

EXECUTIVE BOARD – 17 May 2016

Subject:	Nottingham City Council's Public Spaces Protection Orders in respect of Dogs		
Corporate Director(s)/ Director(s):	Andrew Errington, Director, Community Protection		
Portfolio Holder(s):	Councillor Nicola Heaton, Portfolio Holder for Community Services		
Report author and contact details:	Melanie Fretwell, Community Protection melanie.fretwell@nottinghamshire.pnn.police.uk 07904066858		
Key Decision	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Subject to call-in	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons:	<input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision	<input type="checkbox"/> Revenue <input type="checkbox"/> Capital	
Significant impact on communities living or working in two or more wards in the City	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Total value of the decision: N/a			
Wards affected: All Wards	Date of consultation with Portfolio Holder(s): 22 July 2015		
Relevant Council Plan Key Theme:			
Strategic Regeneration and Development	<input type="checkbox"/>		
Schools	<input checked="" type="checkbox"/>		
Planning and Housing	<input type="checkbox"/>		
Community Services	<input type="checkbox"/>		
Energy, Sustainability and Customer	<input type="checkbox"/>		
Jobs, Growth and Transport	<input type="checkbox"/>		
Adults, Health and Community Sector	<input type="checkbox"/>		
Children, Early Intervention and Early Years	<input type="checkbox"/>		
Leisure and Culture	<input checked="" type="checkbox"/>		
Resources and Neighbourhood Regeneration	<input checked="" type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
<p>Dealing with the issue of dangerous and/or out of control dogs and associated anti-social behaviour is a high priority for Nottingham City Council (The Council) across Nottingham and this issue regularly receives coverage in the local press. This includes problems with dog fouling left in public areas by irresponsible dog owners, which is constantly identified by residents as one of their major environmental concerns, and is not only anti-social, but can convey disease including blindness in young children.</p> <p>The Council has considerable evidence of dogs damaging children's playground equipment at numerous sites across the Administrative Area of Nottingham, and reports of dogs causing considerable alarm and distress to park/public open space users and pedestrians generally. The Council has some reports of citizens even being bitten and terrorised by dogs who have not been under the proper control of their owner in public places across the Administrative Area of Nottingham, with over 331 telephone calls to the police during 2015 alone regarding issues with animals.</p> <p>The Council currently has a variety of tools and powers to deal with these issues, however limitations with these tools have been identified, as detailed in paragraphs 3.1 to 3.7 below and these powers do not apply consistently across Nottingham. Existing Dog Control Orders are also subject to transitional provisions and remain in force for a limited period. Government Guidance confirms that Councils can review existing Dog Control Orders to look to simplify the enforcement landscape. It is considered that the proposed Public Spaces Protection Orders (PSPOs), detailed in paragraphs 1.4 to 1.7 of this Report, which it is proposed will replace existing Dog Control</p>			

Orders (DCOs) and the Nottingham City Council Dog Fouling Order 1998 (the 1998 Order), will assist in reducing and preventing criminal and anti-social acts by excluding dogs from places including children's play areas, requiring Dog Owners to keep their dogs on a lead when walking their dogs on highways and other specified places, and requiring the dogs to be put on a lead when required to do so by Authorised Officers. In addition, if made, Proposed PSPO 4 will also require citizens who walk their dogs in Nottingham to carry equipment to clean up after their dog has fouled and consolidate and extend powers of Authorised Officers to deal with the issue of owners failing to remove their dog's fouling. Breach of a PSPO is a criminal offence, and a fixed penalty notice will be available as an alternative to prosecution.

Exempt information:

State 'None' or complete the following.

NONE

Recommendation(s):

- 1** To note the results of the consultation on the proposal to revoke the following Dog Control Orders made under the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act):
 - (i) The Nottingham City Council Fouling of Land by dogs and dogs on leads by direction (Chediston Vale Open Space and Children's Playground) Order 2011 attached at Appendix 1
 - (ii) The Nottingham City Council (Lenton Abbey Estate) Dogs on Leads Order 2012 attached at Appendix 2
 - (iii) The Nottingham City Council (Lenton Abbey Estate) Fouling of Land by Dogs Order 2012 attached at Appendix 3
 - (iv) The Nottingham City Council (Dales Ward) Fouling of Land by Dogs Dog Control Order 2014 attached at Appendix 4
 - (v) The Nottingham City Council (Dales Ward Urban Areas) Dogs on Leads Dog Control Order 2014 attached at Appendix 5
 - (vi) The Nottingham City Council (Dales Ward) Dogs on Leads by Direction Dog Control Order 2014 attached at Appendix 6
 - (vii) The Nottingham City Council (Dales Ward) Dogs Exclusion Dog Control Order 2014 attached at Appendix 7
 - (viii) The Nottingham City Council (Dales Ward) Dogs on Leads Dog Control Order 2014 attached at Appendix 8.
- 2** To note the results of the consultation on the proposal to make an Order to revoke the Nottingham City Council Dog Fouling Order 1998 made under the Dogs (Fouling of Land) Act 1996 (the 1996" Act) attached as Appendix 9
- 3** To note the results of the consultation on the proposal to introduce the following Public Spaces Protection Orders (PSPOs) :
 - (i) Nottingham City Council Dogs on Leads by Direction Public Spaces Protection Order 2016 (Proposed PSPO 1) as indicated in the draft attached at Appendix 10 for the areas of land within the administrative area of the Council that are open to the air and to which the public are entitled (with or without payment) which are shaded in green on the plan in PSPO 1 (Restricted Area 1);**
 - (ii) Nottingham City Council Dogs on Leads Public Spaces Protection Order 2016 (Proposed PSPO 2) as indicated in the draft attached at Appendix 11 for all land in the administrative area of the Council that is open to the air and to which the public are entitled or permitted to have access (with or without payment) OTHER THAN the land that Proposed PSPO 1 and Proposed PSPO 3 apply to (Restricted Area 2);**

(iii) Nottingham City Council Dogs Exclusion Public Spaces Protection Order 2016 (Proposed PSPO 3) as indicated in the draft attached at Appendix 12 in respect of:

- (a) Any clearly demarcated children's play area;**
- (b) Areas designated as being of special scientific interest**
- (c) Areas designated as local nature reserves**
- (d) School Land**
(Restricted Area 3).

(iv) Nottingham City Council Fouling of Land by Dogs and Requirement to Produce Device for or Other Suitable Means of Removing Dog Faeces Public Spaces Protection Order 2016 (Proposed PSPO 4) as indicated in the draft attachment at Appendix 13 for all land in the administrative area of the Council that is open to the air and to which the public are entitled or permitted to have access (with or without payment) (Restricted Area 4);

4 To authorise the Head of Legal Services to make the PSPOs in the form indicated in Proposed PSPO 1, Proposed PSPO 2, Proposed PSPO 3 and Proposed PSPO 4 as indicated in Appendices 10 to 13 attached in respect of Restricted Areas 1 to 4 as detailed in Recommendation 3 (i) to (iv) above, such PSPOs to last for a period of three years from the date that they come into force unless extended or varied, if satisfied that the test in Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 is met, and having regard to the rights of freedom of expression and freedom of assembly,

5 In the event that a decision is made to make the PSPOs under recommendation (4) above, to set the Fixed Penalty amount for offences committed contrary to the said PSPOs at £70 if paid within 14 days, reduced to £35 if paid within 10 days.

6 In the event that a decision is made to make the PSPOs under recommendation (4) above, to authorise the revocation of the eight Dog Control Orders referred to in recommendation (1) above and authorise the Head of Legal Services to make an Order as indicated in Appendix 9 to revoke the Nottingham City Council Dog Fouling Order 1998 referred to in recommendation (2) above, the revocations to take effect once the PSPOs made under recommendation (4) above come into force.

7 In the event that a decision is made to make the PSPOs under recommendation (4) above and the revocation of the eight Dog Control Orders and the making of an Order to revoke the Nottingham City Council Dog Fouling Order 1998, to authorise the Director of Community Protection to carry out the necessary advertisements and arrange for appropriate signage to be erected in accordance with the legislative requirements.

1.1 REASONS FOR RECOMMENDATIONS

1.2 A need has been identified to control various problems associated with dogs in relation to nuisance and annoyance to the public across the Council's administrative area. The problems are often caused by irresponsible dog owners allowing their dogs to intimidate citizens in Nottingham and 'run amok' within the urban areas of Nottingham, and on public open spaces without being under the full control of their owners as detailed in the Background section of this report. Dog fouling has also been one of the major anti-social issues constantly highlighted across all Wards within the administrative area of Nottingham by citizens. The complaints range from dog faeces being left on footpaths,

the smell and even the serious diseases that can be conveyed which can result in blindness.

- 1.3 The Portfolio Holder for Community Services authorised the formal consultation on the potential introduction of the Proposed PSPOs 1 – 4 (Appendices 10 – 13 attached) in respect of dog controls across Nottingham, and the consultation on the proposed revocation of the existing DCOs and the 1998 Order. The Delegated Decision is attached for information under the Published Documents section. The proposed PSPOs contain the following restrictions:-
- 1.4 Nottingham City Council Dogs on Leads by Direction PSPO 2016 (Proposed PSPO 1) attached at Appendix 10 which would make it an offence for a person in charge of a dog(s) to fail to put the dog(s) on a lead when directed to do so by an Authorised Officer for those parts of Nottingham which are shaded in green on the plan in PSPO 1 (Restricted Area 1);
- 1.5 Nottingham City Council Dogs on Leads PSPO 2016 (Proposed PSPO 2) attached at Appendix 11 which would make it an offence for a person in charge of a dog(s) to fail to keep the dog(s) on a lead on all land in the administrative area of the Council that is open to the air and to which the public are entitled or permitted to have access (with or without payment) OTHER THAN the land that Proposed PSPO 1 and Proposed PSPO 3 apply to (Restricted Area 2);
- 1.6 Nottingham City Council Dogs Exclusion PSPO 2016 (Proposed PSPO 3) attached at Appendix 12 which would make it an offence for a person in charge of a dog(s) to allow the dog(s) to enter the following areas within the administrative area of the Council that are open to the air and to which the public are entitled or permitted to have access (with or without payment):
 - a) any clearly demarcated children's play area;
 - b) areas designated as being of Special Scientific Interest. Details of these areas can be viewed at <http://info.nottinghamcity.gov.uk>;
 - c) areas designated as local nature reserves. Details of these areas can be viewed at <http://info.nottinghamcity.gov.uk>, and;
 - d) "School Land" meaning land that which is used for Education as defined by the Education Act 1996, and land that is identified by the Academies Act 2010.(Restricted Area 3)
- 1.7 Nottingham City Council Fouling of Land by Dogs and Requirement to Produce Device for or Other Suitable Means of Removing Dog Faeces PSPO 2016 (Proposed PSPO 4) attached at Appendix 13 which would make it an offence for a person in charge of a dog(s) to:
 - a) fail to remove their dogs faeces forthwith, and to
 - b) fail to produce a device for or other suitable means of removing dog faeces and transporting it to a bin (whether or not the dog has defecated) when asked to do so by an Authorised Officer on land in the administrative area of the Council that is open to the air and to which the public have access (with or without payment) (Restricted Area 4)
- 1.8 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the 2014 Act) provides the Council with the power to make a PSPO if it is satisfied on reasonable grounds that:

- i. 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 it is likely that activities will be carried on in a public place within that area and that they will have such an effect;
- ii. the effect, or likely effect, of the activities is, or is likely to be, of a persistent or continuing nature, is, or is likely to be, such as to make the activities unreasonable, and justifies the restrictions imposed.

1.9 It is considered that the restrictions being sought in Proposed PSPOs 1-4 are proportionate, necessary and reasonable. When deciding whether to make requirements or restrictions on dogs and their owners, local Councils needs to consider whether there are suitable alternatives for dogs to be exercised without restrictions. Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals and this includes providing the necessary amount of exercise each day. Nottingham City Council have included publicly accessible parks and other public places across the administrative area of the Council which dog walkers can use to exercise their dogs without restrictions save that should the dog be worrying others, Officers can request the dog to be put on a lead for the remainder of the duration that the dog continues to be in the area.

1.10 The effect of the Order PSPO1 will be to ensure that dogs have the space and freedom to exercise off the lead on the specified land across the administrative area of Nottingham which is required under the Animal Welfare Act 2006. The PSPO introduces the additional power to Authorised Officers to request that a dog is only put on a lead if it is worrying other park users or animals which is not an unreasonable request.

1.11 The effect of Order PSPO 2 is to ensure that both the health and safety of dogs and citizens are maintained throughout Nottingham. Dogs will be required to be kept on a lead on the specified land across Nottingham in order to ensure they do not run out into traffic and harm themselves and others and to also ensure that other citizens feel safer walking past dogs who are under the proper control of their owner which will assist in reducing the number of injuries to both dogs, other animals and humans which are caused by dogs who are not under the proper control of their owners.

1.12 The effect of Order PSPO 3 is to exclude dogs from various places in a more official manner than currently in force. Dogs are already excluded from children's playgrounds and it is common practice across Nottingham therefore this will provide no differences to what is currently in place other than to give authorised officers additional powers to tackle irresponsible dog owners who allow their dogs into places where they are excluded.

1.13 The effect of Order PSPO 4 will provide similar powers to the Nottingham City Council's Dog Fouling Order which has been in place for 18 years. The addition of the requirement to produce the means to remove dog faeces supports the City Council's need to keep the streets clean from dog faeces and increase public health and safety by ensuring that dog owners take responsibility of their dog at all times.

1.14 There are exemptions in respect of working dogs including assistance and guide dogs where these powers will not apply.

1.15 The restrictions proposed are therefore reasonable, proportionate and satisfy the Animal Welfare Act 2006 whilst also providing the citizens of Nottingham with additional safety from dangerous and uncontrolled dogs. Evidence gathered shows that there are

problems relating to dogs (see background) and that although various powers are already in place (see paragraphs 3.1 to 3.7 of this Report), further action is required.

- 1.16 Breach of a PSPO is an offence, and a FPN will be available as an alternative to prosecution. The level of the FPN can be set locally, and it is proposed that the FPN be set at £70 for breach of all of the proposed PSPOs, reduced to £35 if paid within 10 days.
- 1.17 The proposed PSPOs are not intended to interfere with persons who are being responsible with their dog(s) and the Council has considered the need for dogs to be exercised without restriction as detailed in paragraph 1.9 above.
- 1.18 When considering a PSPO the Council must have particular regard to the rights of Freedom of Expression and Freedom of Assembly set out in Articles 10 and 11 of the Human Rights Convention. The purpose of the proposed PSPOs is to prevent those that are causing evidenced ASB from continuing and to control their dogs in a responsible fashion. It is intended that those going about their business in a peaceful and lawful manner would not be unreasonably affected by the prohibitions in the proposed PSPOs.
- 1.19 If successful, the Council can consider extending the PSPOs for a period of up to a further three years following the expiry of these Orders. There are no limitations as to the number of times that the Council can extend these Orders once made.

2.0 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 As stated above, problems across Nottingham have been identified with irresponsible dog owners failing to keep their dogs under control, allowing them to damage public property, and failing to clear up their dogs' mess or even taking appropriate receptacles with them to clear up their dogs' mess. It is recognised that most dog owners are responsible, and the problems identified across Nottingham are not attributed to all dog owners.
- 2.2 The Council has evidence of 23 different children's playgrounds across Nottingham where dogs have damaged play equipment by biting and tearing at the play equipment. The Council also has evidence of damage to trees and other street furniture which appears to have been caused by dogs. Details of the park locations and photographic evidence of the damage caused can be found under the background Papers. In addition, the Council is aware that dogs which are not on a lead have caused alarm and distress to park and open space users across Nottingham, and other public places such as our streets. These problems include people who are exercising their own dogs responsibly, and those without dogs, and include reports of people being bitten by dogs. The Council is aware that 331 reports were made to the police in 2015 alone regarding issues with animals across the administrative area of Nottingham. From these reports, the unreasonable conduct appears to be persistent in its nature, and is undoubtedly having a detrimental effect on the quality of life of those who are affected. In respect of dog fouling, the Council carry out a number of "Dog Fouling" Operations where Community Protection Officers, wearing plain clothes, walk through parks in order to try and identify irresponsible dog owners who do not clean up after their animal. Unfortunately it is very difficult for these operations to be successful in catching irresponsible dog owners at the point where the dog fouls and it is not picked up therefore the addition of PSPO 4 will assist in allowing officers to check that dog owners

are prepared to pick up their dog's faeces and appropriate advice and support will be given in respect of the dangers of dog faeces being left on the streets.

- 2.3 As stated in paragraphs 3.1 to 3.7 below, the Council does have existing powers to deal with dog related problems, however there are gaps with these powers as identified in paragraph 3.4 with regards to dogs on leads and different penalties in different parts of the City.
- 2.4 Before a PSPO can be made consultation must be undertaken in accordance with the 2014 Act and Regulations made under it. The Council has therefore formally consulted on the proposed PSPOs (and revocation of existing DCOs and the 1998 Dog Fouling Order). The Delegated Decision of Councillor Heaton authorising the formal consultation is referred to in the Background Papers. This consultation commenced on 15 October 2015 and concluded on 22 January 2016. The proposed PSPOs were published on the Council's website on 29 October 2015. Full details of the consultation process is detailed in the Report on the responses received from the consultation process on the proposed PSPOs in respect of dogs across the Nottingham City Council's Administrative area at Appendix 14
- 2.5 It is recognised that the most contentious part of the proposed PSPOs is where it directly impacts on the City's parks where many responsible dog owners exercise their dogs off a lead. These are public areas and it is important that the correct balance of use is obtained for all park users; this includes suitable and sufficient areas where dogs can safely be exercised 'off lead' but provides Authorised Officers with the power to require owners to put dogs whom they can see are causing alarm and distress to other park users by being out of control or causing harassment, alarm or distress, on a lead.
- 2.6 When considering whether to implement the proposed PSPOs, Nottingham City Council has consulted with the Chief Officer of Police, the Police and Crime Commissioner, Community Representatives, Park User Groups, members of the Public and any other interested parties. The Council has placed a Notice in the Nottingham Post Lite on 21st October 2015.
- 2.7 Between 16th October 2015 and 22nd January 2016, Nottingham's Community Protection Directorate also carried out extensive consultation with members of the public, park users, local Community Centres, and numerous interested parties like Dog Walker groups across Nottingham.
- 2.8 The Community Protection Officers asked over 1000 members of the public for their views on the proposed PSPOs (responders) and as shown in the report attached at Appendix 14 (the Report) these included a good spread of responders who reside across the Nottingham City area, with some giving addresses from Nottinghamshire County, Derbyshire, Leicestershire and even Peterborough.
- 2.9 As shown in the Report, many of the responders were asked whether they had dogs or not, and where available this information was recorded. Where this information was available approximately 14% stated that they had a dog and approximately 19% stated that they didn't which allowed the Council to obtain as impartial and non-biased a view as possible by interviewing all parties across the board.
- 2.10 There were some responders who did not agree with some of the proposals as can be seen in the Report. However a dozen people were subsequently contacted by telephone by the Council, and it would appear that most either did not understand the proposals or had misinterpreted how they would affect them. As a consequence, all of

those people subsequently spoken to altered their views and became positive about the proposals, in particular the PSPO4 to have the means to pick up dog faeces, agreeing that they would assist in providing a greater sense of security and improving the health and wellbeing of the citizens.

- 2.11 The online questionnaire results had 38 respondents with 31 of those being a dog owner and only 7 not owning a dog.
- 2.12 Overall however over 97.5% of those responding to the questionnaire/speaking to the Community Protection Officers, agreed fully with the four proposed PSPOs with many people stating that they wanted them bringing into force quickly as they felt it would make a very good change to the City, the environment and their safety when out and about on the streets, in the town centres and importantly, when out in the parks and recreational areas of Nottingham.
- 2.13 There were no comments or responses received in respect of the proposed Nottingham City Council Dog Fouling Revocation Order 2015 or the proposal to revoke the eight DCOs currently in force across Nottingham.
- 2.14 After careful consideration of the evidence, the results of the consultation, and the queries raised during the consultation period, which have been addressed above, it is considered that the restrictions being sought in the proposed PSPOs are proportionate, necessary and reasonable. They will also assist in providing a uniform response across the City in respect of Dogs which the current eight DCOs do not provide.
- 2.15 If the Proposed PSPOs are made, signage will be required and these will be installed at prominent places across the administrative area of the Council with particular attention being paid to areas where dogs are excluded to ensure that members of the public understand the Orders fully when they exercise their dogs. All Authorised Officers will be given training on the PSPOs and it will be directed that Officers use the powers proportionately, in the first instance by educating dog owners of the introduction of the new powers and what they mean and giving citizens the chance to get used to them and understand them fully and comply with them. Fixed Penalty Notices will be issued to those citizens who blatantly ignore the Orders and refuse to abide by them.

3.0 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 Doing Nothing:

There are existing powers to control various problems associated with dogs in (parts of) the administrative area of Nottingham:

3.2 Order under The Dogs (Fouling of Land) Act 1996 (“the 1996 Act”)

Nottingham City Council made the ‘Nottingham City Council Dog Fouling Order 1998’ (the 1998 Order) under the 1996 Act prior to the repeal of the 1996 Act. This made it an offence to fail to remove dog faeces forthwith from the land that the 1998 Order applies to. This being “*all land to which the public are entitled or permission to have access (with or without payment) and which is not used for agriculture or woodlands and which is not predominately marshland, moor or heath. All carriageways with a speed limit of 40mph or less and adjoining pathways and verges*” The 1998 Order remains in force other than in relation to land that the Council had made DCOs over (see below). A fixed penalty notice is available as an alternative to prosecution for this offence, although limited to £50. The Council consulted on the proposal to revoke the 1998 Order, which must be done by another Order, in order to simplify the enforcement landscape. As

stated at paragraph 2.13 above, the Council did not receive any representations specifically regarding the revocation of the 1998 Order.

3.3 The Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act)

The following DCOs have been made by the Council under the 2005 Act:

- The Nottingham City Council Fouling of Land by Dogs and Dogs on Leads by Direction (Chediston Vale Open Space and Children's Playground) Order 2011 (Appendix 1)
- The Nottingham City Council (Lenton Abbey Estate) Dogs on Leads Order 2012 (Appendix 2)
- The Nottingham City Council (Lenton Abbey Estate) Fouling of Land by Dogs Order 2012 (Appendix 3)
- The Nottingham City Council (Dales Ward) Fouling of Land by Dogs Order 2012 (Appendix 4)
- The Nottingham City Council (Dales Ward Urban Areas) Dogs on Leads Dog Control Order 2014 (Appendix 5)
- The Nottingham City Council (Dales Ward) Dogs Exclusion Dog Control Order 2014 (Appendix 6)
- The Nottingham City Council (Dales Ward) Dogs on Leads by Direction Dog Control Order 2014 (Appendix 7)
- The Nottingham City Council (Dales Ward) Dogs on Leads Dog Control Order 2014 (Appendix 8).

- 3.4 These DCOs apply to various areas of land which are open to the air and to which the public have access with or without payment as detailed in the DCOs for Lenton Abbey Estate, Dales Ward and in relation to the Chediston Vale open space and play area. Breach of a DCO is an offence and a fixed penalty notice is available as an alternative to prosecution. Section 55 of the 2005 Act has now been repealed, and although the above DCOs could remain in force until 19 October 2017, no new DCOs can now be made. The Greens Windmill area of Nottingham in the Dales Ward is the only area of park and open space where the DCO orders that dogs are kept on a lead at all times. Additionally, the five DCOs in the Dales Ward are set at a different Fixed Penalty Notice amount being £80 with all other DCOs across Nottingham having a Fixed Penalty Notice set at £50. The proposed PSPOs will provide uniformity across the City ensuring equality in respect of enforcement actions being taken. The current DCOs also do not have the power to allow authorised officers to require Dog Walkers to produce a device or other suitable means of removing dog faeces.

3.5 Byelaws

Byelaws such as the Regulations of Dogs at Robin Hood Chase, Dogs at Woodthorpe Park, on the Old Market Square and the Colwick Park Byelaws have been made in Nottingham and where in force, these Byelaws contain various dog controls as detailed in the Orders attached in the background papers, breach of which is an offence. However, as with the DCOs they only apply to limited parts of the administrative area of Nottingham and the maximum fine on conviction in the Magistrates' Court for breach is, at most, a level 2 fine. Currently there is no fixed penalty notice available as an alternative to prosecution.

By virtue of Section 70 of the 2014 Act, existing byelaws that prohibit an activity regulated by a PSPO will be of no effect in relation to the restricted area during the currency of the PSPO.

3.6 **Other powers**

There are other powers available to control dogs, such as education and engagement, early intervention using non-statutory measures, Acceptable Behaviour Contracts, Injunctions, Criminal Behaviour Orders, dispersal powers and other dog control legislation for example the Dangerous Dogs Act. Examples of these powers are details in the 'Dealing with irresponsible dog ownership Practitioner's manual' dated October 2014. These powers, other than education, are generally only effective in dealing with specific individuals and incidents, and have been largely ineffective in dealing with the wider issues experienced across Nottingham. Court Orders such as CBOs and Civil Injunctions can be issued, however this approach has also proven costly and time consuming. The Council will continue to be able to use these measures where appropriate.

3.7 The existing powers do not apply consistently across Nottingham, and the large number of different Orders has left a confusing 'patchwork' of powers, particularly in relation to owners who have not removed their dog's faeces from the land forthwith in different parts of Nottingham. Existing DCOs are subject to transitional provisions in any event, and Government Guidance suggests that Councils could review the need for their current orders ahead of that transition to simplify the enforcement landscape. No power currently exists to require owners to carry suitable bags to remove their dogs' faeces in any event.

4 **FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

4.1 Proposed PSPOs 1 - 4 would make it an offence to fail to comply with the restrictions contained in the PSPOs without reasonable excuse. Exemptions will be available for disabled owners with assistance dogs in relation to proposed PSPO 4 (dog fouling order) and proposed PSPO 1 (dog exclusion order). Penalties for the offences include a Fixed Penalty Notice being issued, which it is proposed should be set at £70 (with a reduction to £35 if paid within 10 days), or a fine of up to £1000 following prosecution.

4.2 There will be a cost of approximately £469.20 + VAT for putting a Notice in the newspapers as per the requirement for the revocation of the Dog Control Orders and 1998 Order. It is proposed that the Notice will also be used to inform members of the public of the making of the proposed PSPOs.

4.3 There will also be a cost for the signage which will be met by Community Protection. It is estimated that the following signage will be required

Full sign A4 size @75 pieces = £1471.50 (approx.)

Dogs on Leads at all times A4 sign @ 75 pieces = £1471.50 (approx.)

Dogs excluded A5 signs @400 pieces = £412.00 (approx.)

5 **LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND INCLUDING LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

Legal Comments

- 5.1 The Council's Constitution states that where a proposed PSPO, in the opinion of the relevant director is significant (for example), the relevant Portfolio Holder is responsible for commencing the consultation process and the Executive Board is responsible for deciding whether to approve the making of the order following consultation. The proposed PSPOs contain restrictions which apply across significant areas of the Administrative Area of the Council, and the Portfolio Holder for Community Services authorised the formal consultation via a Portfolio Holder Decision. This decision therefore appears to be within the remit of Executive Board.
- 5.2 As identified in the Report, PSPOs should only be made where the Council is satisfied on reasonable grounds that the legal test in section 59 of the 2014 Act is met in relation to all of the areas that the proposed PSPOs apply to. The Council can only make prohibitions or requirements which are reasonable to impose in order to prevent or reduce the detrimental effect identified in a public place, or which is likely to be carried on in that place, and is likely will have such an effect.
- 5.3 When deciding whether to make a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Convention (as provided by section 72(1) of the 2014 Act).
- 5.4 The Government Guidance states at page 51 that PSPOs can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public place. The proposed PSPOs will include some overlapping provisions, but as the proposed PSPOs cover large areas of land, it may be more confusing to try to further separate out the proposed PSPO controls.
- 5.5 The DEFRA Guidance 'Dealing with irresponsible dog owners Practitioner's manual' states at page 45: "Much like with DCOs, if a PSPO restricts access to land used to exercise dogs, it would be reasonable that there is sufficient other land available for exercise without restrictions." The Council should therefore be satisfied that there is sufficient land to exercise dogs in the area to be covered by the proposed PSPO without restriction.
- 5.6 The maximum penalty for committing an offence contained in a PSPO is a level 3 fine, currently £1,000, although the opportunity to pay a fixed penalty notice may be offered instead. The amount of the fixed penalty notice can be fixed locally to a maximum of £100. The Report contains a recommendation to set the level of the FPN, with a reduction where the FPN is paid within 10 days.
- 5.7 As identified in the Report, the Council has undertaken a consultation exercise regarding the proposed PSPOs, which appears to be in compliance with the requirements in the 2014 Act and Guidance. The requirement to consult owners and occupiers of land within the proposed Restricted Areas only applies to the extent that it is reasonably practicable. The Guidance specifically refers to village greens at page 48 and notes that Village Greens receive considerable statutory protection under the 'Victorian Statutes'. However, these do not specifically include dog control. It is not proposed that dogs should be stopped from using Village Green areas within the Council's area, but that they should be put on a lead if required by an Authorised Officer (Proposed PSPO 1), and that the requirements that owners remove their dog faeces and carry suitable receptacles for their dog's faeces (Proposed PSPO 4) would apply there.

- 5.8 The Council should consider any representations received during the consultation when considering whether to make the proposed PSPOs. The consultation responses are summarised in the Report.
- 5.9 The Council should also consider how easy the proposed PSPOs would be to enforce, since failure to properly enforce a PSPO could undermine the effect of the Order. This is likely to be particularly relevant where dogs are excluded from an area, some of which may not be fenced off.
- 5.10 This is a new area of law, and the boundaries are yet to be tested. There is a potential risk that the PSPO could be challenged, and various ways that prosecutions for breach of a PSPO could be challenged, including challenge relating to the sufficiency of signage and/or the validity of PSPOs could be challenged by way of Judicial Review as detailed in section 66 of the 2014 Act, or raised as a possible defence to a prosecution.
- 5.11 If the proposed PSPOs are made, the Council must comply with the Legal requirements contained in the 2014 Act and the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 in relation to signage and publicity.
- 5.12 It is proposed that, if made, the PSPOs will last for a period of three years. Under section 60(1) of the 2014 Act this is the maximum period that a PSPO can have effect for. However, under section 60(2) of the 2014 Act there is provision for the PSPOs to be extended for a further period of up to three years. There is no restriction on the number of times that PSPOs can be extended.
- 5.13 As identified in the Report, there are some existing powers that relate to control of dogs and provide enforcement powers to deal with those who do not remove their dogs' faeces. It is proposed that the existing DCOs and the 1998 Order made under the Dogs (Fouling of Land) Act 1996 are revoked.
- 5.14 Revocation of DCOs
- 5.14.1 The Council has consulted on the revocation of the eight existing DCOs by placing notification of the proposed revocation in a newspaper circulating in the area in which they apply inviting representations to the proposal in accordance with the relevant Regulations. The Council must consider any representations received, and if it is decided that the DCOs should be revoked, the Council must publish a further notice in such a newspaper, and make information about this available on the Council's Website. No further DCOs can be made, and as stated in the Report, existing DCOs are subject to transitional provisions.
- 5.15 Revocation of the 1998 Order made under the Dogs (Fouling of Land) Act 1996
- 5.15.1 The Council has also consulted on the making of an Order to revoke the 1998 Order by placing notification of the proposal in a newspaper circulated in the area in which it applies inviting representations to the proposal. As with the proposed revocation of the existing DCOs, the Council must consider any representations received, and if it is decided that the 1998 Order is revoked, this must be done by Order and a further notice in a newspaper circulating in the area is required.

5.16 Byelaws

5.16.1 As stated in the Report, the existing Byelaws only apply to limited parts of the Administrative Area of Nottingham. In addition, Byelaws requiring the removal of dog faeces from land to which the 1998 Order applied will probably now be of no effect. However, there is no proposal to formally repeal those byelaws which are still in force. If the proposed PSPOs are made, the existing byelaws which remain in force which cover the same restrictions as the PSPOs will be unenforceable for the duration of the PSPOs. Byelaws which remain in force and which do not cover the same restrictions as those included in the proposed PSPOs will not be affected.

5.17 Crime and Disorder Implications

5.18 Section 17 of the Crime and Disorder Act 1998 places a duty on Councils to do all they reasonably can to prevent crime and disorder. The proposed PSPOs would provide additional powers to deal with the behaviour identified in the Background to the Decision (above), alongside existing powers and legislation.

5.19 Section 2.6 of the Government Guidance states that the Local Authority will want to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion.

5.20 Officers would use any powers derived from the making of a PSPO fairly and proportionately.

6 STRATEGIC ASSETS & PROPERTY COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

6.1 Not applicable.

7 SOCIAL VALUE CONSIDERATIONS

7.1 The Public Services (Social Value) Act 2012 places a statutory obligation on the Council when procuring services OR mixed contracts (where services in the main component of the procurement) OR a framework agreement to which the Public Contracts Regulations 2006 apply, to consider at the pre-procurement stage whether what is proposed to be procured might improve the economic, social and environmental well-being of its area and how, in conducting the procurement process, it might act with a view to achieving that objective. In identifying any social value considerations, regard should only be had to social value considerations which are relevant and proportionate to the subject matter of the contract. There is also a statutory requirement also at the pre-procurement stage to consider whether to undertake community consultation on these issues.

8 REGARD TO THE NHS CONSTITUTION

8.1 Not applicable

9 EQUALITY IMPACT ASSESSMENT (EIA)

9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:
(Please explain why an EIA is not necessary)

Yes



Attached as Appendix 15, and due regard will be given to any implications identified in it.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

10.1 Consultation responses

10.2 Consultation Packs.

10.3 Evidence

10.4 Details of damage to play equipment caused by dogs across Nottingham and photographs of damage caused.

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

11.1 Dealing with irresponsible dog ownership Practitioner's manual' dated October 2014

11.2 Anti-Social Behaviour, Crime and Policing Act 2014

11.3 Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers statutory guidance for frontline professional July 2014 (Home Office)

11.4 Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014

11.5 Clean Neighbourhoods and Environment Act 2005

11.6 Dog Control Orders (Procedures) Regulations 2006

11.7 Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006

11.8 Control on Dogs (Non-application to Designated Land) Order 2009

11.9 Environmental Offences (Fixed Penalties) (Miscellaneous Provision) Regulations 2007

11.10 Dog Control Orders Guidance on Sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005 published by DEFRA

11.11 Dog (Fouling of Land) Act 1996

11.12 The Dogs (Fouling of Land) Regulations 1996

11.13 Department of the Environment Circular 18/96 on The Dogs (Fouling of Land) Act 1996

11.14 Byelaws:-

- Byelaws for the regulation of dogs at Woodthorpe Park

- Byelaws for the regulation of dogs at Robin Hood Chase
- City of Nottingham (Control of dogs on roads) Order 1957
- Colwick Park Byelaws
- Dogs on Leads for Old Market Square, Nottingham

11.15 Newspaper advert

11.16 Delegated decision

12 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT

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