments. These open responses are viewable online at <https://newforest.gov.uk/PSPOcomments>. Where possible, the main issues raised have been grouped together into themes and these have been summarised, along with officers' responses, in a table which can be found in Appendix 3.
- 4.6.8 The consultation on PSPO No 2 did not raise any issues that, in officers' views, necessitate amendments to the draft PSPO No 2 as included in the report to Cabinet on 2 November 2022. The version of PSPO No 2 to be approved, is included in Appendix 6.

#### 4.7 Conclusion from consultation

- 4.7.1 The November 2022 Cabinet report set out the legal tests that must be satisfied for a PSPO to be made:

***"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.***” [para 4.4 of November Cabinet Report]

4.7.2 Based on the evidence base presented to Cabinet at its meeting on 2 November 2022 and the response to the consultation, it is the view of officers that the relevant legal tests have been met and, subject to the proposed amendments to PSPO No 1 set out at paragraph 4.5 of this report, it is recommended that PSPO No 1 in the form included at Appendix 5 and PSPO No 2 in the form included at Appendix 6 should be made.

## **5. ARRANGEMENTS WITH PARTNERS**

5.1 The use of the power to make the PSPOs has been driven and supported by the Council’s partnership working with representatives from, principally, the New Forest National Park Authority, Forestry England and the Verderers (referred to collectively as ‘the Partners’) through the Recreational Management Strategy Steering Group. It was agreed, prior to the consultation, that should the proposed PSPOs be made, the Partners would have a key role to play in respect of both the enforcement of the PSPOs and the placing of appropriate signage in the Restricted Areas. The November Cabinet Report outlined that further details about the arrangements for enforcement and signage would be brought before Cabinet in this report. This section of the report summarises what has been agreed between the Partners and the Council about their respective responsibilities. It is recommended that the Strategic Director for Housing, Communities and Governance be authorised to finalise the arrangements with the Partners for enforcement, training and signage.

### **5.2 Enforcement responsibilities**

5.2.1 It is an offence under section 67 of 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 (‘FPN’) with a maximum penalty of £100.

5.2.2 Under section 68 of the Act, a Police Officer or an ‘authorised person’ (so authorised by the Council) may issue a FPN to anyone whom they believe has breached the terms of the PSPO. For the purposes of the final versions of the PSPOs to be made, as included at Appendices 5 and 6, authorised persons are referred to as Authorised Officers.

5.2.3 The results of the consultation show that the enforcement of the PSPOs is an important issue.

5.2.4 It is acknowledged by the Partners that they have a range of existing resources who are present in and around the New Forest ensuring its good management. The Partners have shared with the Council a list postholders for those that they propose will become authorised persons/ Authorised Officers for the purposes of the PSPOs. The list of relevant job titles is included at Appendix 7.

5.2.5 However, it is recognised that formal enforcement will often be a final resort. It has been agreed with the Partners that they will undertake a range of action, on the Council's behalf, relating to the PSPOs including:

- a) Raising awareness of the provisions of the PSPOs; and
- b) Authorised Officers taking reasonable and proportionate action where they have reason to believe a person has committed, is committing, or likely to commit an offence under the PSPOs as defined by Section 67 of the Act.
- c) Such reasonable and proportionate action shall involve the Authorised Officer taking into consideration all relevant circumstances and may include as applicable:
  - explaining the effect of the PSPOs;
  - referring to visible signage;
  - requiring that the activity carried out in breach of the PSPOs is terminated;
  - requiring that items that they have reasonable grounds to believe are being, or are likely to be used in conjunction with the activities in breach of the PSPOs be surrendered to them;
  - providing a verbal warning; or
  - the issuing of a FPN

### 5.3 Training for Authorised Officers

5.3.1 All Authorised Officers will be required to undertake suitable training to be delivered by the Council on the PSPOs and their enforcement prior to undertaking any enforcement activities.

5.3.2 The training will focus on the reasonable and proportionate action outlined in paragraph 5.2.5 (c) of this report utilising the Four E's approach to enforcement, to:

- Engage,
- Explain,
- Educate and then
- Enforce.

5.3.3 It is currently proposed that there will be two training sessions prior to the PSPOs coming in to force and training will be carried out annually thereafter.

### 5.4 Signage for PSPOs

5.4.1 In accordance with Regulation 2 of the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 ('the Regulations'), the Council is required to publish that a PSPO has been made on its website and *'cause to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to—*



- (i) *the fact that the order has been made, extended or varied (as the case may be); and*
- (ii) *the effect of that order being made, extended or varied (as the case may be)'*

5.4.2 The results of the consultation show that signage and education are key areas that respondents feel that the effectiveness of the PSPOs will depend on. This is an area of priority already identified by officers and work has been undertaken with the Partners to prepare a signage scheme that meets the requirements of the Regulation 2.

5.4.3 As a result of the two different Restricted Areas for PSPO No 1 (which principally comprises Forestry England managed Land) and PSPO No 2 (which covers the Perambulation of the New Forest), two forms of sign have been prepared; one which covers both PSPOs and one which covers only PSPO No 2 as there are some areas of land within the Restricted Area for PSPO No 2 which are outside the Restricted Area for PSPO No 1. The current drafts of these signs are included in Appendix 8 and the proposed locations and numbers of the signs is included in Appendix 9.

5.4.5 Officers will continue to work with the Partners in this regard and the final form, number and locations of the signs to meet the requirements of the Regulations will be agreed by the Strategic Director of Housing, Communities and Governance prior to the PSPOs coming in to force.

## 5.5 Agreement

5.5.1 To ensure that there is clarity and certainty regarding the respective roles and responsibilities of the Council and the Partners, it is proposed that a collaborative agreement will be entered into.

5.5.2 This agreement will include provisions relating to enforcement, Authorised Officers, signage and training and other appropriate terms to govern the arrangements.

5.5.3 As proposed in the recommendations at paragraph 1.6, it is intended that the Executive Director for Housing, Communities and Governance will be authorised to sign this agreement on behalf of the Council.

## 6. **NEXT STEPS**

6.1 Following making of PSPO No 1 and PSPO No 2, officers will continue to work with the Partners in readiness for the PSPOs to come in to force on 1 July 2023. This will include finalising the signage scheme and the required signage being put in place, training Authorised Officers, the collaborative agreement being entered into and additional administrative tasks being completed to facilitate the enforcement of the PSPOs.

6.2 In accordance with section 60(1) of the Act a PSPO may not have effect for a period of more than 3 years, unless it is extended. At the appropriate time, Cabinet will be briefed on the effectiveness of the PSPOs and consideration will be given as to whether they should be extended beyond their initial 3 year duration.

## **7. OTHER LEGAL IMPLICATIONS**

### **7.1 Legal Challenge**

- 7.1.1 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.
- 7.1.2 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.
- 7.1.3 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.
- 7.1.4 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.

### **7.2 Convention rights**

- 7.2.1 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 PSPO No 1 and PSPO No 2, it is not considered, that these rights are engaged.

### **7.3 Byelaws**

- 7.3.1 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.
- 7.3.2 For the purposes of the PSPOs, this will mean that, 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)

## **8. FINANCIAL IMPLICATIONS**

- 8.1 The making of the two PSPOs will have some financial implications for the Council. Whilst Partners have agreed to enforce the PSPOs and meet the costs of signage, there will still be some residual costs for the Council in assisting with the administration

of the PSPOs, through the supply of Fixed Penalty booklets to Partners, on-going monitoring of the arrangements, including training, as well as providing general support to Partners. Such costs are likely to be contained within existing budgets and would be offset against any income received from the payment of Fixed Penalties, which, by law, have to be paid to the Council.

8.2 The financial implications will be kept under review.

## **9. ENVIRONMENTAL IMPLICATIONS**

9.1 The making of PSPO No 1 relating to wildfires and BBQs, will 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.

9.2 The making of PSPO No 2 relating to the feeding and petting of Forest animals, 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.

## **10. CRIME AND DISORDER IMPLICATIONS**

10.1 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.

10.2 It is expected that by making the 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 and November Cabinet Report.

## **11. EQUALITY AND DIVERSITY IMPLICATIONS**

11.1 The impact that the PSPOs will have on the community, as well as those with protected characteristics under the Equality Act 2010, has 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. An equality impact assessment screening has been carried out and this is attached to this report at Appendix 10.

- 11.2 It is not considered that PSPO No 1 or PSPO No 2 targets those with any of the protected characteristics and it is not considered that they will have a negative impact on those with protected characteristics.
- 11.3 Statutory Guidance 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 Authorised Officers will have particular discretion over the issuing of FPNs and the Council will have discretion over the decision to prosecute breaches of the PSPOs. Decisions to issue FPNs 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.

## 12. CONCLUSION

- 12.1 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.
- 12.2 Based on the evidence base presented to Cabinet at its meeting on 2 November 2022 and the response to the consultation, it is concluded that the relevant legal tests have been met and it is appropriate to proceed with the making of PSPO No 1 in the form included at Appendix 5 and PSPO No 2 in the form included at Appendix 6.
- 12.3 The Council and the Partners will continue to work together both in readiness for the PSPOs to come into force and afterward to raise awareness and support enforcement.

## 13. PORTFOLIO HOLDER COMMENTS

- 13.1 To bring this paper to Cabinet has been a journey of many years. Collaboration between Forestry England, NPA and ourselves was necessary to bring about the implementation of these two PSPO’s. Whilst it will be possible to issue a fixed penalty notice for noncompliance, this would be a final resort. It is expected that the public will respond well to encouragement and education. The consultation process highlighted the concern felt by our residents, and I am confident that, once in place, the orders will contribute to a safer New Forest for our residents and visitors

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### **Background Papers:**

Report to Cabinet of 2 November –  
The Introduction of Public Space  
Protection Orders - [The  
Introduction of Public Space  
Protection Orders](#)

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