

	<p>REPORT TO CABINET</p> <p>TO BE HELD ON 14 NOVEMBER 2017</p>				
	<table> <tr> <td>Key Decision</td> <td>YES</td> </tr> <tr> <td>Forward Plan Ref No</td> <td>N/A</td> </tr> </table>	Key Decision	YES	Forward Plan Ref No	N/A
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<p>Corporate Priority: ALL</p>	<table> <tr> <td>Cabinet Portfolio Holder</td> <td>Cllr. Bill Chatt</td> </tr> </table>	Cabinet Portfolio Holder	Cllr. Bill Chatt		
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REPORT OF THE DIRECTOR (NE) 17/244

WARDS AFFECTED: ALL

SUBJECT: INTRODUCTION OF A DOG CONTROL PUBLIC SPACES PROTECTION ORDER COVERING THE BOROUGH OF SCARBOROUGH

RECOMMENDATION(S):

That Cabinet recommend that Council:

1. approve the making of the Scarborough Borough Council Dog Control Public Spaces Protection Order ('the Order') as set out at Appendix A;
2. approve the use of fixed penalty notices for offences under the Order;
3. approve that the fixed penalty for offences under the Order be;
 - (a) £100 for dog fouling offences; and
 - (b) £75 for all other offences
4. delegate authority to the Directors to;
 - (a) issue fixed penalty notices for offences under the Order;
 - (b) authorise in writing any Officer of the Council to issue fixed penalty notices for offences under the Order;
 - (c) give directions under Part 7 of the Order; and
 - (d) authorise in writing any Officer of the Council to give directions under Part 7 of the Order.
5. agree that upon the coming into force of the Order the existing Dog

Control Orders are discharged.

REASON FOR RECOMMENDATION(S):

To provide up to date control measures addressing dog related anti-social behaviour, dog ownership and the responsible exercise of dogs within the Borough.

HIGHLIGHTED RISKS

Failure to ensure appropriate and up to date control measures reflecting current legislation may result in an increase in dog related anti-social behaviour across the Borough and challenges around enforcement.

1. INTRODUCTION:

- 1.1 At its meeting of 14 March 2017 Cabinet authorised the commencement of the appropriate consultation, publicity and notification regarding the draft version of the Order.
- 1.2 This report sets out the outcome of the consultation exercise in consequence of which a slightly amended draft of the Order (at Appendix A) is now proposed for approval.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 This report supports all of the corporate aims and the community plan.

3. BACKGROUND AND ISSUES

- 3.1 In 2012 the Council (pursuant to The Clean Neighbourhoods & Environment Act 2005) brought into force a number of Dog Control Orders (DCOs) dealing with dog exclusion, restriction and fouling within the Borough.
- 3.2 This enabled the Council to replace the considerable number of byelaws and orders in place at the time which had been introduced in tranches over many years, thus addressing confusion and improving enforceability, whilst creating a more convenient and consistent method of addressing dog related issues.
- 3.3 On 20 October 2014, the power to make any further DCOs, Designated Public Place Orders, and Gating Orders was repealed by the Anti-social Behaviour, Crime and Policing Act 2014 ('the Act').
- 3.4 The Act instead gives local authorities powers to deal with a broad range of anti-social behaviour through the use of Public Spaces Protection Orders (PSPOs).
- 3.5 The Act states that any DCO in force at the commencement date would

cease to be a DCO at the end of a period of 3 years (being 20 October 2017), and the provisions of such a DCO would instead be treated as provisions of a PSPO.

- 3.6 PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 3.7 District Councils are responsible for taking the lead, with enforcement being carried out by both local authorities and the police.
- 3.8 A PSPO can be made by a Council if it is satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space;
 - have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
 - is, or is likely to be, persistent or continuing in nature;
 - is, or is likely to be, unreasonable; and
 - justifies the restrictions imposed.
- 3.9 The maximum duration of a PSPO is 3 years, and at any point before expiry the Council can extend the PSPO by up to 3 years if it is considered necessary to prevent the original behaviour from occurring or recurring. The Council can also discharge or vary the PSPO.
- 3.10 Once a PSPO is made by the Council, it will be an offence for any person, without reasonable excuse, to do anything that is prohibited by the PSPO, or to fail to comply with any requirement under the PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding Level 3 (currently £1000).
- 3.11 The Act also allows offences to be dealt with by use of Fixed Penalty Notice (FPN). The Council has the discretion to set the level of penalty up to a maximum amount of £100, and can also specify a discounted figure if the FPN is paid within a specified number of days (less than 14).
- 3.12 Where an FPN is not paid within 14 days, a prosecution can be initiated.

4. CONSULTATION

- 4.1 Views, comments and feedback were sought through the corporate consultation process, via the Council's website, through local resident

panels, local ward Councillors and other statutory and key stakeholders.

- 4.2 The consultation attracted 314 responses. A breakdown of the results is attached at Appendix B to this report.

5. ASSESSMENT

Fixed Penalty Amounts

- 5.1 It is intended that breaches of the PSPO will primarily be dealt with via FPNs. The level of penalty should act as a deterrent and be a suitable punishment in the eyes of the public.
- 5.2 Post the consultation exercise Officers recommend the following penalty structure for approval as initially proposed;

PSPO offence	Recommended penalty
Dog fouling	£100
Dogs not on lead when required to be.	£75
Dogs within an exclusion zone	£75

- 5.3 49.8% of respondents to the consultation 'strongly agreed' or 'agreed' with the proposed levels of fixed penalty.
- 5.4 A number of respondents felt that the proposed penalties were insufficient, however £100 is presently the maximum amount permitted.
- 5.5 A number of respondents also felt that all of the offences should carry the maximum fixed penalty, however with the differing rates are used to demonstrate the seriousness with which the public view dog fouling offences.
- 5.6 Officers are of the strong view that there should be no reduction for early payment of an FPN. This is in line with the Council's practice in relation to other environmental offences for which FPNs are used, and the consensus of the Yorkshire and Humber Environmental Enforcement Managers Group.
- 5.7 The aforementioned Group were of the view that allowing early payment options:
- causes a considerable administrative burden and does not deliver the expected outcome of early and prompt payment;
 - reduces the deterrent impact of the FPN regime;
 - produces inequality between those who could afford, and those who may not be able to afford such penalties due to their economic

background and circumstances, rather than willingness to pay the fixed penalty.

- 5.8 This Council has for a number of years allowed for a discounted rate for early payment, however Officers from the environmental service state that this has created a significant administrative burden. They advise that what tends to happen is that individuals will try and pay the reduced amount long after the discounted period has expired, resulting in the Council having to issue a credit prior to taking further proceedings if appropriate.
- 5.9 Not adopting an early payment option will simplify the system, strengthen the deterrent factor, reduce burden upon resources, and accord with the Council's neighbouring authorities across the region.
- 5.10 Payment by instalment will not be offered but the enforcement business unit manager may at their discretion offer an extension not to exceed an additional fourteen days.

Restrictions

- 5.11 Seasonal restrictions at Filey, Scarborough North Bay, South Bay, Whitby and Sandsend were widely supported and have remained largely as previously in place. All attracted 'strongly agree' responses in excess of 78%.
- 5.12 It is worth noting that the area proposed to be covered by the restriction on North Bay in Scarborough is less than at present, this is to try to provide an area beyond the chalets for dog owners to responsibly exercise their dog throughout the season.
- 5.13 A number of respondents requested the beach restrictions to be based on time of the day rather than month, allowing owners to exercise their dog early morning for instance. This has been considered before; implementing this would run the risk of any fouling being left on the Borough's most popular beach locations until the next high tide. It is therefore not proposed to change from the seasonal based restrictions.
- 5.14 Year round prohibitions at Scarborough - Falconers Square, Granville Square, The Green – Burniston, Quarry Mount Park, Olivers Mount – South Playing Fields, Shuttleworth Gardens and Woodlands cemetery and crematorium were widely supported – in excess of 66% 'strongly agreed' or 'agreed'.
- 5.15 It is proposed to implement these restrictions with the exception of Falconers Square. This is because the Council is currently working with a third party to occupy and develop this space. Irrespective the area would still be covered by the requirement to remove dog faeces.
- 5.16 Year round prohibitions in Whitby Cemetery and White Leys Playing

Fields attracted support in excess of 74%, and the year round prohibition in Pannet Park attracted 65% support.

- 5.17 Year round prohibitions at Filey paddling pool at the base of Crescent Hill and The Lawns Cemetery attracted support in excess of 78%.
- 5.18 The prohibition relating to Memorial Gardens on Murray Street, Filey was only supported by 46.4% of respondents with 39.5% disagreeing or strongly disagreeing. Owing to the location it is not recommended to remove all restrictions in this area, however it is proposed to change the prohibition to a dogs on lead restriction.
- 5.19 The requirement for dogs to be exercised on a lead May through to September at Tate Hill Beach and West Cliff Recreation Area were supported by over 75% of respondents. Outside of these months there would be no restriction bar the requirement to remove faeces.
- 5.20 The bulk of the restricted areas cover the requirement for dogs to be exercised on a lead all year, and the locations were backed by between 71.4% and 91.2% of respondents.
- 5.21 Helredale Road Recreation Area in Whitby was supported for a dogs on lead restriction but we propose to remove this restriction. This is because the area now has development upon it. Aside from this it is recommended to implement the list as proposed with the introduction of Memorial Gardens, Filey as referred to in paragraph 5.18 above.
- 5.22 It is worth noting the level of response concerning the proposed changes to the restrictions covering South Cliff Gardens. It was proposed to remove the majority of the area covered by the dogs on lead order and instead to focus on the formal areas; Rose Garden and Italian Gardens. There were a large number of respondents requesting no change to the restrictions.
- 5.23 A number of comments suggested all enforcement activity would cease in this area should the change take place, however this is not the case. The proposal was to remove the requirement for dogs to be on a lead from the informal paths within the area. The area would still be covered by dog fouling provisions and enforced to the same level as currently.
- 5.24 In light of the comments and strength of feeling it is proposed to expand the list of covered areas to; the Rose Gardens, the Italian Gardens, and South Cliff Putting Green to include the Clock Tower formal flower beds. It is still the recommendation to remove the wider restriction on the following basis; much of the area is not a formal landscaped area, there are no vehicular access routes through the area and footfall is not unduly high compared to other pedestrian routes with restrictions – the main promenades. Should there be repeated and widespread issues from this change then the responsive nature of the Order would allow us to review and amend requirements.

5.25 A large number of comments welcomed the Order and sought additional enforcement action to take place. The Dog Warden service currently employs 2.5 permanent Full Time Equivalent employees for the full Borough. The priority for the team is to deal with stray dogs and enforcement fits in around this function. In light of the on-going reduction in the budget for front-line services any additional expansion of the team is only likely to come from budget growth.

6. IMPLICATIONS

6.1 All relevant implications have been considered in the body of this report.

7. ACTION PLAN

7.1 If approved by Cabinet, the draft Order will be taken to Full Council for approval and adoption.

Nicholas Edwards

Nick Edwards
Director

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Background Papers:

N/A

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO
INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT
Harry Briggs

Risk Matrix

Risk Ref	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	Incidents of dog related anti-social behaviour are not effectively managed	Reduced quality of life and impact upon wellbeing, tourism, and the local economy.	Implement PSPO	C3	B2	PT	

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

A = Very Low
 B = Not Likely
 C = Likely
 D = Very Likely
 E = Almost Certain

Impact

1 = Low
 2 = Minor
 3 = Medium
 4 = Major
 5 = Disaster