

EXECUTIVE BOARD – 18 December 2018

Subject:	City Centre Public Spaces Protection Order
Corporate Director(s)/Director(s):	Andy Vaughan – Corporate Director, Commercial and Operations Andrew Errington – Director of Community Protection
Portfolio Holder(s):	Councillor Toby Neal – Executive Member for Community Protection
Report author and contact details:	Steve Stott – Interim City Centre Manager, Community Protection Email: stephen.stott6852@nottinghamshire.pnn.police.uk Tel: 0115 9670999 x 3111350
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a) <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	
and/or	
(b) Significant impact on communities living or working in two or more wards in the City <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Total value of the decision:	£1,000 (Potential cost of signage)
Wards affected:	Arboretum, St Ann's, Radford and Park, Bridge
Date of consultation with Portfolio Holder(s):	20 November 2018
Relevant Council Plan Key Theme:	
Strategic Regeneration and Development	<input type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	<input type="checkbox"/>
Community Services	<input checked="" 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 type="checkbox"/>
Resources and Neighbourhood Regeneration	<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
<p>Nottingham City Council (“the Council”) wants all those living in, working in or visiting the city centre to enjoy safe, clean, vibrant and attractive public spaces.</p> <p>The Council has previously introduced some specific measures that help tackle anti-social behaviour in the city centre, such as a Public Spaces Protection Order (PSPO) that allows authorised officers to require the surrender of alcohol from anyone drinking in a public place.</p> <p>However, evidence and complaints from a number of sources, including the Nottingham Crime and Drugs Partnership (“CDP”) Respect Survey, social media and face to face surveys, customer service requests and complaints, and from front line staff involved in uniformed patrols and cleansing activity, indicate that there are a variety of on-going behaviours occurring within Nottingham city centre that are having a detrimental effect on the quality of life of those living in, working in or visiting the city centre.</p> <p>With a view to addressing these behaviours, formal consultation has been undertaken on a proposal to introduce a further PSPO in Nottingham city centre, pursuant to the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”), and this report advises Executive Board of the outcome of that formal consultation. A copy of the draft PSPO consulted upon (“First Draft PSPO”) is attached at Appendix 3.</p>	

Whilst the report highlights the broad public support for the proposals contained in the First Draft PSPO, and recommends the introduction of a PSPO for the city centre, it also recommends that the terms of the First Draft PSPO, upon which consultation was based, be amended to, where possible, address concerns raised and suggestions made, in the course of that consultation. This amended draft which is being considered by Executive Board (“Proposed PSPO”) is attached at Appendix 1.

The report also recommends that a guidance document be produced and published, to clarify the policy and procedural framework within which the Proposed PSPO will sit, and to provide further reassurance and additional safeguards with regards some of the concerns raised during formal consultation.

Exempt information:

An appendix to the report is exempt from publication under paragraph 5 of Schedule 12A to the Local Government Act 1972 because it contains advice relating to the PSPO and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it is legally professionally privileged.

Recommendation(s):

- 1 To note the evidence gathered, and the results of the formal consultation on the proposal to introduce a PSPO to tackle behaviours in Nottingham city centre.
- 2 That, being satisfied that the test in section 59 of the 2014 Act is met, and having regard to the Rights of Freedom of Expression and Freedom of Assembly and the other Human Rights issues raised by the consultation, Executive Board authorise the Director of Legal and Governance and/or the Head of Legal and Governance to make the PSPO in the form indicated in the Proposed PSPO at Appendix 1, to last for a period of three years from the date that it comes into force.
- 3 To authorise the Director of Community Protection to carry out the necessary publication and arrange for appropriate signage to be erected in accordance with legislative requirements in the event that a decision is made to make the PSPO under recommendation (2) above.
- 4 To note the draft Guidance Document at Appendix 2

1 REASONS FOR RECOMMENDATIONS

- 1.1 Section 59 of the 2014 Act gives the Council the power to make a PSPO if satisfied on reasonable grounds that
 - a) activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried on in the locality that will have that effect; and
 - b) the effect/likely effect of the activities is/or is likely to be persistent/continuing in nature, is likely to be such as to make the activities unreasonable, and justifies the restrictions imposed.
- 1.2 Where the test in Section 59 of the 2014 Act is met, a PSPO may prohibit specified things being done in the public place that is identified in the order, and/or require specified things to be done by persons carrying on specified activities in that area.

- 1.3 The only prohibitions or requirements that can be imposed in a PSPO are ones that are reasonable to impose in order to prevent or reduce the detrimental effect from the activities from continuing, occurring or recurring.
- 1.4 Before a PSPO can be made, consultation must be undertaken in accordance with the 2014 Act, regulations made thereunder and statutory guidance. This includes consulting with
 - a) the Chief of Police and the local policing body for the police area that includes the restricted area;
 - b) the Police and Crime Commissioner;
 - c) whatever community representatives the local authority thinks it appropriate to consult;
 - d) the owners and occupiers of land within the restricted area, so far as is reasonably practicable;
- 1.5 When making a PSPO, the Council must also 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.
- 1.6 Breach of a requirement or restriction contained in a PSPO, without reasonable excuse, is an offence. The penalty for committing an offence contained in a PSPO is a fine of Level 3 on the standard scale (current maximum fine £1,000) although the opportunity to pay a fixed penalty notice ("FPN") may be offered instead.
- 1.7 Revised Statutory Guidance in respect of the 2014 Act was issued by the Government on 17 December 2017.
- 1.8 This guidance states that when considering whether to make a PSPO

"the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring".
- 1.9 With regards to PSPOs, that guidance also states that

"Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community".

- 1.10 The Council has identified a number of activities taking place in the city centre, outlined at Paragraph 2 below, in respect of which evidence suggests that the test set out in section 59 of the 2014 Act is met.
- 1.11 Having undertaken formal public consultation on the terms of the First Draft PSPO, and having made amendments to the terms of the First Draft PSPO to address concerns raised in responses to that consultation, it is considered that the Proposed PSPO as shown at Appendix 1, is a reasonable and proportionate means of addressing the behaviours identified therein. It is also considered that the test in section 59 of the 2014 Act is met in respect of the behaviours that it is proposed will be prohibited or restricted by the Proposed PSPO. There has been particular regard to rights of freedom of expression and freedom of assembly.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

Issues covered by the First Draft PSPO and the Proposed PSPO

- 2.1 As stated above, evidence from a number of sources, indicates that there are a variety of behaviours occurring within Nottingham city centre that are having a detrimental effect on the quality of life of those living in, working in, or visiting the city centre.

Evidence includes the annual CDP Respect Survey, social media surveys and face to face surveys undertaken by the Council's Community Protection team, customer service requests and complaints, and, most compellingly, testimony from staff within the Council's Community Protection Directorate with regards the day to day problems with which they are asked to deal by members of the public, residents and local businesses.

2.1.1 Obstruction

Historically Nottingham has been proud of its reputation as one of the cleanest big cities in the country. However, in the 2017 CDP Respect survey, 26% of those surveyed suggested that rubbish and litter lying around was a very or fairly big problem in the city centre.

Significant resources are invested in maintaining the cleanliness of the city centre and, for that cleansing activity to be effective, cleansing staff, must be able to obtain unfettered access to all public areas. Obstructions, of any sort, to street cleaning activity have a negative impact on cleanliness levels, and a consequent negative impact on the quality of life of those living or working in or visiting the city centre.

From a health and safety perspective, it is also imperative that emergency services have the ability to access all areas of the city, and that those living and working in or visiting the city centre can freely enter and exit shops, businesses and residential properties and that fire exits remain clear at all times.

The Council's uniformed Community Protection Officers ("CPOs") receive and respond to complaints on a continuing basis from business owners, employees and members of the public regarding unreasonable obstructions to premises that prevent free access to and egress from buildings.

Often, these obstructions are caused by individuals, or groups of individuals, who respond to a polite request to move with anger and aggression which intimidates those attempting to enter or leave the premises in question.

Complaints have been received from businesses that staff have been forced to remain in their building at the end of the day as they have felt trapped by individuals who are blocking their doorways. Businesses also report that customers complain to them and advise them that they will not return as a result of intimidation and harassment by those blocking access.

CPOs also regularly identify, in the course of their daily foot patrols, obstructions to the fire escapes of buildings. Post Grenfell, the Council is mindful of its need to safeguard and improve fire safety. Obstructions of this type carry significant danger, due both to the risk of death or serious injury to those inside the building whose emergency exit route may be blocked, and due to the risk of the person causing the blockage being trampled if there is a rush to escape.

2.1.2 Unauthorised Requests

The Council currently has a voluntary Site Management Agreement with the Institute of Fundraising which sets out previously agreed levels of direct debit style charity collections that will take place within Nottingham city centre. Most, although not all, charities that currently employ direct debit style collection methods in the city centre do so through this Site Management Agreement.

However, CPOs receive regular complaints, from members of the public regarding the number of such collections taking place in the city centre, the over-zealous behaviour of some collectors when making an approach, and the very fact that their quiet enjoyment of the city centre is interrupted by such requests.

Complaints are also received from businesses who report that potential customers are deterred from visiting their properties due to an unwillingness to run an apparent gauntlet of on-street charity collectors.

In a social media poll conducted by Community Protection in November 2017, 79% of those responding stated that they wanted the Council to take action against pushy charity collectors. In face to face surveys conducted with visitors to the city centre in December 2017, 28% of those interviewed stated that they were very or somewhat dissatisfied with charity collectors in the city centre.

In the course of their daily patrols, CPOs also identify a range of other individuals and organisations operating within the city centre, who are approaching members of the public with various requests for money, without the knowledge or consent of the Council.

CPOs have expressed concerns regarding the integrity of a number of those operating in this way where, for example, they target young, impressionable individuals and persuade them to enter an on-going financial arrangement, but they have no current powers to intervene.

2.1.3 Big Issue Magazine

The Council works closely with the Big Issue Company to agree a number of locations (pitches) from which genuinely homeless and workless individuals, who are properly authorised by the Big Issue Company, can offer for sale the Big Issue magazine as a means of earning an income.

The working relationship with the Big Issue Company, and the number and location of pitches agreed, allows a balance to be struck between supporting those who are genuinely homeless to gain an income, whilst limiting the potential detrimental impact of having multiple vendors in close proximity to each other. This is a relationship that both the Council and the Big Issue Company are keen to continue.

Unfortunately, not all those offering the Big Issue magazine in the city centre are authorised by the Big Issue Company, not all are homeless and not all attempt to sell from authorised pitches.

CPOs observe, on a daily basis, unlicensed vendors selling, or purporting to sell, the Big Issue in unauthorised locations. Rogue vendors are not bound by the rules of conduct imposed on authorised vendors by the Big Issue Company, are often observed by CPOs being aggressive in their approaches to members of the public and often use the Big Issue as a front for begging activity.

Rogue vendors of this type have an adverse impact on the sales, and often the reputation, of those vulnerable people who are legitimately authorised to sell, but at present CPOs have no powers to intervene.

2.1.4 Busking/Street Entertainment

Nottingham welcomes busking and street entertainment on streets and open spaces within the city and acknowledges that busking and street entertainment can add vibrancy and culture to its streets.

Whilst the Council is keen to foster a vibrant street culture, it also wishes to align this to the needs of local businesses, residents of, and visitors to, the city centre.

The increase in residential accommodation within Nottingham city centre over recent years, and the integration of that residential accommodation with business accommodation, results in an increased likelihood of disturbance at all hours of the day from irresponsible street entertainment.

Both the Council and the Police receive complaints relating to busking and street entertainment, with 49 complaints having been received in the last 12 months. Complaints are made by both businesses and residents and relate primarily to disturbance caused by excessive noise levels and/or amplification or the repetitive nature of busking where a busker with a limited repertoire remains in place for a lengthy period of time.

Complaints are also received regarding the inappropriate location of busking activity. This is most notable in respect of areas outside the Council House in Old Market Square but complaints have also been received when busking has affected church services or business.

The Council House is Nottingham's Chief Register Office for births, marriages and deaths, with over 6,000 deaths being registered each year, and marriages being facilitated most weekends. It is also home to the Nottingham City Coroner's Court which hears inquests on most weekdays.

The Service Manager for Registration, Civic and Events Services confirms that business within the Council House is largely undisturbed by the noise of passing pedestrians, due to the large foyer within the frontage of the building, which tends to absorb such noise. However, frequent disturbance is caused by noise from inconsiderate buskers, particularly on Long Row/Smithy Row.

Such disturbance is particularly distressing for those visiting the building for the purpose of registering the death of, or attending an inquest into the death of, a loved one.

The Service Manager for Registration, Civic and Events Services confirms that whilst she has approached buskers and asked them to stop performances, her requests have been refused on many occasions resulting in calls to the Police being made or, more often, calls being made to CPOs for assistance.

CPOs also encounter issues, and receive direct complaints, with regards irresponsible street entertainment in the course of their daily foot patrols. Requests by CPOs to buskers to reduce the volume of a performance are sometimes met with abuse, refusal or with temporary compliance only, where the volume is turned down only to be turned up again once the CPO moves away.

Some buskers and street entertainers have also been observed by CPOs using foul language in the course of a performance and others have been observed to masquerade as buskers as a front for begging activity.

2.1.5 Distribution of Free Matter

The Council has designated the City Centre, pursuant to the Environmental Protection Act 1990, as an area where consent is required before a person may distribute free printed matter.

However, a range of other items are also currently distributed without charge in Nottingham's city centre, often without any prior knowledge of the Council. Some distributions, such as those involving the handing out of free samples, cans, bottles etc are done on a commercial basis and bring with them vehicles and stands that cause unexpected obstruction of the public highway.

Distributions often lead to increased littering, as items are discarded, with the cost of clearance falling upon the Council. Where this litter involves food waste, this has the potential to attract vermin and potentially cause health problems. The items distributed may also, by their very nature, give rise to health and safety risks.

2.1.6 Mobile Advertising

The Town and Country Planning Act 1990 (“TCPA”) and the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 (“TCPA Regs”) regulate the display of advertisements and make it an offence to display advertisements which fall within the meaning of the TCPA Regs, without either the express consent of the local authority or deemed consent as provided by the TCPA Regs. This recognises the potential impact on the local amenity of unregulated advertisements.

However, for the purpose of the TCPA Regs, advertisement does not include “a placard or other object borne by an individual or an animal”. Accordingly, individuals holding placards or dressing as human A Boards to advertise, for example, a business, fall outside the TCPA Regs and there is, currently, no need for them to obtain express or deemed consent.

The lack of regulation of mobile advertising results in a number of businesses using mobile placard/human A Board advertising from time to time within the city centre. This advertising tends to be used in areas of high footfall or high visibility and causes additional congestion and obstruction of the highway and detriment to the visual amenity.

CPOs with responsibility for ensuring the free flow of traffic around the city centre have witnessed incidents where individuals walking around the city centre with full advertising boards on their front and back have caused danger on the roads due to drivers “rubbernecking” to view the content of the advertisement.

In addition officers within the Community Protection Directorate have also observed members of the public with visual impairment walking into placard borne advertisements, highlighting another risk of this practice.

2.1.7 Public Urination/Defecation

Urination and defecation in public places within the city centre is a source of regular complaint particularly from business owners and residents. It is totally unacceptable when it happens, and can have a significant impact on those who witness it or who come into contact with it.

CPOs observe public urination regularly, most notably within the night time economy, and report “streams of urine” flowing from darkened corners, and parts of the city centre smelling of urine. Evidence of public defecation is also regularly observed by CPOs and removed by the Council’s street cleansing service.

In the 2017 CDP Respect survey, 35% of those responding identified people being drunk in public spaces as a very or fairly big problem in the city centre. Public urination is often an evident sign of such drunken behaviour.

In face to face surveys undertaken by CPOs in December 2017, 40% of those interviewed stated that they were very or somewhat dissatisfied with people urinating in public.

Whilst a potential offence exists under a 1936 byelaw for “nuisances contrary to public decency” this is ill defined and ineffective in dealing with the issue of

public urination. Potential public order offences are available to the Police, but not available to CPOs, and are seldom, if ever, used to tackle this issue.

2.1.8 Psychoactive Substances

Community Protection Officers, and other agencies such as the Police and East Midlands Ambulance Service, are dealing, on a daily basis, with individuals in the city centre who are believed to have taken drugs known popularly as “mamba” and “spice” but more correctly described as synthetic cannabinoid receptor agonists (“SCRAs”).

SCRAs are often termed “zombie” drugs as a result of the almost catatonic state induced in users. Those under the influence may collapse or exhibit inappropriate behaviour, including inappropriate sexual behaviour, all of which have the potential to have a serious detrimental effect on those who witness, or are subjected to such behaviour.

In the 2017 CDP Respect survey 21% of those surveyed highlighted people taking and dealing drugs as a very big or fairly big problem in the city centre. In addition, in face to face surveys with visitors to the city centre conducted by CPOs in December 2017, 38% of those surveyed were very or somewhat dissatisfied with the use of mamba/spice in the city centre.

As evidence of the size of the problem, city centre CPOs have spent approximately a quarter of their operational time over the last five month period in dealing with SCRA related first aid incidents, attending 885 such incidents during that period. Officers have been required to provide CPR on individuals on a number of occasions, and have saved lives in the process.

First Draft PSPO

- 2.2 In the case of a number of the activities identified above, the Council recognises the potential positive impact that these can have on the city centre’s street scene if properly managed.
- 2.3 Accordingly, in such cases, the First Draft PSPO sought to facilitate these activities within defined parameters, such as a requirement for consent. In the case of other activities, where the potential is purely for harm, the First Draft PSPO proposed an outright prohibition. The First Draft PSPO (and the subsequently recommended Proposed PSPO), apply to public spaces including highways within the area outlined with a bold blue line on the plan attached which covers the city centre (“the Restricted Area”).

Consultation Process

- 2.3 Formal consultation on the First Draft PSPO for the city centre (as shown at Appendix 3) was authorised by a delegated decision of Councillor Toby Neal, Executive Member for Community Protection, dated 14 August 2018.
- 2.4 Consultation was undertaken over a period of six weeks, commencing on 23 August 2018 and ending at midnight on 3 October 2018.
- 2.5 As part of the consultation process the Council sought the views of

- The Chief Officer of the Police
- The Police and Crime Commissioner
- Institute of Fundraising
- Big Issue Company
- Nottingham Business Improvement District (“Nottingham BID”)
- Nottingham Creative Quarter
- Keep Streets Live
- Equity
- Nottingham Community and Voluntary Service
- Nottingham City Homes
- University of Nottingham/Nottingham Trent University
- Others whose land was potentially affected (Churches/Public Car Park providers)

2.6 In addition, CPOs conducted face to face surveys with those working in, living in or visiting the city centre, throughout the six week consultation period. The survey used by CPOs was also made available to the Nottingham BID and the Creative Quarter, for use by their members.

2.7 The First Draft PSPO, a Frequently Asked Questions document, and associated documentation were also placed on the Nottingham City Council website, to allow wider public comment.

Consultation Responses – Surveys

2.8 547 responses were received via the face to face surveys conducted by CPOs or via surveys submitted by Nottingham BID/Creative Quarter members.

2.9 Attached at Appendix 4 is a report that includes

- Graphs summarising the responses to survey questions
- Demographic information regarding respondees

2.10 Results from the survey show significant levels of public support for the proposals contained within the First Draft PSPO, with those strongly agreeing or agreeing with the individual proposals being 86% or higher in respect of all but one proposal (mobile advertising) where the percentage strongly agreeing or agreeing was still high at 69%.

Consultation Responses - Other

2.11 34 other responses were received to the consultation including 20 from members of the public, and 13 from the following organisations

- Police
- Police and Crime Commissioner
- Nottingham BID
- Liberty
- Big Issue
- Keep Street Live
- Musicians Union
- Manifesto Club
- Equity
- Institute of Fundraising

- Emmanuel House
- Churches x 2

2.12 In addition, a petition supported by 673 signatures, was submitted on behalf of the Nottingham busking community, expressing their views in respect of the proposals regarding busking contained within the First Draft PSPO.

2.13 The report at Appendix 4 contains detailed excerpts from the non-survey responses received.

2.14 Responses from the Police, Police and Crime Commissioner, Nottingham BID and the churches are supportive of the proposals contained within the First Draft PSPO.

2.15 However, as can be seen at Appendix 4, a variety of concerns and issues regarding proposals contained within the First Draft PSPO have been raised by other respondents that fall broadly into the following main categories

- Impact of the proposals on the homeless/those rough sleeping
- Big Issue
- Busking/Street Entertainment
- Public Fundraising/Charitable giving
- Nature of the consultation
- Other

Impact of the proposals on the homeless/those rough sleeping

2.16 Significant concerns have been raised by a variety of respondents, including Liberty, the Manifesto Club, Emmanuel House and some members of the public, regarding the potential impact of the First Draft PSPO, upon which consultation was based, on those who are homeless or rough sleeping.

2.17 In essence, those raising the concerns feel that the First Draft PSPO has, as its specific intent, the targeting and/or criminalising of those who are homeless or rough sleeping, contrary to the statutory guidance referred to at Paragraph 1.9 above.

2.18 Concerns voiced include a belief that the First Draft PSPO, is simply designed to remove rough sleepers from the street and a fear that it will be impossible for those who are rough sleeping to avoid breaching certain provisions of the order.

2.19 In addition, concerns have been raised that some definitions, such as that regarding “free matter”, are too wide and vague and would mean that the Article in the First Draft PSPO regarding the need for consent before distributing free matter would potentially criminalise simple acts of kindness/charitable giving between 2 human beings, such as the giving of a cup of coffee by a member of the public to a homeless person.

2.20 Many of those expressing concerns consider that the First Draft PSPO is purely punitive and that no attempt is being made by the Council to support those who are homeless or rough sleeping, or to solve the broader homelessness issue.

Rough sleeping and homelessness support work within Nottingham

- 2.21 Homelessness, in all its forms, has increased throughout the country over recent years following a sustained period of austerity and in the context of a national housing crisis.
- 2.22 The situation in Nottingham echoes the national trend, and the number of households presenting in need has risen over the last five years, and continues to increase further following the introduction of the Homelessness Reduction Act in April 2018. Locally, a further pressure is projected following the introduction of Universal Credit Full Service in the city in October 2018
- 2.23 The Council understands that rough sleepers are one of the most vulnerable groups in society, many having high levels of complex and inter-related needs.
- 2.24 In order to help homeless individuals get back into housing a multitude of support networks may need to be called upon including mental health assistance and drug and alcohol support. Individuals may also need assistance managing money, paying bills and generally running a home.
- 2.25 To increase support for those who are rough sleeping the Council, and its partners, have a new Rough Sleeping Initiative (“RSI”), accessing the national targeted £30 million fund for 2018/19 for local authorities with high levels of rough sleeping.
- 2.26 The project is providing a range of additional provision in supporting rough sleepers including
- 10 additional beds at the London Road hostel.
 - 10 beds at the Sneinton Hermitage Hostel.
 - Extended opening of the Winter Night Shelter, providing an additional 20 beds.
 - 3 additional outreach workers (staffed by Framework HA) in order to support the most vulnerable people in hostels into more permanent accommodation.
 - A detox clinic, offering support with drug and alcohol abuse. The project is able to fully fund detox and then reconnection to country of origin for those with no recourse to public funds.
 - A “No First Night Out” approach. The initiative has processes in place which means that no one need sleep rough on the streets of Nottingham.
 - Additional beds in a “sit up” style service providing 16 spaces available across 2 fire stations when the temperature drops below zero degrees. This service is staffed entirely by volunteers from a variety of organisations including Red Cross, Muslim Hands, Nottingham City Council and the University of Nottingham.
 - A contract established with a local taxi firm, which enables staff connected with the initiative to use a password to facilitate transport for anyone found rough sleeping who wishes to access the shelter or sit up services but is unable to walk there.
- 2.27 In addition, health workers from Nottingham Recovery Network accompany Framework HA outreach workers on their evening shifts, encouraging drug users to engage with services and seek support and treatment. Staff are also

able to assist with general health queries, administer blood tests, bandage wounds and treat minor ailments.

- 2.28 Strong links have also been built with those that provide food to the homeless and they are able to deliver hot meals to the “sit up” centres.
- 2.29 In the first 4 months of the RSI the number of individuals identified as rough sleeping within Nottingham has reduced from 47 individuals to 34 representing a 27% reduction.
- 2.30 A communication strategy regarding the initiative, and the proposed introduction of Nottingham’s Homelessness Charter, is being developed with a full press launch undertaken on 23 November 2018, and a double page spread in the Winter edition of the Nottingham Arrow which will be delivered to every household in Nottingham.

Addressing concerns regarding the First Draft PSPO and rough sleepers

- 2.31 As indicated above, Nottingham’s over-riding approach to those rough sleeping is one of help and support. The clear message is that this help and support means that there is no need for anyone to sleep rough in Nottingham.
- 2.32 However, it is apparent that not all of those people who choose to sleep rough are homeless, and not all of those who are homeless and/or rough sleeping are willing to engage with the support that is available to them. Some people make a conscious choice to rough sleep for a variety of complex reasons.
- 2.33 The restrictions contained within the Proposed PSPO (as originally drafted in the First Draft PSPO and subsequently amended in the Proposed PSPO) are designed to address the specific behaviours identified therein. The Proposed PSPO is not designed to be used to target people based solely on the fact that they are homeless or rough sleeping, nor is it intended that those who choose to rough sleep should unwittingly be capable of breaching the order.
- 2.34 Furthermore, in wishing to control the predominantly commercial distribution of free matter, there is, categorically, no intention that the Proposed PSPO be used to penalise acts of kindness between one individual and another, such as the giving of a cup of coffee to a homeless person. Enforcing the proposed PSPO in this way would be neither reasonable nor proportionate.
- 2.35 In response to concerns raised, some Articles of the First Draft PSPO have been amended in the Proposed PSPO at Appendix 1.
- 2.36 It is also proposed that the Director of Community Protection publish guidance which will clarify for Authorised Persons, who may be considering taking action under the terms of the Proposed PSPO, the policy and procedural framework within which the PSPO will sit and aims to provide additional safeguards in ensuring that individuals are not targeted by reason solely of their rough sleeping, that those rough sleeping are offered support before any enforcement action is taken, and that those rough sleeping do not unwittingly breach the Proposed PSPO (if made) by the simple act of rough sleeping. A copy of the draft guidance is attached at Appendix 2.
- 2.37 The guidance document at Appendix 2 makes it clear that before action is taken for a potential breach of the Proposed PSPO against any person who

appears to the Authorised Person to be homeless, an offer must be made to that person to refer them to the appropriate support services with a view to securing them accommodation.

- 2.38 The guidance document at Appendix 2 also makes it clear that action should not be taken under the provision of the Proposed PSPO regarding the distribution of free matter in respect of individual acts of kindness from one person to another such as the provision of a cup of coffee or a sandwich by an individual member of the public to a homeless person.
- 2.39 Article 4 of the Proposed PSPO, regarding obstruction, has been amended to ensure that prior to action being taken against anyone for obstruction, Authorised Persons will first ask the person causing the obstruction to cease the obstruction, explain to them the reason for the request, and warn them of the consequences of failing to comply with the request. If made, this will prevent those who are rough sleeping unwittingly breaching the Proposed PSPO.
- 2.40 Article 12 of the proposed PSPO, regarding unauthorised requests, has also been amended to ensure that action is only taken against individuals who are making unauthorised requests for money etc where it can be shown that they are aware of the prohibition.
- 2.41 The Council's RSI Co-ordinator is in support of the prohibitions and restrictions contained within the Proposed PSPO, as supported by the guidance document. In supporting the Proposed PSPO, the RSI Co-ordinator acknowledges that those rough sleeping can, just like any other person, behave in an anti-social manner, but also recognises that the Proposed PSPO may provide another means of encouraging those who are rough sleeping to take up help that is available to them.

Matters raised by Big Issue and subsequent amendments

- 2.41 The Big Issue Company have confirmed that they are keen to continue working with the Council and the Police as they always have done.
- 2.42 However, the Big Issue Company raised concerns that the suggested future authorised pitches for Big Issue vendors published on the Council's website as part of the consultation, showed a reduction of 3 pitches overall from 15 to 12, and removed both of their current training pitches.
- 2.43 Further discussions have taken place with the Big Issue Company, and it has been agreed that the number of authorised pitches will remain at 15, with both training pitches being reinstated. Those authorised pitches are shown on the map attached at Appendix 5.
- 2.44 It is intended that if any changes to those authorised pitches become necessary in future these will be agreed, as and when required, in discussions between the Council and the Big Issue Company and will be authorised by the Director of Community Protection.
- 2.45 The Big Issue Company also raised two practical concerns regarding the wording of the First Draft PSPO.

- 2.46 Firstly, the Big Issue Company pointed out that whilst all authorised vendors have identification badges, not all of their authorised vendors have tabards. New vendors are subject to a trial period before being required to purchase a tabard and, accordingly, some pitches are designated for vendors who do not have a tabard.
- 2.47 In response to this concern, Article 5 of the proposed PSPO has been amended to remove the requirement that authorised vendors must wear a tabard, although the Big Issue Company have confirmed that they will continue to encourage authorised vendors who have tabards to wear them.
- 2.48 In addition the Big Issue Company have asked that references in the First Draft PSPO to the “Big Issue Foundation” be amended to references to the “Big Issue Company” and the Proposed PSPO has been amended accordingly.

Objections and concerns raised re busking/street entertainment and subsequent amendments

- 2.49 Appendix 4 contains details of responses received from Keep Streets Live, the Manifesto Club, the Musician’s Union, Equity and individual buskers. It also contains details of a response submitted by the Nottingham busking community supported by a petition containing 673 signatures.
- 2.50 All of these responses oppose the provisions of the First Draft PSPO in respect of busking. However, the Nottingham busking community response suggests some alternative proposals that they wished to be considered if a PSPO was to be introduced.
- 2.51 One common theme of the objections to the proposals regarding busking and street entertainment is an objection to the idea of busking and street entertainment being limited to a relatively small number of authorised pitches, as was suggested in the First Draft PSPO and the associated consultation documentation.
- 2.52 Keep Streets Live felt that limiting busking to a small number of authorised locations would serve to create more conflict between performers, make it considerably more difficult to make a living, and also concentrate noise and activity over longer periods of time rather than allowing it to naturally disperse across a fairly large city centre area.
- 2.53 The Nottingham busking community acknowledged that not all areas in the city centre may be suitable for busking and performing and suggested that rather than having a small number of designated busking pitches, there could be designated no busking zones, if required, in areas where busking/street entertainment may not be suitable.
- 2.54 Having reflected on the comments received in this respect, Article 7 of the Proposed PSPO has been amended to remove the idea of authorised pitches. However, the Proposed PSPO does identify two small areas, one each side of the Council House, where it is proposed that busking and street entertainment will be prohibited. This reflects the sensitivities identified in clause 2.1.4 above and will ensure that the Coroner’s court, registrations of death, weddings and civic ceremonies taking place within the Council House, are not subject to disturbance.

- 2.55 Keep Streets Live and the Musicians Union have stated that they feel that a PSPO is not appropriate as they believe it targets all performance regardless of whether any actual disturbance, harm or loss is caused. They cite the statutory guidance to the 2014 Act which states that PSPOs should not be used to prevent busking or other forms of street performance unless it is the cause of genuine and serious anti-social behaviour. Both Keep Streets Live and the Musicians Union prefer a system of self-regulation, supported by codes of practice.
- 2.56 The wording of Article 8 of the Proposed PSPO makes it clear that the PSPO does not target all performances. It explicitly requires there to be an unreasonable disturbance before action can be taken. All forms of street entertainment are welcomed throughout the city centre, with the only caveats being that those performing should avoid the small prohibited zones, and should not cause an unreasonable disturbance.
- 2.57 Accordingly, the Proposed PSPO retains the right for an Authorised Person to request a busker or street entertainer to cease a performance if, in the opinion of that officer, they are causing an unreasonable disturbance. This will allow an immediate solution to be provided for those suffering from any unreasonable disturbance. The approach is in accordance with the statutory guidance and tackles only busking and street entertainment that causes anti-social behaviour.
- 2.58 The Nottingham busking community also stated that having the ability to distribute their own original material is extremely important to buskers and musicians. Being able to do this helps artistes to get commercial bookings, to reach out to fans and to increase their income.
- 2.59 Concerns have been raised that the provisions of the First Draft PSPO regarding the distribution of free matter, as defined, may prevent buskers from continuing with the current practice of offering CDs to the public in return for a donation. Whilst, under the terms of the Proposed PSPO, the Council's consent will be required for such a practice to continue, it is proposed that arrangements will be made to enable such consent to be quickly and easily obtained, without cost, to the busker.
- 2.60 The Nottingham busking community proposals suggested that consideration be given to a specific low cost street trading permit to allow buskers to sell and distribute their original material within their performance space.
- 2.61 Whilst this can be explored further in future it would, currently, limit buskers to fixed locations, and exclude performance in large areas of the city centre where street trading is prohibited. Accordingly, granting consent for the distribution of free matter that is subject to a voluntary payment or discretionary donation is likely to provide buskers with a better solution.

Public Fundraising/Charitable giving

- 2.62 The Institute of Fundraising ("IoF"), which represents 600 fundraising organisations, has expressed concerns that the First Draft PSPO is being used to restrict charitable donations. They do not believe that direct debit fundraising has a detrimental effect on the quality of life of those in the locality.

- 2.63 The IoF state that donations by direct debit to charities are integral to funding great causes and that charities, both small and large, have a significant role to play in making people's lives better. The IoF believe that the work of fundraisers is vital, not just in raising the money that enables charities to do their work, but also ensuring members of the public have a positive and inspiring experience of fundraising and giving.
- 2.64 Neither the First Draft PSPO nor the Proposed PSPO) seek to ban charitable giving or collection. If made, the Proposed PSPO will seek to ensure that, those who are approaching individuals for money, on a predominantly commercial basis, whether on behalf of a charity or otherwise have the consent of the Council to do so and are not causing detriment to those going about their business in the city centre.
- 2.65 As indicated in the IoF response to the consultation, and referenced at paragraph 2.1.2 above, the IoF and the Council currently have a voluntary Site Management Agreement in place, through which consent is currently given to those wishing to conduct direct debit type charitable collection in the city centre.
- 2.66 That Site Management Agreement has not been reviewed in terms of the numbers, frequency and location of collections since its inception. It will be reviewed, with the IoF, in the light of evidence gathered and responses received to the First Draft PSPO consultation to ensure that a balance is struck between facilitating charitable giving and ensuring that people are able to have uninterrupted enjoyment of the city centre.

Nature of the Consultation

- 2.67 Concerns were raised by some respondees with regards the nature of the consultation undertaken.
- 2.68 One respondent felt that the survey document was psychologically biased and designed to hook the reader's "Critical Parent" so as to bias a response in favour of punitive measures. The survey design was approved by the Council's Engagement and Consultation team and no issue of psychological bias were identified.
- 2.69 Others were concerned that the consultation had not been displayed prominently enough on the Council's website, that the survey itself had not been displayed on the website and had not been circulated widely enough and that surveys had been conducted by CPOs, with whom some people may not have been comfortable engaging.
- 2.70 Considerable local media interest shown in the First Draft PSPO at the commencement of, and throughout the consultation period, helped to highlight the fact that consultation was being undertaken and the demographic information contained in Appendix 4 shows that the surveys, that were always intended to be conducted primarily by CPOs on a face to face basis, reached a wide range of the community that live in, work in or visit the city centre.

Other comments reflected in the Proposed PSPO

- 2.71 The consultation response submitted by the Manifesto Club disagreed with the prohibition, contained in the First Draft PSPO, in respect of the distribution of free printed matter without consent.
- 2.72 The Manifesto Club highlighted the fact that the current legislative power to designate areas and require consent to be required prior to the distribution of free printed matter, inserted into the Environmental Protection Act 1990 by the Clean Neighbourhoods and Environment Act 2005, did not allow Councils to restrict leafleting on behalf of a charity, or for religious or political purposes.
- 2.73 It was never the intention of the Council to remove the right for the distribution of free printed matter on behalf of a charity or for religious or political purposes. For the sake of clarity however Article 12 of the Proposed PSPO has been amended to explicitly retain this exemption.

Convention Rights

- 2.74 As required by both the Human Rights Act 1988 and the 2014 Act, the Council has had particular regards to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of European Convention on Human Rights, as well as having regard to other freedoms and rights contained within the Convention.
- 2.75 Human rights contained in the Convention can often conflict and need to be balanced to protect both individuals and the wider society. There is an expectation that those asserting rights will behave responsibly and to respect the rights of others.
- 2.76 The terms of the Proposed PSPO attempt to balance those competing human rights and impose only reasonable and proportionate restrictions on individual behaviours so as to safeguard the rights of other individuals and the wider society.

Fixed Penalty Notices (“FPN”)

- 2.77 By virtue of Section 68 of the 2014 Act, an authorised person may offer a FPN to any person that they believe has breached a PSPO. A FPN provides the person to whom it is issued the opportunity of discharging liability to conviction for the offence by payment of a fixed penalty to the local authority.
- 2.78 The level of FPN can be fixed locally at an amount not exceeding £100. By virtue of a delegated decision of the Director of Community Protection, dated 24 August 2017, the amount of the FPN for breach of a PSPO has been set at £70, reduced to £35 if paid within 10 days, and this would apply to FPNs for breach of the Proposed PSPO, if made.
- 2.79 The Proposed PSPO, if made, provides that requests under Article 4 (obstructions) and Article 8 (Buskers causing an unreasonable disturbance) are made by Authorised Persons. For the purposes of the Proposed PSPO, Authorised Persons are proposed to be Authorised Officers of the Council, Police Officers and Police Community Support Officers. It is proposed that Authorised Officers of the Council will include CPOs. If the Proposed PSPO is

made Authorised Officers will be authorised by the Director of Community Protection.

Signage

- 2.80 By virtue of regulations made pursuant to the 2014 Act, namely the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, the Council is required to cause to be erected on, or adjacent to the public place to which the PSPO relates, signage to draw attention to members of the public of the existence of the order.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 Not implementing a PSPO. Whilst the Council has the power to introduce a PSPO where the test in Section 59 of the 2014 Act is met, it is not under a duty to do so.
- 3.2 This option has been rejected as it is felt that should the Proposed PSPO not be introduced, the activities identified within the Proposed PSPO will continue to the detriment of those living and working in, or visiting, the city centre.

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

- 4.1 There will be a small initial cost for signage in the designated areas, but these costs will be met from the budget allocation that already exists within the service.
- 4.2 There will be potential income from the issuing of FPN's, not exceeding £70, potentially reduced to £35 if paid within 10 days. It is envisaged that the issue of FPN's would be few. All income would be paid back into the service within Community Protection.
- 4.3 Any PSPO can only operate effectively, if it can be enforced. Whilst not a direct cost of the PSPO, recruitment to, and maintenance of, a team of Community Protection Officers will be an on-going requirement. Officer time will be required to enable patrols of the Restricted Area, and to take any relevant action to ensure the success of the proposed PSPO

Michelle Pullen, Finance Partner – 23 November 2018

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

- 5.1 A decision relating to the making of a PSPO under the 2014 Act, for which the formal consultation process was commenced by a decision of the Portfolio Holder, falls within the remit of Executive Board in accordance with the Council's Scheme of Delegation.
- 5.2 As identified in the Report, PSPOs should only be made where the Council is satisfied on reasonable grounds that the legal tests in section 59 of the 2014 Act are met in relation to all of the areas that it is proposed the PSPO will 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 which it is likely will have such an effect.

- 5.3 When deciding whether to make a PSPO the Council must give due regard to human rights issues and ensure it is acting proportionality. In particular section 72(1) of the 2014 Act requires particular regard to be had to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the European Convention on Human Rights.
- 5.4 The 'Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory Guidance for frontline professionals', made under section 73 of the 2014 Act ("Statutory Guidance") confirms that a PSPO can be drafted from scratch based on the 'individual and specific issues being faced in a particular public space', and that a 'single order can also include multiple restrictions and requirements.'
- 5.5 The 2014 Act and Regulations made under it specify requirements for consultation and as identified in the Report, the Council has undertaken a formal consultation process.
- 5.6 As identified in the Report, the Statutory Guidance contains specific advice regarding homeless people and rough sleepers, and advises that Councils: '...consider carefully the nature of any potential [PSPO] that may impact on homeless people and rough sleepers.' The Statutory Guidance also advises that: 'These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is beyond the control of the person concerned.'
- 5.7 The Council should also consider how easy the Proposed PSPO would be to enforce, since failure to enforce a PSPO could undermine the effect of that Order.
- 5.8 This is a comparatively new area of law, and the boundaries are yet to be fully tested. There is a potential risk of challenge, and the validity of a PSPO may be challenged by an interested person in the High Court, by way of Judicial Review, or, in some circumstances, as a possible defence to a relevant prosecution.
- 5.9 It is proposed that, if made, the PSPO 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 PSPO to be extended for a further period of up to three years. There is no restriction on the number of times that a PSPO can be extended.
- 5.10 Where a PSPO is made the Council must also comply with requirements as to signage and publication under the 2014 Act, the Regulations made under it, and the Statutory Guidance.
- 5.11 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.

There is an additional legal advice which is exempt from publication and contained within exempt appendices.

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

6.1 Not applicable as this report does not relate to property assets and associated infrastructure.

7 SOCIAL VALUE CONSIDERATIONS

7.1 Not applicable as this report does not involve the procurement of goods or services.

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 6, 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 Hard copies of individual consultation survey responses (results summarised in Appendix 4)

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

11.1 Anti-social Behaviour Crime and Policing Act 2014

11.2 Home Office Guidance – Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers – Statutory guidance for frontline professionals – Updated December 2107

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

11.4 Delegated decision of Cllr Toby Neal dated 14 August 2018 authorising public consultation

11.5 Delegated decision of Andrew Errington, Director of Community Protection, dated 24 August 2017 setting the amount of the FPN for breach of PSPOs

