



CABINET – 14TH MARCH 2018

SUBJECT: PROPOSED PUBLIC SPACE PROTECTION ORDER AT CEFN BRITHDIR

REPORT BY: INTERIM CORPORATE DIRECTOR COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 To seek Cabinet endorsement for the introduction of a Public Space Protection Order to restrict vehicle access on to Cefn Brithdir for a period of 3 years; and the restrictions be included in a draft Order and the statutory process including formal consultation is commenced with the outcome reported back to Cabinet for consideration or if there are no objections, the decision to make the Order be delegated to the relevant Head of Service.

2. SUMMARY

- 2.1 The Anti-Social Behaviour, Crime and Policing Act 2014 brought in a new power for local authorities to deal with anti-social behaviour problems in a geographical area by imposing conditions on the use of an area. The aim is to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 2.2 PSPO's replace a number of existing legal provisions including Designated Public Place Orders, Gating Orders and Dog Control Orders. It is no longer possible to make Orders under these various forms of legislation and any new orders made to control such activities should be made as PSPOs.
- 2.3 PSPOs can prohibit a wider range of behaviours than previous legislation and can be used to control a number of anti-social activities within the same order. PSPO's are subject to a consultation and notification process with stakeholders and must satisfy the required legal test before a Local Authority makes an Order and may be appealed in the High Court within 6 weeks of an order being made. An appeal may be made by an 'Interested Person' i.e. a person who lives, works in, or regularly visits the 'Restricted Area'.
- 2.4 This report outlines the rationale for introducing a PSPO restricting vehicular access over public highway at Cefn Brithdir and recommends Cabinet approval of making such an Order. If approved by Cabinet, officers will proceed with the installation of barriers across the public highway and associated works restricting vehicle access on to Cefn Brithdir.

3. LINKS TO STRATEGY

- 3.1 The proposal complements a number of goals within the Wellbeing of Future Generations (Wales) Act 2015, in particular in supporting the 'Resilient Wales' goal by protecting and enhancing the natural environment; the 'Wales of cohesive communities' goal by creating attractive and safe communities; and 'A Globally responsible Wales' goal through improving the economic, social, environmental and cultural wellbeing of the local community.

- 3.2 The proposal also supports the implementation of the Environment (Wales) Act 2016 in particular Part 1: Sustainable Management of Natural Resources through managing the landscape in a more proactive, sustainable and joined up way; and Part 2: Collection and Disposal of Waste through helping the Council better target its resources in addressing fly-tipping.
- 3.3 The proposal also complements the Caerphilly Public Services Board's draft Well-being objective to increase the contribution that the environment makes to the health and well-being of our residents. It is also consistent with the sustainable development principle as defined within the Wellbeing of Future Generations (Wales) Act 2015 and the 5 Ways of Working, through collaborating with and involving local people in decision making, and by taking a long term approach to preventing anti-social behaviour on Cefn Brithdir through an integrated approach. The proposal also directly delivers the Cwm a Mynydd Rural Development Programme's Local Development Strategy by working with communities to protect and enhance upland areas.

4. THE REPORT

- 4.1 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 allows a local authority to make a PSPO relating to the activities carried out or likely to be carried out, in a public place if it is satisfied on reasonable grounds that two conditions are met:
- (i) activities are having a detrimental effect on the quality of life of those in the locality, or it is likely that they will do;
 - (ii) that the activities are of a persistent or continuing nature, are unreasonable and justify the restrictions imposed by the order.
- 4.2 As a minimum, a PSPO must set out:
- (i) what the detrimental activities are
 - (ii) what is being prohibited and/or required, including any exemptions
 - (iii) the area covered
 - (iv) the consequences of the breach
 - (v) the period for which it has an effect
- 4.3 PSPOs subsist for a maximum of 3 years following which consideration must be given as to whether they should be extended, renewed or varied. A shorter time period can be set depending on the issue the PSPO is intended to control. The proposed Order is intended to cover the maximum three year period.
- 4.4 The Council can make a PSPO on any public space within its own area. The definition of a public space is wide and includes any place to which the public, or any section of the public, has access on payment or otherwise as a right by virtue of express or implied consent, for example a shopping centre.
- 4.5 Before making a PSPO a Council must consult with stakeholders including the local police via the Chief Officer and the Police and Crime Commissioner. Also any community representatives that they think appropriate for example a residents association, as well as individual residents affected and other users or groups. Before making an Order the Council must publish a draft order in accordance with the required Regulations.
- 4.6 A PSPO can be drafted from scratch based on an individual issue being faced in a particular public space and can include multiple restrictions and requirements in one order e.g. prohibit alcohol, and placing requirements on individuals carrying out certain activities.

- 4.7 Councils should ensure that the measures are necessary to prevent the detrimental effect on those in the locality and reduce the likelihood of the detriment effect continuing or recurring.

The Proposal

- 4.8 Caerphilly County Borough Council received over 37 formal complaints regarding fly-tipping on the Cefn Brithdir area of the Gelligaer and Merthyr Common in 2017. Following these complaints and detailed documentary evidence received from a member of the public (Appendix 1), CCBC Community and Leisure Services, CCBC Environmental Health, Countryside Service, Cwm a Mynydd Rural Development Programme, and partners including Natural Resources Wales, the Gelligaer and Merthyr Commoners Association, KJ Services Ltd. and Biffa Waste Services Ltd. Trecatti Landfill Site, undertook a multi-agency clean-up day on Cefn Brithdir in early November removing over 10 tonnes of dumped material.
- 4.9 This dumped material represents a danger to the public and the livestock on the Common and is an issue that cannot be effectively managed without additional measures. Following the multi-agency clean-up day (and ongoing cleansing by CCBC Officers), further waste has again been dumped across Cefn Brithdir on almost a daily basis and recorded and reported by a member of the public.
- 4.10 Against this background, consideration has been given to the introduction of a PSPO on the Cefn Brithdir ridge of the Gelligaer and Merthyr Common and the installation of two barriers and associated works at the southern and northern entrances along an adopted Public Highway (see Appendix 2).
- 4.11 However, the gating of a public highway consisting of a carriageway is not generally permitted, since it would be at odds with the public right to pass and re-pass over the highway. PSPO's can be made for the purpose of restricting public rights of way and highways are covered by s.65 of the Anti-Social Behaviour, Crime and Policing Act 2014. This can include the installation of barriers operated by the Local Authority. Such orders can only be made in respect of highways which are not listed within s.65:
- (a) a special road;
 - (b) a trunk road;
 - (c) a classified or principal road;
 - (d) a strategic road;
 - (e) a highway in England of a description prescribed by regulations made by the Secretary of State;
 - (f) a highway in Wales of a description prescribed by regulations made by the Welsh Ministers.
- 4.12 Since the highway affected is classed as a 'Rural Lane', it is possible that a PSPO could be made.
- 4.13 Additionally, a local authority cannot make a PSPO under this section without considering:
- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
 - (b) the likely effect of making the order on other persons in the locality;
 - (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

Consultation

- 4.14 In light of the above, relevant departments within the Council as well as the local community and other stakeholders including Merthyr Tydfil County Borough Council, have been consulted on the likely effect of making the Order. In addition to local residents who use the area, Cefn Brithdir is also used legitimately by local paragliding group, horse riders, walkers and cyclists,

the Civic Aviation Authority as well as the Gelligaer and Merthyr Commoners Association and Dowlais Top Investment Company Ltd (the landlord). Additionally, in consulting with the contractors working for the Civil Aviation Authority who maintain the aircraft beacon located on Cefn Brithdir, they are fully supportive of the proposals as the access track to the beacon is regularly blocked with fly-tipped material. It is proposed that all these users will have a key to open the barrier.

- 4.15 In consulting with local residents, many felt that fly-tipping was a significant issue and that a barrier could help address the problem. Likewise, following discussions with Gwent Police, they are fully aware of the issues and are supportive of the proposals. The Gelligaer and Merthyr Commoners Association proposed the idea in the first instance and having consulted with the full membership and those directly affected, they are fully supportive of it being implemented. In discussions with the local paragliding group, they have a similar set up in other areas whereby they access launching areas that have restricted vehicle access and are in support of the Order. In discussions with local horse riders, they are in support of the proposals as the fly tipping is a danger to them and their horses.
- 4.16 As a result of these consultations, it is proposed that the introduction of the PSPO for a 3 year period will be of benefit to residents in the area and help reduce anti-social behaviour and fly-tipping on Cefn Brithdir. There is also the potential to see this approach as a 'pilot' to address similar issues in other parts of the county borough and elsewhere and develop good practice. Merthyr Tydfil County Borough Council is in support of the proposal and is looking to replicate the approach used on Cefn Brithdir if it proves successful.

Potential Issues

- 4.17 The introduction of the PSPO may be objected to by some residents, such as those who currently use Cefn Brithdir for illegal off road vehicle driving. Vans transporting off road vehicles drive along the Rural Lane, park on the Common and then illegally use off road vehicles on the Common itself. It is an offence to use vehicles on the Common and so the Order, whilst not fully stopping all illegal off-road vehicles on the Common, will at least help reduce and discourage the activity.
- 4.18 In addition to illegal off-road vehicle users objecting to the Order, other residents may object to its introduction on the grounds of unreasonable restriction of vehicle access. The road itself is a designated Rural Lane and is unsuitable for most vehicles. Monitoring of the Lane by officers indicates that regular users include the Commoners (requiring access to tend livestock and access properties), the local paragliding club, horse riders, cyclists and walkers; all of whom will still be able to access. Similarly, emergency services may have a need to access the site and so keys will be provided to them.
- 4.19 Other regular users (evidenced by the frequency and scale of fly-tipping), are those people responsible for dumping the waste on the Common and the main purpose of the Order is to stop these using the Lane. It is likely that the Order could displace fly-tipping to other areas, however, by reducing the number of areas available for fly-tipping through these types of measures, the Order could assist in enabling the Council to focus its reducing resources on a smaller number of areas targeted by fly-tippers.
- 4.20 Officers are aware that there may be currently unknown 'legitimate' users of the Common who may be adversely affected by an Order. However, reasonable steps have been taken to identify such users and Officers will continue work with residents and groups to identify and respond to potential issues during the 3 year trial through monitoring and reviewing the Order. Fundamentally, the purpose of the Order is not to stop legitimate users of the Common doing so; it is to stop anti-social behaviour, primarily fly-tipping and illegal off-road vehicles abusing the landscape.

5. WELLBEING OF FUTURE GENERATIONS

- 5.1 The proposal complements a number of goals within the Wellbeing of Future Generations (Wales) Act 2015, in particular in supporting the 'Resilient Wales' goal by protecting and enhancing the natural environment; the 'Wales of cohesive communities' goal by creating attractive and safe communities; and 'A Globally responsible Wales' goal through improving the economic, social, environmental and cultural wellbeing of the local community.

6. EQUALITIES IMPLICATIONS

- 6.1 Cefn Brithdir is an open access area of the Cadw-designated Historic Landscape of Gelligaer and Merthyr Common. Unfortunately due to the fly-tipping across the area, and off-road vehicles using the area the landscape is degrading creating a negative perception of the area and the communities.
- 6.2 The proposals will help reduce fly-tipping on Cefn Brithdir and by being led by the community will support 'Inclusive Engagement and Participation' and 'Corporate Compliance' Objectives of the Council's Equalities and Welsh Language Objectives and Action Plan. Likewise, the proposals could help create an improved living environment for visitors and residents.
- 6.3 As has been noted above, officers will work with residents and provide a telephone number at the barrier for people to contact should they need access. The barriers will only stop vehicles from accessing Cefn Brithdir along the Rural Lane, walkers, cyclists and horse riders will still have access. Additionally, in order to reduce any adverse impacts of the Order, for example access by disabled users, keys will be provided for these residents and any others which require 'legitimate' access.

7. FINANCIAL IMPLICATIONS

- 7.1 The proposed costs of the PSPO are minimal other than officer time and the costs of advertising the notices, which will be covered from existing budgets.
- 7.2 Should the introduction of the PSPO be approved by Cabinet, the cost of installing the barriers will be borne by the Gelligaer and Merthyr Commoners Association with any maintenance costs covered by the Green Spaces and Transport Service.

8. PERSONNEL IMPLICATIONS

- 8.1 There are no personnel implications associated with this report.

9. CONSULTATIONS

- 9.1 All responses from consultations have been incorporated in the report.

10. RECOMMENDATIONS

- 10.1 Cabinet is asked to endorse the proposal to introduce a Public Space Protection Order to restrict vehicle access on to Cefn Brithdir for a period of 3 years; and the restrictions be included in a draft Order and the statutory process including formal consultation is commenced with the outcome reported back to Cabinet for consideration/or if there are no objections the decision to make the Order be delegated to the relevant Head of Service.

11. REASONS FOR THE RECOMMENDATIONS

11.1 To reduce fly-tipping and anti-social behaviour on Cefn Brithdir.

12. STATUTORY POWER

12.1 Local Government Acts 1972 and 2000, Anti-Social Behaviour Crime and Policing Act 2014.

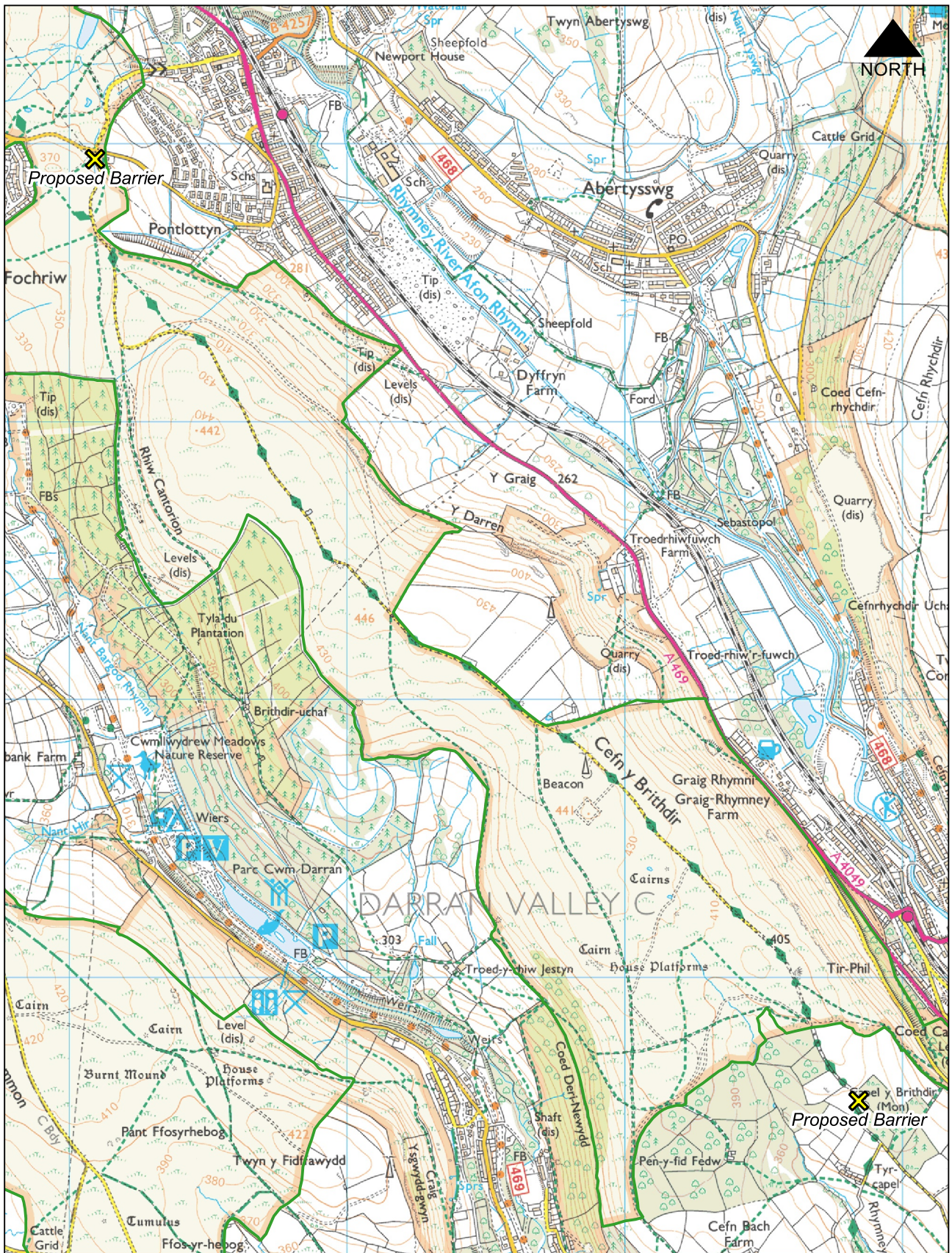
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Consultees: Cllr David Poole – Leader of the Council
Cllr Sean Morgan – Deputy Leader and Cabinet Member for Economy, Infrastructure, Sustainability & Wellbeing of Future Generations Champion
Cllr Nigel George – Cabinet Member for Neighbourhood Services
Cllr Mrs Eluned Stenner – Cabinet Member for Environment and Public Protection
Cllr Carl Cuss – Cabinet Member for Social Care and Wellbeing
Cllr Mark Evans – Ward Member New Tredegar
Cllr David Hardacre – Ward Member Darren Valley
Cllr Gaynor Oliver – Ward Member Pontlottyn
Christina Harrhy – Interim Chief Executive
Mark S. Williams – Interim Corporate Director Communities
Rob Hartshorn – Head of Public Protection
Marcus Lloyd – Acting Head of Engineering Services
Richard M Harris – Acting Deputy Monitoring Officer
Richard Crane – Senior Solicitor
Lisa Lane – Corporate Solicitor
Mike Eedy – Finance Manager
Mike Headington – Green Spaces and Transport Services Manager
Phil Griffiths – Green Spaces and Cemeteries Manager
Lyndon Ross – Senior Environmental Health Officer
Tony White – Waste Strategy & Operations Manager
Rhodri Lloyd – Special Projects Officer
Graham Owen – Waste Operations Supervisor, Upper Rhymney Valley
Gareth Richards – Highways Maintenance Manager
Gavin Barry – Senior Assistant Engineer
Martin Sprackling-Jones - Assistant Engineer
Anwen Cullinane – Senior Policy Officer (Equalities & Welsh Language)
PC Simon James – Gwent Police

Appendices:

Appendix 1 – Photographs of fly-tipping on Cefn Brithdir

Appendix 2 – Proposed locations of barriers on Cefn Brithdir









(Photo from 2016)













**Fly-tipped waste found and photographed on Gelligaer Common
at Cefn y Brithdir (the ridge between the Rhymney and
Darran valleys) on Saturday 3rd June 2017.**

Aluminium drinks cans.

Aerosols - various.

Asbestos sheeting.

Building waste.

Building materials - resin, plaster.

Bedding material and blankets.

Bottles.

Buckets.

Black bag waste.

Baby chair.

Chair.

Cardboard.

Childrens toys - various.

Carpets.

Cups and mugs - various.

Chemical containers.

Council waste bins.

Childs bicycle.

Clothing.

Car bumper.

Chairs - a variety.

Car tyres - many.

Drinks cans.

DVD's.

Dish washer.

Fencing.

Fridge Freezers.

Garden materials - plant pots etc.

Housing tiles.

Hose pipe.

Mattresses.

Microwave Oven.

Metal spring mattress.

Plastic.

Pillows.

Pram.

Paint containers.

Roof tiles.

Shoes.

Stone blocks.

Settee.

Televisions - CRT.

Television - LCD.

Trees and bushes.

Wood.

Wood flooring.

Wooden boards.

Wooden drawers.

Washing machine.