

Recommendation to Consult Report

Public Space Protection Order (PSPO) Extension; Psychoactive Substances

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Borough wide proposal

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Executive Summary

- ✚ On 17th August 2015 Lambeth implemented a PSPO prohibiting the possession and consumption of Novel Psychoactive Substances (NPS), formerly known as “legal highs”, throughout the entire borough. The Order lasts for a period of three years before expiring on 16th August 2018. This report has analysed the evidence, legalities and practicalities of extending the order;
- ✚ Our evidence indicates that the PSPO has been successful in reducing the volumes of incidents linked to NPS. However; the detrimental impact and unreasonable nature of identified behaviours still persist. Police data illustrates the frequency and severity of the detrimental effect on the quality of life of people in the locality. UK wide and local research has improved our understanding of the detrimental impact of NPS on mental health and physical systems in the body. We know that the use of NPS is growing in the UK and amongst drug users globally;
- ✚ Our understanding of the problem coupled with evaluations of limitations in the current NPS legislation highlight the necessity of extending the PSPO. For enforcement against NPS misuse in Lambeth to continue effectively, it is essential that the PSPO is extended. This report seeks senior managerial approval for a consultation proposing the extension of a borough wide PSPO in relation to the possession and consumption of NPS in Lambeth.

i. Context

- i.i On 26th May 2016 the Psychoactive Substances Act became law. The Act stipulates that *“it is an offence to produce, supply, offer to supply, possess with intent to supply, possess on custodial premises, import or export psychoactive substances; that is, any substance intended for human consumption that is capable of producing a psychoactive effect”*.
- i.ii However, the act does not account for either possession or consumption of NPS. As stated in the Cabinet report of 2015, this does not enable the police or council to tackle the current problems of anti-social behaviour and waste generated by usage in the borough.
- i.iii In 2015, following a public process, and subject to considerable scrutiny, Lambeth agreed to implement a Public Space Protection order. The original wording for this order can be found in Appendix A. The order specifically prohibits the *“ingestion, inhalation, injection, smoking, possession or otherwise use of intoxicating substances”*. This order preceded the enactment of the Psychoactive Substances Act in 2016.
- i.iv The consultation results in 2015 indicated a 63% support rate for the order. In the Cabinet meeting on 27th of July 2015, Inspector Neil Cochlin remarked that the consultation results indicated an unusual agreement between residents and businesses in favour of implementation of the order.
- i.v Lambeth has a persistent and continuing issue with the possession and consumption of NPS. The Metropolitan Police data indicates that this issue has continued to occur on a weekly basis since the implementation of the original order in 2015 (Appendix C1).
- i.vi The details of the individual reports and incidents that have happened in Lambeth linked to NPS highlight the unreasonable nature of these activities and the detrimental impact caused by them. Examples of some of the issues that have occurred since August 2015 can be found in the main body of this report, and full data tables can found in the Appendix B.
- i.vii Recent evidence also indicates that there is a public health implication regarding the misuse of NPS. This report includes references to recent public health studies that show the detrimental impact to health caused by NPS. Recent studies have also found that there is a lack of awareness of the negative health implications of NPS, especially nitrous oxide, amongst young people.
- i.viii Despite the legislative changes NPS are still readily available and accessible, and the Psychoactive Substances Act 2016 has failed to sufficiently curb abuse of such substances (Ehirim E, Naughton D, Petróczi. 2017).
- i.ix Data analysis indicates that since the implementation of the first order in 2015, the volumes and frequency of such behaviour have reduced. This suggests that since implementation, the PSPO has had a positive impact on the volumes of incidents that occur linked to NPS. Graphical representations of this reduction can be found in Appendix C. Without this order, it is likely that activities associated with NPS possession and consumption, and the detrimental impact those activities cause, will continue in public places.

1. Recommendation

- 1.1 That a public consultation is undertaken (as set out in sections 7.4 – 7.6), regarding the extension, for another three years, of the Public Space Protection Order prohibiting the possession and consumption of Psychoactive Substances in Lambeth.

2. Proposal and Reasoning

- 2.1 We have the power under section 60 of the Anti-social Behaviour, Crime and Policing Act 2014 to extend the existing Public Space Protection Order for another three years. We are required to extend the original order before it is due to expire on 16th August 2018.
- 2.2 We must be satisfied that on reasonable grounds, extension of the order is necessary to prevent occurrence or reoccurrence of the activities identified by the order, or that there will be an increase in frequency or severity of the activities identified.
- 2.3 The Psychoactive Substances Act 2016 only addresses supply and production of such substances. A recent evaluation highlights that much of the UK based online and local shops that sold Psychoactive Substances have shut down. However, many questions have been raised as to whether or not this has driven the illicit street based market, and whether or not NPS can be regulated effectively in this way (Reuter and Pardo (2016); Wadsworth, Drummond and Deluca (2017)).
- 2.4 Since the implementation of the order there has been general agreement amongst statutory partners that the nature and scale of the problem has reduced and our ability to deal with the issue has improved. Supporting statements from Lambeth Police, the Lambeth Events Team, Community Safety Area Managers, Environmental Enforcement and Public Health can be found in Appendix D1.
- 2.5 The views of the statutory partners are supported by the data. Since the implementation of the order there have been 541 records on various Police systems where the keywords; “psychoactive”, “nitrous oxide”, “nitros [sic] oxide” or “legal high” were present in the details of the; crime investigation, custody detention record or risk assessment, intelligence report, stop and search detail or risk assessment of a vulnerable child or adult. The volume of such records has reduced over the last three years (Appendix C).
- 2.6 The data period covers 145 weeks since the order was introduced. Of these, only 14 weeks (9.5%) have not had any events or incidents involving the keywords. In 2017 and into 2018 the number and frequency of weeks where there is no record of NPS use or involvement has increased. This indicates an improving situation (Appendix C1).
- 2.7 This same weekly line graph (Appendix C1) shows two significant peaks in recorded incidents and events linked to NPS misuse. In 2016, this was the week commencing 22nd August 2016, and in 2017 this was the week commencing 21st August 2017. In both instances, the dates coincide with the August bank holiday weekend. This weekend also hosts Lambeth’s largest annual music festival, the South West 4 (SW4) festival. The data supports the anecdotal suspicions of enforcement officers and statutory partners that NPS misuse is particularly prevalent during large events.
- 2.8 Lambeth hosts a considerable number of large events which have national scope. The data indicates that when major events are held, it is likely that activity and behaviour linked to

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the possession and consumption of NPS will occur in a public place at a higher than normal frequency. Moreover, it is likely that they will have a continuing, detrimental and unreasonable effect on the quality of life of those in the locality. A list of large events that Lambeth has received applications for can be viewed in Appendix E. The events occur in Lambeth's largest public open spaces, and the largest events expect attendances over 30,000 people, and in some instances up to 80,000 people, during the course of a single day.

- 2.9 The column chart in Appendix C2 highlights that on an annual basis, volumes of crimes, intelligence, custody records, stop and searches, and assessments of vulnerable people linked to NPS have reduced since implementation of the order. The average monthly number of combined recorded incidents on the systems in 2015 and 2016 was 21 incidents or events. In 2017, this dropped to 13 incidents or events recorded per month.
- 2.10 Evidence from the police systems would indicate that a street level market is still prevalent. Since the introduction of the order, there have been 140 intelligence logs relating to the use, supply, possession and identification of new psychoactive substances. Evidence of use in public places accounted for 50% of the logs (69), information about a potential supplier accounted for 24% (34) and a further 18% accounted for possession (25) – often linked to dangerous driving and specific vehicles.
- 2.11 Police custody records show that there have been 110 arrests where either the detention log, risk assessment or charge sheet contains one of the key words “nitrous oxide”, “nitros [sic] oxide”, “psychoactive” or “legal high”. The most common reasons for these words being recorded during these arrests were:
- 35 linked to being found in possession of a psychoactive substance (commonly nitrous oxide);
 - 28 related to being charged with a possession with intent to supply offence (PWITS);
 - 17 linked to recent consumption of psychoactive substances (often identified through risk assessments).
- 2.12 Since the implementation of the order there have been 110 Stop and Search records in Lambeth where the key words “nitrous oxide”, “nitros [sic] oxide”, “psychoactive” or “legal high” were present in the record. Some examples of recent stop and searches of this nature are as follows:
- In May 2018, police stopped a vehicle on Streatham Common North. When speaking to the driver, the officer noticed there was drug paraphernalia in the car. This included empty gas canisters used for consuming nitrous oxide. The vehicle was pulled over in an area known for drug usage;
 - In March 2018, an anti-social behaviour call was made to police in regards to two young men in a car taking drugs and being aggressive to members of public. Police approached males in a car surrounded by nitrous oxide bottles. The smell of cannabis could be smelt when the person opened the car door. Subject was

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aggressive and did not want to leave the car when being asked and could not give a reason for being in the area;

- In February 2018, a call was made to an area suffering from anti-social behaviour including drug dealing and drug taking. Two people were sat in a car and couldn't say why, as they lived nearby. There was drug paraphernalia in the foot well of the car, including nitrous oxide canisters and balloons. The officer could also smell cannabis;
- In December 2017, officers were called to a disturbance in the street. Four occupants of a vehicle were spoken to and detained. One was in possession of cannabis and a box full of nitrous oxide canisters in the car. The subject was extremely argumentative and tried to hide small drugs about their clothing. The subject was seen fidgeting often with their waistband and a cannabis grinder was inside a handbag.

2.13 There have been 133 recorded crimes in Lambeth since the implementation of the order where the key words "nitrous oxide", "nitros [sic] oxide", "psychoactive" or "legal high" were present in the details of the investigation. The offences predominantly occurred in 2016 (63) and 2017 (43). The most common crime classifications recorded were crime related incidents (17). This is likely to represent a situation where there is a third party report of something occurring and no witnesses or physical evidence of the offence can be found after attendance at the scene. This would make sense in reference to consumption and possession of legal highs, as once consumed or discarded there little remaining usable evidence.

2.14 In 47 instances, the crimes identified through this methodology relate to the possession of other drugs prohibited under the Misuse of Drugs Act 1971. This supports the notion that psychoactive substances are often a precursor or 'gateway' to other drugs. This is an associated type of detrimental impact that consumption and possession of psychoactive substances has, and one which the PSPO seeks to address.

2.15 Examples of individual offences in the last 18 months, which are not uncommon in their nature, are as follows:

- Following a Section 23 Misuse of Drugs Act Stop and Search in June 2017, a suspect who was violent in resisting arrest was found in possession of nitrous oxide, other class A drugs, money and a Taser;
- In July 21017, a suspect was being chased by security at the Lambeth Country Show. On being detained, the suspect was found in possession of numerous canisters of nitrous oxide. After arrest and a further search the suspect was found in possession of further drugs;
- In August 2017, a suspect was detained by SW4 festival security in possession of multiple nitrous oxide canisters, dispenser and balloons. A further search found multiple individual wraps of cannabis concealed inside the suspect's anus;
- In March 2018, a car was seen in a potentially un-roadworthy state. The car was stopped and the occupants inside appeared to be under the influence of drugs.

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All were searched and found in possession of psychoactive substances and suspected Class A drugs.

- 2.16 Police officers encounter adults who may be considered vulnerable by means of mental health, age, illness or disability and where a safeguarding concern is raised. These vulnerable adults together with those subject to Section 135 and 136 Mental Health Act 1983 are recorded on the police MERLIN information system. This is in addition to vulnerable children who may have come to notice for safeguarding concerns or any other reasons. There are 50 records on MERLIN, since the implementation of the original PSPO, that include the words “nitrous oxide”, “nitros [sic] oxide”, “psychoactive” or “legal high”. The most common reasons for their inclusion are as follows:
- Drug dependency, regularly reported missing, has a mental health condition and often misuses psychoactive substances (24 records);
 - Vulnerable person found in possession of nitrous oxide or another psychoactive substance (10 records);
 - Homeless person who is dependent on psychoactive substances (2 records);
 - Number of used nitrous oxide canisters found in vulnerable young person’s bedroom (2 records).
- 2.17 There was one MERLIN recorded in July 2017 where a large scale house party came to the attention of police. The attendees at the party were mainly 14 – 17 year old children. The report details that at the scene there was widespread evidence of drug and alcohol usage, a strong smell of cannabis, and multiple canisters of used nitrous oxide and empty balloons scattered all over the property. When police tried to close the event they came under attack.
- 2.18 Of the 110 arrests where key words linked to psychoactive substances were present, there were 27 custody records of mental health, dependency or behavioural disorder linked to psychoactive substances misuse.
- 2.19 Some examples of the types of issues people in custody suffer from are as follows:
- In April 2018, the Criminal Justice Mental Health Clinician referred a patient to the Lambeth North Psychosis Team after a diagnosis of mental and behavioural disorder due to multiple psychoactive drug use;
 - In February 2018, an individual was taken into custody who had a diagnosis of mental and behavioural disorder due to psychoactive drug misuse. The detained person is known to addiction services alongside having spells in prison;
 - In July 2017, a detained person was risk assessed as having anxiety and depression, mental and behavioural disorders, dependence syndrome and an emotionally unstable personality disorder due to multiple drug use and psychoactive substance misuse;

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- In March 2017, a detained person was drunk, had consumed a psychoactive substance, and was very drowsy. The detained person had slurred speech and physical indications of self-harm. The detainee was known to police and has tried to kill themselves in the past. The detainee was visited and roused every 30 minutes.
- 2.20 Research has developed in recent years, more accurately demonstrating the negative impacts of NPS. Some of these effects include:
- Nitrous oxide is more water soluble than oxygen which decreases oxygen delivery to the brain and can lead to asphyxia (Ehirim, Naughton, Petróczi; 2017);
 - Abuse of nitrous oxide can lead to a vitamin B12 deficiency. Low or low-normal levels of B12 are associated with psychiatric effects such as psychosis, peripheral neuropathy and other medical effects relating to blood flow (Ehirim, Naughton, Petróczi; 2017);
 - Severe negative impact on mental health from NPS misuse includes; agitation, insomnia, catatonia, anxiety, aggression, psychosis, hallucinations and suicidal ideation (Public Health England; 2017);
 - NPS affect many physical systems in the body, such as; the cardiovascular system, leading to conditions like tachycardia, hypertension, and cardiac arrest; the central nervous system, resulting in seizures, collapse, dystonia; the pulmonary and the renal system; the musculoskeletal system and many more (Karila L, et al.; 2015).
- 2.21 In January 2018, a study was conducted relating to the presence and consumption trends of nitrous oxide for 140 participants from South West London (Ehirim, Naughton, Petróczi; 2017). Participants were randomly selected electronically and were in the age range of 18–25 years with 94 females, 40 males, and 6 not declaring gender. The study concluded that:
- The majority of participants showed little or no knowledge of serious side effects associated with nitrous oxide;
 - That despite the introduction of legislation by UK Government, young people asserted the relative ease with which they can access nitrous oxide;
 - That the recent Psychoactive Substances Act is failing to curb abuse.
- 2.22 In the last four years, the Global Drugs Survey (GDS) has assessed the drugs habits of over 400,000 people in over 50 countries. In 2016, the survey found that the UK had the highest rate of NPS purchase of any other participating country, 11.6% of 6,015 participants (Global Drugs Survey, 2016). In 2017, this dropped slightly to 10.6% of 5,900 UK participants, but the UK still remained the fourth highest of all participating countries (Global Drugs Survey, 2017).
- 2.23 The most recent iteration of the GDS survey states that the risk profiles of NPS vary widely, with inconsistent composition and potency often being significant factors in the risks they

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pose. Highly potent hallucinogen compounds and potent amphetamine analogues are causing concern across Europe and Australia, where their use has been associated with deaths in recent months. Over half of the respondents to the 2017 survey answered that in taking NPS they were trying to mimic hallucinogenic 'LSD-like' effects (Global Drugs Survey, 2017).

- 2.24 The GDS also found there has been a major rise in the amount of UK drug users using psychedelics. Since the first report in 2014, ketamine, nitrous oxide and LSD have all seen major growth in the rate of UK users taking them. Use of nitrous oxide in the UK has risen from 20% to 31% of all users who participated in the survey (Global Drugs Survey, 2017).
- 2.25 The GDS results also raise another pertinent issue – the changing nature of the logistics of purchasing and sourcing NPS. Since 2014, UK drug purchases on the darknet have doubled, equating 1 in 4 users in the UK. In this setting, dealers are anonymous, their IP addresses are concealed, and payment is made in crypto currency (Global Drugs Survey, 2017). Additionally, the 2016 GDS found that 58% of people in the UK who had bought NPS had done so online (Global Drugs Survey, 2016). As a result of this, it is likely that more and more of the production and supply of NPS and other drugs will be occurring abroad or off public spaces. This highlights the inadequacy of the current legislation and its focus on only production and supply.
- 2.26 Lambeth is reliant on the existing Public Space Protection Order to be able to safeguard the public by seizing and enforcing against people in possession of NPS and those observed consuming NPS. With the increasing online market reducing the likelihood of successful enforcement against production and supply, it is imperative that Lambeth retains the ability to effectively and efficiently deal with the possession and consumption of NPS.
- 2.27 The key points from the evidence base leading to the recommendation to consult on extending the existing Public Space Protection Order for three years are as follows:
- Volumes of crime, intelligence, custody, stop and search and MERLIN records linked to NPS misuse have reduced in Lambeth since the implementation of the order. This suggests that the order has had a positive impact on Lambeth's ability to deal with NPS in public spaces;
 - Weekly data analysis highlights that NPS usage has persistently continued in Lambeth for the last three years. There is no indication that this would not be the case over the course of the next three years, albeit if current trends continue in lower volumes, and as such the maximum extension should be sought;
 - There has been a considerable rise in NPS usage in the UK since 2014, specifically in relation to nitrous oxide;
 - The illicit street market for psychoactive substances has remained active in Lambeth despite the law changes as shown by crime, intelligence, and stop and search records;
 - More UK drug users are obtaining NPS from unknown sources online than ever before, reducing Lambeth's ability to enforce against production and supply. This

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necessitates the ability to enforce against possession and consumption in public spaces;

- Possession of psychoactive substances is often linked or associated with the possession and consumption of Class A, Class B and other prohibited substances under the Misuse of Drugs Act. This supports the idea that NPS are gateways to more harmful substances – a significant detrimental impact to public health;
- Misuse of psychoactive substances leads to significant mental and physical health problems, which are often observed in custody and have been identified in more detail in recent health related academia;
- Lambeth hosts a number of major events and evidence indicates that consumption and possession of NPS increases in prevalence during such events. Considerable littering and anti-social behaviour are a by-product of this increase in usage;
- Nitrous oxide and other psychoactive substances regularly being sold from, found in, linked to, and consumed in vehicles. These vehicles can be in an unworthy state and being driven under the influence of drugs, which is a considerable risk to members of the public;
- Recent studies have identified that users of NPS, specifically young people, have been shown to lack of awareness of the detrimental impact NPS can have on their health.

3. Consideration of Alternatives

- 3.1 Due consideration has been applied regarding the appropriateness of the use of a Public Space Protection Order in this instance. The current legislation, as previously stated, does not allow the local authority or police to deal with the issues as they currently exist. The most prominent element of behaviour which is demonstrably detrimental to the quality of life of those in the locality, and is persistent, continuing and unreasonable, is the possession and consumption of NPS in public spaces. This is reinforced by the evidence presented in section 2 of this report, and in the corresponding appendices.
- 3.2 The Anti-social Behaviour, Crime and Policing Act 2014 has a number of legislative tools which allow local authorities and the police to tackle anti-social behaviour, crime and disorder. Within the act, the following options are available; Injunctions, Criminal Behaviour Orders, Dispersal Powers, Community Protection Notices, Closure Orders and Closure Notices. This section will address each of those options.
- 3.3 Injunctions are individually focused and granted through a court process. The evidence in this report shows the behaviours identified are sufficiently widespread and need to be responded to immediately. As such, it would be too slow, costly, and impractical to process and enforce individual injunctions with varying conditions for each person.
- 3.4 Criminal Behaviour Orders, as with Injunctions, are individually focused and granted through a court process. They stipulate that a court must be “*satisfied, beyond reasonable*

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doubt that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person". In relation to prohibiting the possession and consumption of NPS, the detrimental impact evidenced in section 2 does not always relate to harassment, alarm and distress caused to any person. Additionally, as with injunctions, the same practical implications apply with regards to the cost, processing, and enforcement of such individual orders relating to such a widespread issue.

- 3.5 Dispersal powers are not universally expedient for the possession and consumption of NPS. They relate only to police officers, which reduces the resources that can deal with the issue. The existing PSPO and proposed extension authorises Council Officers as well as Police Officers to enforce the order. Dispersal powers are also time limited to 48 hours, and have to be repeatedly put in place by an officer ranked Inspector or above. They only allow the officer to compel an individual to leave a specified locality for an exclusion period, which would not prevent future consumption or possession of NPS as there is no requirement for the individual to surrender the NPS. Finally, Police Officers must be satisfied that the person in the locality has contributed or is likely to contribute to harassment, alarm or distress to members of the public, or the occurrence of crime and disorder in the locality. Possession and consumption of NPS is not a crime under the Psychoactive Substances Act 2016, and it does not always meet the threshold for harassment, alarm and distress.
- 3.6 Community Protection Notices are focused on individuals and premises. Like PSPO's they focus on detrimental impact on the quality of life of those in the locality. However, they are more suited to individual specific issues caused by one person or one premises. This does not resolve the issue of possession and consumption of NPS. The evidence indicates the issue is too widespread, with behaviour often exhibited by numerous people, often at the same time, and over large geographical areas.
- 3.7 Closure Notices issued by the police or local authority and Closure Orders issued by a court relate to specific premises which either have, or are likely to have, engaged in crime and disorder or serious nuisance. They are time limited and relate to premises only, so do not adequately deal with the scale of the problem or the individuals involved in possession and consumption of NPS in Lambeth.
- 3.8 A Public Space Protection Order is the most suitable measure because it allows:
 - A suitable geographical area to be defined;
 - Prohibitions to apply to everyone;
 - NPS to be seized following a breach;
 - Council officers and police officers to enforce the order; and
 - The order to last long enough to effect change.

4. Past Enforcement

- 4.1 Enforcing the PSPO is an area that needs improvement should a new order be implemented. On council systems there are 26 Fixed Penalty Notices (FPN) that have been issued since the implementation of the order. This does not appear to be high enough relative to the number of offences and other incidents evidenced in this report. A full list of the issued FPN's can be found in Appendix F.

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- 4.2 In November 2016, there was a successful prosecution in court following a breach of the PSPO where a fine was issued and legal costs were awarded.
- 4.3 The police evidence highlights that this is not a prevalence issue. The evidence shows that the volume of crimes, intelligence reports, custody records, stop and search, and MERLIN reports linked to psychoactive substances in Lambeth do not reflect the number of Fixed Penalty Notices issued.
- 4.4 Further, there is evidence on the systems that opportunities to utilise the Fixed Penalty Notices have been missed either through lack of awareness or training. In some instances, a Penalty Notice for Disorder or a Dispersal Notice has been used when a breach of PSPO FPN may have been more appropriate. This must be mitigated and addressed in future, with a commitment to raising awareness amongst all partnership enforcement officers and a further commitment to provide additional training where necessary.
- 4.5 It is important to note that the possession or consumption of psychoactive substances often accompanies a more serious criminal offence which may take priority during an enforcement situation.

. 5. Finance

- 5.1 Financial costs for consultation will be borne by existing budgets

6. Legal and Democratic

- 6.1 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') provides a power for local authorities to make what this provision calls a Public Spaces Protection Order (PSPO). A PSPO is designed to tackle a range of activities which have a detrimental effect on a local community's quality of life and may in respect of a specified area, either prohibit specified things being done in that location and/or require specified things to be done by persons carrying on specified activities in that place. Those restrictions/requirements can be targeted at specific people and designed to apply only at specific times or in certain circumstances. Once made, a PSPO empowers a Constable (or other authorised persons as defined in the 2014 Act) ("Officers") to enforce a prohibition or requirement set out in the PSPO.
- 6.2 A PSPO may be made if the council is satisfied on reasonable grounds that two conditions are met:
 - 1. 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 a public place within that area and that they will have such an effect.
 - 2. That the effect, or the likely effect, of the activities is, or is likely to be, of a persistent or continuing nature such as to make the activities unreasonable, and justifies the restrictions imposed by the order.
- 6.3 As to the prohibitions set out in the proposed Order, the council must be satisfied that they are reasonable to impose in order to, (a) prevent the detrimental effect referred to from

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continuing, occurring or recurring, or (b) reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

- 6.4 Anyone breaching the terms of a PSPO without reasonable excuse commits an offence punishable by a fine set at level 3 on the standard scale (currently £1000). Officers may issue an offender with a Fixed Penalty Notice (FPN) in lieu of prosecution, in which case payment of the FPN would discharge the offender from any criminal liability.
- 6.5 A PSPO may not have effect for more than 3 years unless it is extended under Section 60 of the 2014 Act. The process for extending an Order in this way must be undertaken before the PSPO expires. In accordance with Section 60(2), the council may extend a PSPO if satisfied on reasonable grounds that that this is necessary to prevent:
- a. Occurrence or recurrence after that time of the activities identified in the Order;
or
 - b. An increase in the frequency or seriousness of those activities after that time.
- 6.6 In August 2015 the council made a PSPO targeting the possession and consumption of Psychoactive Substances in Lambeth. That PSPO is due to lapse on 16th August 2018. This report proposes to extend the PSPO for a period of 3 years and seeks authority for officers to trigger the attendant statutory processes for this purpose.
- 6.7 Section 72 (1) of the 2014 Act requires that in deciding whether to extend a PSPO and, if so, for how long, the Council must have particular regard to the rights of freedom of expression and freedom of assembly and association set out in articles 10 (right to respect to for private life) and 11 (right to freedom of assembly and association) of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). Whilst acknowledging that the proposed Order potentially entails an infringement of the aforementioned Articles of the Convention, it is considered that these qualified rights may in this instance be legitimately interfered with in the interests of public safety, the prevention of crime and disorder and in accordance with the law.
- 6.8 Sections 72(1) & (3) of the 2014 Act requires that a local authority carry out the necessary consultation and publication, before deciding to extend a PSPO. This means that the council must publish a notice on its website setting out its proposal to extend the Order in question and to consult with the chief officer of Police and MOPAC, with such local community groups as the council sees fit, and with any owners of land covered by the PSPO.
- 6.9 In respect to the consultation, it is essential that we follow the principles set out in a recent High Court case: First, a consultation had to be at a time when proposals were still at a formative stage. Second, the proposer had to give accurate and sufficient reasons for any proposal to permit of intelligent consideration and meaningful response. Third, adequate time had to be given for consideration and response, and finally, the product of consultation had to be considered with a receptive mind and conscientiously taken into account in finalising any statutory proposals. The process of consultation had to be effective and looked at as a whole it had to be fair. Fairness might require consultation not only upon the preferred option, but also upon discarded options. The Council is obliged to take account of any representations made during the consultation period and all objections received must be

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properly considered by the decision maker in the light of administrative law principles, Human Rights law and the relevant statutory powers.

- 6.10 Section 149 of the Equality Act 2010 sets out the new public sector equality duty replacing the previous duties in relation to race, sex and disability and extending the duty to all the protected characteristics i.e. race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership and gender reassignment.
- 6.11 The public sector equality duty requires public authorities to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation;
 - Advance equality of opportunity; and
 - Foster good relations between those who share a protected characteristic and those who do not.
- 6.12 Part of the duty to have “due regard” where there is disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim. Accordingly, there is an expectation that a decision maker will explore other means which have less of a disproportionate impact.
- 6.13 The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision.
- 6.14 The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, sets out the manner in which a PSPO must be publicised once it is extended and requires that we, (a) publish the order as extended on our website; and (b) cause to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to (i) the fact that the order has been extended, and (ii) the effect of that order being extended.
- 6.15 Further guidance in relation to the making of a PSPO is set out in the Home Office Guidance Document (Anti-Social Behaviour, Crime and Policing Act 2014: Policing Act 2014: Anti-social behaviour powers - Statutory guidance for frontline professionals) Updated December 2017 (See background documents).

7. Consultation and Co-Production

- 7.1 The first order was implemented following a four week public consultation from 15th June 2015 to 13th July 2015. The results of this consultation and all other evidence were presented to Cabinet on 27th July 2015. Following this, Cabinet agreed to implement the order.
- 7.2 It is also obligatory under Section 72, subsection (3)(b), that a local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before extending the period for which a PSPO has effect.

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- 7.3 Due to this being an extension of an already existing order which was passed with a significant level of public scrutiny in 2015, the appropriate legal and statutory tests have been applied as required and the wording of the order to be implemented has not changed. It is more practical for the implementation of the extension of the order to be a delegated decision for the Cabinet Member and not full Cabinet.
- 7.4 Given that the current order expires on 16th of August 2018, and that our power under Section 60 only applies before expiry, it is essential that authority to proceed to consultation is granted at the earliest opportunity. The consultations team has been briefed, and is aware of the timeliness required. However, statutory consultations now require a minimum six week period to run in most circumstances. Appropriate time must be allocated to enable thorough analysis of the consultation results. The current plan is to go live on Monday 18th June 2018 and close the consultation on Sunday 29th July 2018.
- 7.5 It is anticipated that a very similar consultation will be conducted as in 2015. The consultation asked three specific questions:
1. Have you experienced any issues in your area in relation to anti-social behaviour linked to “legal highs” (emerging drugs)?
 2. Have you personally been affected by anti-social behaviour which is linked to “legal highs”?
 3. Would you support a Public Space Protection Order as a way for the authorities to tackle anti-social behaviour linked to the consumption and possession of “legal highs”?

For each question a blank text field was left for respondents to enter more specific comments. In addition, each resident was asked their residential area, age, sex and ethnicity anonymously.

- 7.6 The consultation will be widely published across the borough, utilising all available communications methods.

8. Risk Assessment

- 8.1 If the process to introduce a PSPO is not followed correctly this could lead to a challenge to the authority including legal costs and reputational damage. To mitigate risks, all key stakeholders will be involved in consultation and implementation.
- 8.2 If the PSPO order is implemented but not enforced due to capacity issues, this could lead to reputational damage to the council and a waste of public funds implementing the order. This is particularly important as this is an area of improvement identified after reviewing the previous data. Training was agreed with the local police to ensure there were operational officers active in each affected area to utilise the new power. However, there was still an underuse of the power overall. This must be addressed with a more robust training and awareness programme if the PSPO is to be extended.
- 8.3 There is the risk that expectations will be raised by this order which agencies cannot meet. An effective communications strategy will be devised to succinctly explain that the order may

not resolve all of the issues, but will go some way to reducing the current detrimental impact to people in the locality.

9. The PSPO Area

- 9.1 This PSPO is a borough wide order, thus the area is the entirety of the Lambeth boundary, a map of which can be seen at Appendix G1.
- 9.2 Crime data has been mapped to the borough (Appendix G2). This shows how widespread the issue is, as every ward, with the exception of Thornton, has crimes that include the words “nitrous oxide”, “nitros [sic] oxide”, “psychoactive” or “legal high” mapped as having occurred within them since August 2015. A full table of crimes recorded per ward can be found in Appendix G3.
- 9.3 Stop and Search data also highlights the widespread nature of the issue, the largest public open spaces; Clapham Common, Brockwell Park and Streatham Common are specifically mentioned in numerous reports. These are often linked with large events associated with the sites. Additionally, streets within the boroughs most well known areas; Vauxhall, Clapham, the Southbank, Brixton and Streatham regularly feature as locations associated with Stop and Searches linked to NPS.
- 9.4 In the light of such a geographical spread of incidents linked to psychoactive substances it is both proportionate and necessary to continue to use the borough boundary as the area for this PSPO.

10. Other Required Tasks

- 10.1 Public consultation for a minimum six week period.
- 10.2 Equalities impact assessment to be conducted alongside consultation.
- 10.3 Full risk assessment and risk management plan to be formulated alongside consultation.

11. Approval and Authority to Proceed

Name	Title	Date
ClIr Mohammed SEEDAT	Councillor, Healthier and Stronger Communities	
Sue FOSTER	Strategic Director, Neighbourhoods and Growth	
Raj MISTRY	Director, Neighbourhoods and Growth	
Doug PERRY	Associate Director, Commissioning Environment	
Kristian ASPINALL	Head of Service, Public Protection	

Approved By Date

Approved By Date

Approved By Date

Approved By Date

Approved By Date

12. References

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13. Appendices Navigation

The below table provides a navigation tool by which to find the relevant evidence within the appendices.

Appendices Section	Description
A	Wording of the original PSPO
B1	Table of recorded crimes linked to NPS
B2	Intelligence records linked to NPS
B3	Stop and Search records linked to NPS
B4	Custody records linked to NPS
B5	MERLIN records linked to NPS
C1	Line Graph - Weekly Volumes of Police Records Linked to NPS
C2	Column Chart - Annual Volumes of Police Records Linked to NPS Broken Down by System Type
D1	Statements of Support from Partners
D2	Statement of Support from a Local Resident
E	Large and Major Events in Lambeth in 2018
F	Fixed Penalty Notices Issued for Breach of PSPO
G1	Map of PSPO Area
G2	Mapped Crimes, showing spread of incidents linked to NPS
G3	Table of Crime Counts per Ward