



Full Council	Tuesday, 13 July 2021	Matter for Information and Decision
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Report Title: **Proposed Public Space Protection Order (Nitrous Oxide) 2021**

Report Author(s): **Thomas Maccabe (Anti-Social Behaviour Officer)**

Purpose of Report:	To inform the Council of the outcome of the public consultation and the evidence supporting the implementation of the proposed Public Space Protection Order (PSPO) to control the possession of nitrous oxide.
Report Summary:	The report outlines that within the Borough, there is a clear indication of the recreational use of nitrous oxide, which has caused and will continue to cause harassment, alarm and distress if allowed to go unchecked.
Recommendation(s):	<p>A. That the content of the report and appendices be noted; B. That the draft Public Space Protection Order (as set out in Appendix 1) be approved; and C. That implementation of the Public Space Protection Order take place on the same date as Harborough District Council.</p>
Senior Leadership, Head of Service, Manager, Officer and Other Contact(s):	<p>David Gill (Head of Law & Democracy / Monitoring Officer) (0116) 257 2626 david.gill@oadby-wigston.gov.uk</p> <p>Andrew Dingley (Community & Wellbeing Manager) (0116) 257 2651 andrew.dingley@oadby-wigston.gov.uk</p> <p>Thomas Maccabe (Anti-Social Behaviour Officer) (0116) 257 2611 thomas.maccabe@oadby-wigston.gov.uk</p>
Corporate Objectives:	Building, Protecting and Empowering Communities (CO1) Providing Excellent Services (CO3)
Vision and Values:	Accountability (V1) Respect (V2) Teamwork (V3) Innovation (V4) Customer Focus (V5)
Report Implications:-	
Legal:	Under section 60 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act"), a PSPO cannot have effect for more than three years, unless extended under section 60(2) of the Act. This section permits a local authority to extend a PSPO where it is satisfied on reasonable grounds that doing so is necessary to prevent an occurrence or recurrence of the activities identified in the PSPO. The

	Act also sets out a number of additional requirements for consultation and communication before a PSPO can be introduced, once it is implemented and where it is extended, varied or discharged. PSPO's can legally be challenged under the Act on certain grounds.
Financial:	There are no implications arising from this report.
Corporate Risk Management:	No corporate risk(s) identified
Equalities and Equalities Assessment (EA):	There are no implications directly arising from this report.
Human Rights:	There are no implications directly arising from this report.
Health and Safety:	There are no implications directly arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	<ul style="list-style-type: none"> • Leicestershire Police • Public Consultation (Running from 7 May – 18 June 2021)
Background Papers:	None.
Appendices:	<ol style="list-style-type: none"> 1. Draft Public Space Protection Order (Nitrous Oxide) 2021 2. Results from Consultation

1. Background and Discussion

- 1.1 Nitrous oxide, also known as 'laughing gas', is a substance with a number of legitimate uses in medicine and catering. It is also the second most popular recreational drug amongst young people, with 7.6% of 16-24 year olds responding to the 2013/14 Crime Survey for England and Wales reporting nitrous oxide use in the previous year. When inhaled, this substance can make users feel euphoric and relaxed, with some reporting hallucinations.
- 1.2 It is a medical gas (a medicinal product) and, mixed with oxygen, is used to treat analgesia and as an anaesthetic. Use as a medicinal product typically involves large cylinders containing the gases which are administered to the patient using a face mask in a variety of settings such as hospitals, dental surgeries and by ambulance crews.
- 1.3 Nitrous oxide is also an approved food additive (E942) when used as a propellant for whipped cream. While there are no provisions in food additives legislation which would provide a basis for seizing nitrous oxide, there are a number of other enforcement options.
- 1.4 Nitrous oxide is also used in vehicle engines.
- 1.5 Nitrous oxide is now being used recreationally in a number of settings such as clubs, private residences and parks, and is particularly prevalent at music festivals. It is commonly sold in small metal canisters containing the gas, which is then either transferred into a balloon for

inhalation using a dispenser or a 'cracker'. These small metal canisters are sold in bulk online and presented for use as a whipped cream propellant.

- 1.6 Inhaling nitrous oxide can be dangerous, and can lead to loss of blood pressure, fainting and even heart attack. Prolonged exposure to nitrous oxide may also result in bone marrow suppression and poisoning of the central nervous system. These risks are likely to be exacerbated if the exposure to the gas is combined with alcohol or other drugs.
- 1.7 The legislation on the use of nitrous oxide is contained within The Psychoactive Substances Act 2016. Section 5 of The Act makes it an offence to supply or offer to supply a psychoactive substance to another person. It is not an offence to possess or use nitrous oxide.
- 1.8 The use of nitrous oxide presents challenges to three main agencies: health services in relation to the harmful effect of the substance's use; the Police in terms of the supply of the substance and associated behaviours; and the Council in terms of littering through the discarding of spent canisters, seen by many communities as being associated with criminal activity.
- 1.9 The Council's ability to respond to the use of nitrous oxide revolves around users who will regularly throw the canister away immediately after its use, thereby committing a litter offence. The volume of litter, combined with the highly visible nature of the discarded canisters has a significant impact on the public's perception of safety within an area, making it a signal crime (defined as any criminal incident that causes change in the public's behaviour and/or beliefs about their security).
- 1.10 Currently, where a canister is seen to be discarded by an authorised Officer, Police or Community Support Officers, the Officer is empowered to issue a fixed penalty notice for litter. The reality is that the modus operandi around the use of the nitrous oxide is not conducive to this type of enforcement being effective. Where evidence of a litter offence is recorded on CCTV, the environmental health team will conduct a proportionate investigation which will lead to an appropriate level of sanction (i.e. no further action, caution, fixed penalty ticket or court appearance).
- 1.11 Where an authorised Officer, Police or Community Support Officer becomes aware that an individual may be in possession of nitrous oxide canisters currently no legal power exists that permits confiscation of the canisters.

2. Evidence

- 2.1 It is clear the local residents in the Borough are concerned with the use of nitrous oxide. Reports have been received both by the Council and by the Police either concerning the use of the substance, or metal cartridges left discarded in public spaces. The Following evidence taken from Council and Policing systems highlights the extent of the issue.
- 2.2 The Council created 12 separate anti-social behaviour reports from April 2020 to March 2021 relating to the use of nitrous oxide. The table below lists the different locations and in what month and year the report was created.

Year/Month	Road Name	Town
2020/04	ROSEMEAD DRIVE	OADBY
2020/06	COOMBE RISE	OADBY
2020/06	COOMBE RISE	OADBY
2020/06	UPLANDS ROAD	OADBY

2020/07	BRIGHTON CLOSE	WIGSTON
2020/07	COOMBE RISE	OADBY
2020/07	HALF MOON CRESCENT	OADBY
2020/07	HAMBLE ROAD	OADBY
2020/07	QUICKTHORNS	OADBY
2020/08	QUICKTHORNS	OADBY
2020/11	UPLANDS ROAD	OADBY
2021/03	KNIGHTON RISE	OADBY

- 2.3 The use of nitrous oxide attracted other issues to the locations, which included groups meeting in cars and playing loud music at unreasonable times, the use of cannabis and littering. Due to the specific problems this was causing at Coombe Park on Coombe Rise in Oadby, a local volunteer offered their service locking the park gate in the evening, preventing vehicle access to the park.
- 2.4 The Police created a Problem Solving Plan in June 2020 to try to tackle the use of nitrous oxide in the Borough because when lockdown restrictions due to COVID 19 were lifted in 2020 they saw a rise in reports for both the use of nitrous oxide and the canisters discarded in public spaces.
- 2.5 The Problem Solving Plan allowed Officers to document the hot-stop areas as well as any proactive work undertaken. Through consultations with residents who had phoned the Police, it was clear to see that members of the public felt intimidated when seeing groups of people using nitrous oxide, which often coincided with the same group using cannabis and leaving graffiti. Through further investigations, attending incidents and stop checks, the Police discovered that the majority of those who had been using nitrous oxide in the Borough were in fact local residents, with a small number of people travelling elsewhere from Leicester into the Borough. These were mainly males aged 16-25 years.
- 2.6 The Police highlighted several locations where either phone calls were received reporting the use of nitrous oxide or Officers had identified locations whilst undertaking proactive patrolling. The locations identified are listed below:

Location	Road Name	Town
BLABY ROAD PARK	BLABY ROAD	SOUTH WIGSTON
WILLIAM GUNNING PARK	GLOUCESTER CRESCENT	SOUTH WIGSTON
CAR PARK	WINDLASS DRIVE	SOUTH WIGSTON
CAR PARK	KIRKDALE ROAD	SOUTH WIGSTON
CAR PARK	COUNTTESTHORPE ROAD	SOUTH WIGSTON
COOMBE PARK	COOMBE RISE	OADBY
CAR PARK'S	ST PAULS CLOSE	OADBY
ASDA CAR PARK	LEICESTER ROAD	OADBY
CAR PARK'S	HAYDEN AVENUE	OADBY

CAR PARK'S	BEAUMONT STREET	OADBY
STREET	BRIAR MEADS	OADBY
UPLANDS PARK	UPLANDS ROAD	OADBY

- 2.7 Officers gave consideration to various tools and tactics that could be used to deter the use of nitrous oxide and have worked closely with stakeholders. This included working with staff at Asda in Oadby who have often received verbal abuse when asking those using nitrous oxide on the premise to leave. Staff at Asda have discovered perpetrators in vehicles parked on their lower ground car park using the psychoactive substance and working jointly with Police, have erected signs giving an initial warning to those using a vehicle in a manner that is likely to cause harassment, alarm or distress, which includes using nitrous oxide within the vehicle.
- 2.8 Under the Road Traffic Act, Officers have also utilised serving Section 59 Notice's to individuals using nitrous oxide whilst in a vehicle. If a second Notice is served, the vehicle can then be seized.
- 2.9 On 31 May 2020, a male was served a first Section 59 Notice for using nitrous oxide whilst in a vehicle parked in a small residential car park on Hayden Avenue in Oadby.
- 2.10 On 17 June 2020, Officers stop checked three males in three different vehicles who had met at the Asda car park. A box of nitrous oxide canisters were voluntarily handed over by one male, and all three served Section 59 Notices.
- 2.11 A Section 59 Notice was served to a male on 30 June 2020 whilst at Parklands car park in Oadby after Officers searched his vehicle and discovered nitrous oxide canisters.
- 2.12 The Problem Solving Plan was updated frequently with Officers attending live incidents in relation to the use of nitrous oxide, or patrolling hotspot locations. Through this, Officers discovered other areas in the borough where nitrous oxide canisters were also being discarded. These areas included Brighton Close, Cooks Lane and a small car park located next to Subway on Leicester Road all in Wigston, Dorset Avenue in South Wigston and the car park located behind The Parade, just off Brooksby Drive in Oadby. After a consultation with business owners on the Oadby industrial estate, feedback was received that nitrous oxide canisters were also found to be left there. As such, all locations were added to the Problem Solving Plan for Officers to complete proactive patrols. Business owners and staff located in the Oadby industrial estate, after being encouraged by Officers to report incidents into the Police at the time did so. This included two phone calls in August 2020 where registration numbers for vehicles were passed after the occupants were seen to discard nitrous oxide canisters.
- 2.13 The Problem Solving Plan evidenced 3 months' worth of actions, and was closed in September 2020. Officers concluded that they had seen a reduction in phone calls from residents reporting the problem, and a reduction in discarded canisters seen in hotspot locations. It was however difficult to measure how successful the plan was due to the uncertainty of displacement, and simply moving the perpetrators from one location to another.

3. Proposed PSPO

- 3.1 A PSPO can be put in place to deal with a particular nuisance in a particular area that is having a detrimental effect on the quality of life for those in the local community. It can prohibit certain things or require specific things to be done. It is proposed that enforcement of the PSPO will be Borough wide.

- 3.2 Members will be aware that the Local Policing Unit (LPU) also covers the administrative area of Harborough District Council. The misuse of nitrous oxide for recreational use is a similar issue in that district also and it is the intention that both authorities will approve a PSPO in similar terms in order to ensure that the Officers of the local LPU will have clarity about their powers across the whole of the LPU area.
- 3.3 It is recommended that Members support implementing the PSPO on the same date as Harborough District Council. This to ensure that it is simple and straightforward for Police Officers and Community Support Officers who will be enforcing similar PSPO's in both our Borough and Harborough District. It will further support Leicestershire Police training their Officers on how to enforce the PSPO and from what date.
- 3.4 Harborough District Council's PSPO will be discussed at their Cabinet Meeting on 6 September 2021. Both Councils, alongside Police will then set a date for commencement of the PSPO.
- 3.5 The PSPO will provide that the consumption/possession of nitrous oxide canisters will constitute an offence for any person, when requested by an authorised officer, not to surrender the item(s). A draft of the proposed PSPO is attached at Appendix 1.

4. Public Consultation

- 4.1 The PSPO went to public consultation on 7 May 2021, and ended on 18 June 2021. This has been promoted on the Council's social media accounts, and Neighbourhood Link which is a social media platform controlled by the Police and reaches 2002 residents in the Borough as well as schools.
- 4.2 The Council received 162 consultation responses of which 127 were in favour of the introduction of the PSPO. A synopsis of the responses to the consultation questions is attached at Appendix 2 for Members' information.

5. Licensing & Regulatory Committee

- 5.1 The proposed PSPO was discussed at the Licensing & Regulatory Committee on 24 June 2021. The Committee unanimously recommended that the Council adopt the PSPO, however raised two actions; firstly, to send a leaflet into all schools in the Borough explaining the dangers of using nitrous oxide, and secondly, writing a letter to the Local Government Association (LGA) asking them to lobby government to introduce a minimum age to purchase nitrous oxide.