

| | |
|-------------------------------------|---|
| Report to: | Cabinet |
| Date: | 9 February 2022 |
| Title: | Eastbourne Public Spaces Protection (Anti-social Driving) Order 2022. |
| Report of: | Tim Whelan, Director of Service Delivery. |
| Cabinet member: | Councillor Rebecca Whippy, Cabinet member for disabilities and community safety |
| Ward(s) | Devonshire, Meads, Sovereign, St Anthony's. |
| Purpose of report | <p>To enable Cabinet to consider a proposal to introduce a Public Spaces Protection Order (PSPO) to address the incidence of anti-social driving in a number of locations across Eastbourne.</p> <p>To approve the draft Public Spaces Protection Order for consultation, and authorise the Director of Service Delivery to undertake the required statutory consultation, amend as necessary and subsequently make the definitive Order.</p> |
| Officer recommendation(s): | <p>Cabinet is recommended to:</p> <ol style="list-style-type: none"> 1. Approve, as a draft only, the Public Spaces Protection Order (the Order) as set out in Appendix B. 2. Delegate authority to the Director of Service Delivery: <ol style="list-style-type: none"> i. to carry out statutory consultation on the draft Order; ii. if necessary, to amend the draft Order in light of consultation responses and seek approval from the Lead Cabinet Member for Disabilities and Community Safety; iii. to make and publicise the definitive Order in accordance with relevant legislation; iv. to put in place arrangements, including with external parties, to enforce the Order; and v. to keep the Order under review; to bring to Cabinet any variation considered necessary to the Order during its three-year term; and at the end of that term extend the period for which it has effect, if considered necessary on statutory grounds. |
| Reason for recommendation(s) | Requesting a decision on approval of the draft Order and delegation of specified authorities to the Director of Service Delivery. |

Contact:**Name: Oliver Jones.****Post title: Lead, Housing, Homelessness & Community Safety.****Email: Oliver.Jones@lewes-eastbourne.gov.uk****Telephone number: 07939 578 415.****1. Introduction.**

- 1.1 The incidence of anti-social driving has been an increasing concern for local residents, and reports to Sussex Police evidence a year-on-year upward trajectory of incidents. Most commonly these involve reports of poor, dangerous and aggressive driving, speeding, illegal manoeuvres, racing, and excess noise from vehicles.
- 1.2 In November 2021 full Council unanimously passed a motion to address the incidence of anti-social driving in the town, and this paper asks Cabinet to consider proposals for the introduction of a Public Spaces Protection Order (PSPO) in support of this.
- 1.3 The legislation underpinning PSPOs is Part 4 (i.e. the community protection provisions) of the Anti-Social Behaviour, Crime & Policing Act 2014 (“the 2014 Act”), which introduced new powers to tackle anti-social behaviour. The Council has previous experience of seeking the use of such orders and active PSPOs are already in place setting out controls in relation to dogs and the consumption of alcohol in the town centre. A large number of other local authorities across England have used PSPOs to control various behaviours and activities, including those associated with anti-social driving, such as aggressive driving, speeding, car meetings, and the control of noise from vehicles.

2. Legislative background to Public Spaces Protection Orders.

- 2.1 The 2014 Act gave local authorities the power to implement a PSPO if satisfied on reasonable grounds that two conditions have been met. The first condition is that:
 - Activities carried out 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 out in a public place within that area and that they will have such an effect.
- 2.2 The second condition is that the effect, or likely effect, of the activities:
 - Is, or is likely to be, of a persistent or continuing nature.
 - Is, or is likely to be, such as to make the activities unreasonable, and justifies restrictions imposed by the order.
- 2.3 In order to meet these requirements it is crucial that the PSPO is clear in its remit, by specifying the activities that it prohibits and the extent of the public spaces to which it applies. The Council can then, with the assistance of enforcement by Sussex Police, implement the prohibitions and/or requirements it contains to help reduce the detrimental impact on members of the public and the wider community.

- 2.4 PSPOs can apply for a maximum of three years. At any point before expiry, the Council can extend a PSPO by up to three years if they consider it is necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local police and any other community representatives they think appropriate before doing so. Subject to meeting these requirements, an Order may be extended for a period of three years more than once.
- 2.5 Failure to comply with either a prohibition, or requirement, contained in a PSPO is a criminal offence. A breach of the Order can incur a fixed penalty notice of up to £100, or a fine not exceeding £1,000 upon summary conviction.

3. The anti-social driving PSPO proposal.

- 3.1 Anti-social driving has been a growing issue of local concern for some time, amongst both members of the public and the policing teams here in Eastbourne. Its incidence is commonplace and, since November 2020 the local policing team in Eastbourne has recorded 425 reports of anti-social driving.
- 3.2 Appendix A provides a summary of the reports received in the year to November 2021. It shows that the most commonly reported concerns relate to poor and dangerous driving, aggressive driving, speeding and excess noise from vehicles. A further set of issues including racing, stunts, illegal manoeuvres, and off road activity, also feature prominently in reports. Sussex Police are aware that locations in Eastbourne are routinely advertised as a meeting point for drivers of both cars and motorcycles, and of particular concern are impromptu meetings of car enthusiasts, many of which take place at Beachy Head. It is these impromptu gatherings, rather than the regular meetings of 'car clubs' in Eastbourne, the representatives of which local police have a good level of engagement with, that are the focus of the relevant aspects of these proposals.
- 3.3 Although reports of anti-social driving are received from across the town, the data analysis presented by Sussex Police suggests that its prevalence is focussed across a number of locations, with the most number of reports relating to Beachy Head, Lottbridge Drive, the parades running along the seafront and Seaside Road, amongst the most affected. The analysis of reports also shows that the issues are seasonally affected, with around 40% more reports recorded between April and September, than in the remaining months of the year. In 2021, April (53), May (48) and June (53) are the months when most reports were received. Appendix A also provides a summary of reports by location (top ten locations) and month.
- 3.4 Sussex police are leading the calls for the new PSPO, in order to enhance and supplement powers contained in the Road Traffic Act 1988, and the Section 59 powers made available in the Police Reform Act 2002. The Section 59 powers allow officers to issue warnings if a vehicle is being driven in a careless or inconsiderate manner and is causing, or is likely to cause, alarm, distress or annoyance to members of the public. Despite being an extremely useful tool (Sussex Police issued Section 59 warnings 79 times in Eastbourne during the year to November 2021), the definition set out in the Act used is broad, subjective and does not always lend itself to issuing warnings for some of the anti-social driving incidents witnessed.

- 3.5 The implementation of a PSPO has a number of key advantages that could help local police tackle a broader range of issues, such as noisy vehicles, abuse emanating from vehicles and vehicle meetings; provide a unified way of addressing these alongside more commonplace offences such as speeding; and provide officers with a means of issuing immediate fixed penalty notices of up to £100, in relation to beaches of the order. This is likely to act as a clear deterrent, whilst the presence of an order in itself provides a strong signal that antisocial driving is something that residents, the council and local police will take robust action to deal with.
- 3.6 The wording of the PSPO, a draft of which is set out in Appendix B, would seek to prohibit a specific list of activities most commonly featuring in reports of anti-social driving. As follows:
- Revving of engine(s) (as to cause public nuisance);
 - Repeated, sudden, or rapid acceleration (as to cause public nuisance);
 - Racing or speeding;
 - Performing stunts (including but not limited to performing doughnut manoeuvres, drifting, skidding, handbrake turns or wheel spinning);
 - Sounding horns (as to cause public nuisance);
 - Playing music from a vehicle (as to cause public nuisance);
 - Making modifications to the vehicle in order for it to make excessive sound, including but not limited to, the removal of exhaust silencers and using racing modes on public roads (as to cause public nuisance);
 - Driving on any public footpath, pedestrian or other area not designed for such motorised vehicles;
 - Causing damage or presenting a risk of damage to property whilst using a vehicle;
 - Shouting or swearing at, or abusing, threatening, or otherwise intimidating (including by the use of sexual language or making sexual suggestions) another person from a vehicle;
 - Making abusive gestures to another person from a vehicle; and
 - Causing obstruction on a public highway, whether moving or stationary, including in convoy.
- 3.7 In order to be reasonable, both as a proportionate set of prohibitions and in regard to the police's capacity to enforce and manage them, the proposals limit the area to which the order applies to those roads most affected by the issues of concern, along with key roads that connect them. In line with the analysis these include: Beachy Head Road, Prince William Parade; Royal Parade; Marine Parade; Grand Parade; King Edwards Parade; Dukes Drive; Upper Dukes Drive; Warren Hill, stretches of East Dean Road; Seaside; Seaside Road; and Lottbridge Drove. These roads represent the 'top five' locations with the highest levels of recorded cases and together account for over a third (36%) of all the reports received in Eastbourne over the past year (year to November 2021). For the purpose of the PSPO, these identified stretches of road are known as 'restricted areas' and are shown on the accompanying map set out in Appendix C. The map will be an appendix to the Order once made.
- 3.8 Some stretches of East Dean & Beachy Head Road, along with Gilbert Road in East Dean that fall within Wealden District Council (WDC), experience similar issues and including these would present a more rounded solution to the problems at hand. However, legislation dictates that a separate PSPO put in place by WDC is the only way of achieving this. Whilst we are engaging WDC and keeping them

informed of our proposals, our plan is to press ahead with the approval and consultation needed to get the EBC PSPO in place before summer 2022.

- 3.9 Given that the data shows that there is less anti-social driving during winter months, again from both a proportionality and enforcement perspective, it seems reasonable to propose that the PSPO should only run between 1 April to 31 October each year.

4. Consultation.

- 4.1 Subject to Cabinet approval of the recommendations, the Director of Service Delivery would carry out a statutory consultation exercise to elicit the views of relevant parties on the proposed Order.

- 4.2 The Council must consult with the following bodies on the proposals:

- The Chief Officer of Sussex Police.
- The Office of the Sussex Police and Crime Commissioner.
- Landowners of the affected areas, which in this instance would include East Sussex County Council due to their responsibility for highways, and the South Downs National Park Authority (SDNPA).
- Any community representatives the local authority considers appropriate.

- 4.3 Plans for the consultation would include the creation of an online survey, to meet the obligation to consult other local landowners, residents, community representatives, as well as the wider public. Notification of the consultation will be via the database of local residents and businesses who have opted to be contacted directly about the Council's plans and proposals, as well as being promoted online and through local press releases. Given the potential impact of the proposals, it is recommended that the consultation runs for six weeks.

- 4.4 The Director of Service Delivery would have regard to consultation responses in deciding whether the draft PSPO requires amendment. The Director would then seek approval from the Lead Member for Disabilities & Community Safety, prepare the definitive PSPO, then bring it into force in accordance with the 2014 Act.

5. Implementation & enforcement.

- 5.1 Subject to approval, implementation of the PSPO is anticipated to take place by June 2022. This will provide the required time to plan and complete the consultation, put in place the required legal notifications (a public notice of the order must be published on the Council's website before it can come into force) and implement the necessary enforcement processes.

- 5.2 Signage setting out the nature of the order and the kinds of activities it prohibits will be required in the locations covered by the order. The signs help enforce the order and reduce the risk of mitigation pleas from those found to be in breach.

- 5.3 Although Council officers have the legal authority to enforce PSPOs, Sussex Police have agreed that enforcement of this order will be led by Police Officers (PCs) and Police Community Support Officers (PCSOs), as only they have the powers required to stop moving vehicles. PCs and PCSOs will be responsible for giving warnings, issuing fixed penalty notices, and gathering any evidence related to

serious breaches of orders that may be liable to prosecution. Section 68(1) and section 69(2) of the 2014 Act confers on police constables the power to issue a fixed penalty notice for failing to comply with a PSPO.

- 5.4 In line with this approach, Council officers will not be involved in any frontline enforcement, but will be responsible for following up the non-payment of fines and leading prosecutions relating to serious breaches and will offer support by promoting the existence of the order and monitoring the performance of activities in relation to it.
- 5.5 It is important to note that in order to play a successful part of the strategy for helping tackle anti-social driving, the PSPO will need to be actively enforced, as to act, officers must witness breaches of the prohibitions it contains. As such, the order will take its place as one of a range of tools, supplementing rather than replacing the use of existing legislative powers by the police. The consideration of speed restrictions and road calming measures, that could help put in place a rounded solution to the issues at hand, may also play a vital role in rolling out measures helping to address anti-social driving in the future.

6. Corporate plan and council policies.

- 6.1 The introduction of the proposed PSPO supports the wider goals set out in the Council's Corporate Plan (2021-24), which commits to identifying and addressing issues, such as anti-social driving, in order to help local communities feel safer. The Eastbourne & Lewes Community Safety Partnership, of which the Council is a key member, identifies tackling anti-social driving as one of its six key priorities.

7. Financial appraisal.

- 7.1 The cost associated with the consultation and subsequent implementation and monitoring of the PSPO proposed in this report will be met from existing budgets. There is no recurring impact on the General Fund. As enforcement activity will be led by Sussex Police, the order will not place any additional resource, or have budgetary implications for Neighbourhood First or other Council frontline teams.
- 7.2 *Finance Director consulted on 29/01/2022.*

8. Legal Implications.

- 8.1 The Council must be satisfied on reasonable grounds that the conditions set out in paragraphs 2.1 and 2.2 above are met before it makes the PSPO recommended in this report. The "reasonable grounds" are that the order is considered necessary for tackling the anti-social driving identified; and that the nature and scope of prohibitions specified in the order are proportionate to the scale and seriousness of the problem.

Proportionality can be achieved by limiting the number of roads covered by the order to those most seriously affected; and by applying the order only during those months when the anti-social behaviour is most likely to occur.

- 8.2 A further requirement is that in deciding whether to make a PSPO and what it should include, the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights. It is not considered that either of these Convention Rights will be infringed by the proposed PSPO.
- 8.3 A PSPO must be publicised in accordance with regulations laid down in statutory instrument no. 2014/2591. These provisions are reflected in the body of this report.
- 8.4 A PSPO must include the required information about how its validity may lawfully be challenged.
- 8.5 It would be advisable for the Council to enter into an agreement with Sussex Police over the arrangements for enforcing the PSPO, so that each party is clear on its responsibilities. The data sharing agreement already in place will allow the parties securely to exchange and process personal data relating to individuals issued with a fixed penalty notice and/or prosecuted for breaching the order.

8.6 *Lawyer consulted on 22.12.21.* *Legal ref: 010434-EBC-OD*

9. Risk management implications.

- 9.1 A number of risks were identified during the process of producing the proposals - as follows:
- 9.2 Risk 1- The PSPO requires active enforcement, and it is possible that during times where active enforcement is not operational, incidents of anti-social driving will persist.

Mitigation – implementation of the PSPO will be restricted to those times / areas / locations across the town that data analysis shows are most commonly affected by reported incidents. This will help the police better enforce the prohibitions the order contains. In addition, Sussex Police will continue to deploy routine patrols, enforcement action and specific operations to address anti-social driving across the rest of the borough.

- 9.3 Risk 2- Implementation of the PSPO may lead to the displacement of anti-social driving to areas of the Borough not covered by the order, or to adjacent districts and boroughs.

Mitigation - reports of anti-social driving will be monitored and variations of the locations covered by the PSPO may be periodically sought, in response to any emerging trends. Routine enforcement using existing police powers will also help mitigate any displaced activity across the Borough.

- 9.4 Risk 3 – The PSPO proposals may meet opposition from members of the public, organised car clubs, or 'routine' gatherings of car enthusiasts that take place each week in Eastbourne.

Mitigation – the consultation will provide general reassurance about the proportionality and appropriateness of the proposals. It will also make clear that the

prohibition it contains will not apply to car gatherings or rallies where no incidents of prohibited behaviours take place, for example as they might apply to groups of classic car drivers or motorcyclists meeting for organised drives. Sussex Police will seek to actively engage the weekly gathering of car enthusiasts in the town throughout the consultation period.

10. Equality analysis.

10.1 The equality impact assessment process has been followed in regard to these proposals. Completion of the initial questionnaire established that there were no equality impacts on protected groups, so a full equality impact analysis has not been completed in regard to these proposals.

11. Environmental sustainability implications.

11.1 There are no environmental sustainability implications associated with these proposals, except that a reduction in engine revving, harsh acceleration and speeding should produce fewer harmful emissions.

12. Conclusion.

12.1 The impact that anti-social driving is having on the local community in Eastbourne cannot be underestimated, and residents report that related issues are having a direct effect on the quality of their lives. Whilst the significant resources that local police have dedicated to managing the problem over the summer months have had a positive impact, Sussex Police view the PSPO as an important additional tool, that can act as a deterrent and bolster enforcement activity in the years ahead.

12.2 The proposals and recommendations outlined in this report set out a clear approach to putting in place a proportionate order that seeks to address the specific anti-social driving activities experienced across the town.

13. Appendices.

13.1 The following appendices are attached to this report:

- Appendix A - Sussex Police summary of reported incidents.
- Appendix B - Draft Eastbourne Borough Council Anti-social Driving Public Spaces Protection Order.
- Appendix C – Map(s) of restricted areas.

14. Background papers.

14.1 The following background papers are associated with this report:

- Anti-social Behaviour, Crime & Policing Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted/data.htm>
- Anti-social Behaviour, Crime and Policing Act 2014: anti-social behaviour powers – statutory guidance for frontline professionals: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956143/ASB_Statutory_Guidance.pdf

Appendix A - Sussex Police summary of reported incidents.

Report category

| Reported issue | No. reports |
|--|-------------|
| Poor, dangerous or aggressive driving | 244 |
| Car racing, stunts or illegal manoeuvres | 70 |
| Speeding | 48 |
| Noisy / noise from vehicle | 23 |
| Vehicle stop | 22 |
| Off road driving | 18 |
| Total | 425 |

Seasonality

| Month | No. reports |
|--------------|-------------|
| January | 31 |
| February | 28 |
| March | 33 |
| April | 53 |
| May | 48 |
| June | 53 |
| July | 40 |
| August | 30 |
| September | 26 |
| October | 29 |
| November | 30 |
| December | 24 |
| Total | 425 |

| Period | No. reports |
|--------------|-------------|
| Apr - Sep | 250 |
| Oct - Mar | 175 |
| Total | 425 |

Location

| Road | No. reports |
|--|-------------|
| Beachy Head Road | 40 |
| Lotterbridge Drove | 38 |
| Seafront Parades (King Edwards / Grand / Royal / Prince William) | 36 |
| Seaside Road | 28 |
| East Dean Road | 10 |
| Cross Levels Way | 9 |
| Kings Drive | 8 |
| Willingdon Drove | 7 |
| Pevensy Bay Road | 6 |
| Sevenoaks Road | 5 |
| Total | 187 |

Appendix B - Draft Public Spaces Protection Order.

Eastbourne Borough Council Anti-social Behaviour, Crime and Policing Act 2014 Part 4: Community Protection

Eastbourne Public Spaces Protection (Anti-social Driving) Order 2022

Eastbourne Borough Council (“the Council”), in exercise of its power under section 59(1) of the Anti-social Behaviour, Crime and Policing Act 2014 (“the Act”), being satisfied that the conditions required by sections 59(2) and 59(3) of the Act have been met, and having complied with the requirements of section 72 of the Act, makes the following public spaces protection order (the “Order”):

Citation, commencement and application

1. This Order shall be known as the Eastbourne Public Spaces Protection (Anti-social Driving) Order 2022.
2. This Order shall come into force on [*date*] and shall have effect for a period of three years unless discharged under section 61 or extended under section 60 of the Act.
3. This Order applies from 1 April to 31 October in the areas detailed in the Schedule to this Order (“the Restricted Areas”).

Prohibited Activities

4. The Schedule to this Order has effect.
5. By this Order, a person shall be guilty of an offence if, in any of the Restricted Areas, and without reasonable excuse, he or she commits any of the activities specified in paragraph 6.
6. The activities prohibited by this Order are:
 - (i) Revving of engine(s) (as to cause public nuisance);
 - (ii) Repeated, sudden, or rapid acceleration (as to cause public nuisance);
 - (iii) Racing or speeding;
 - (iv) Performing driving stunts (including but not limited to performing doughnut maneuvers, drifting, skidding, handbrake turns or wheel spinning);
 - (v) Sounding horns (as to cause public nuisance);
 - (vi) Playing music from a vehicle (as to cause public nuisance);
 - (vii) Making modifications to the vehicle in order for it to make excessive sound, including but not limited to the removal of exhaust silencers and using racing modes on public roads (as to cause public nuisance);
 - (viii) Driving on any public footpath, pedestrian or other area not designed for such motorised vehicles;
 - (ix) Causing damage or presenting a risk of damage to property whilst using a vehicle;
 - (x) Shouting or swearing at, or abusing, threatening, or otherwise intimidating (including by the use of sexual language or making sexual suggestions) another person from a vehicle;
 - (xi) Making abusive gestures to another person from a vehicle; and
 - (xii) Causing obstruction on a public highway, whether moving or stationary, including in convoy.

Enforcement

- 7. A person guilty of an offence under paragraph 5 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Exception

- 8. The prohibition specified by paragraph 6(xii) shall not apply to any person driving a motor vehicle taking part in a funeral procession.

Validity

- 9. If any person who lives in or regularly works or visits the Restricted Areas wishes to question the validity of this Order on the grounds that the Council had no power to make it or that any requirement of the Act has not been complied with in relation to this Order, he or she may apply to the High Court within six weeks from the date on which this Order is made.

GIVEN under the COMMON SEAL of EASTBOURNE BOROUGH COUNCIL
this day of 2022.

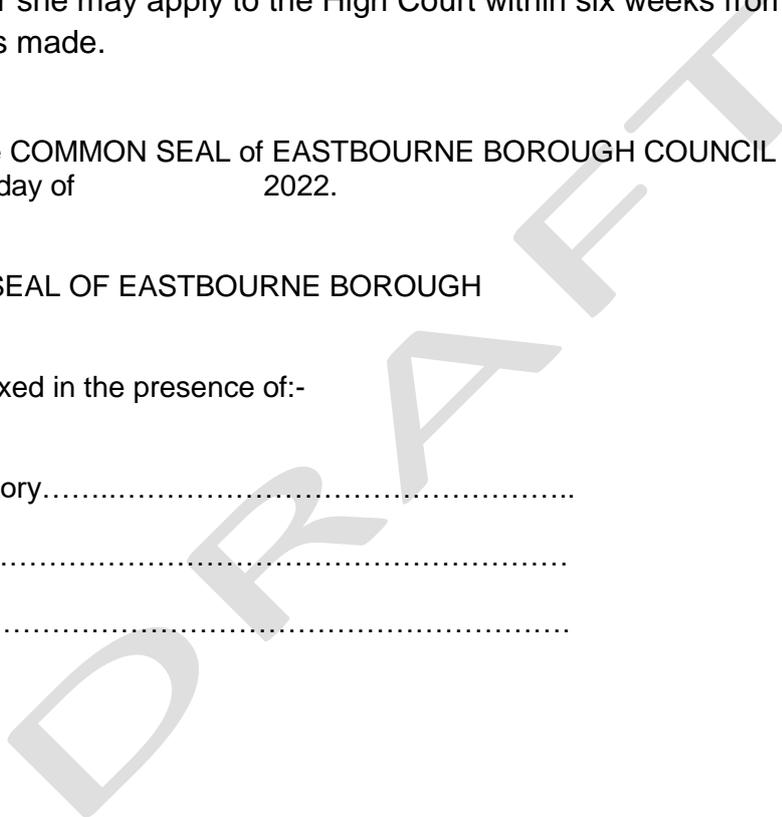
THE COMMON SEAL OF EASTBOURNE BOROUGH
COUNCIL

was hereunto affixed in the presence of:-

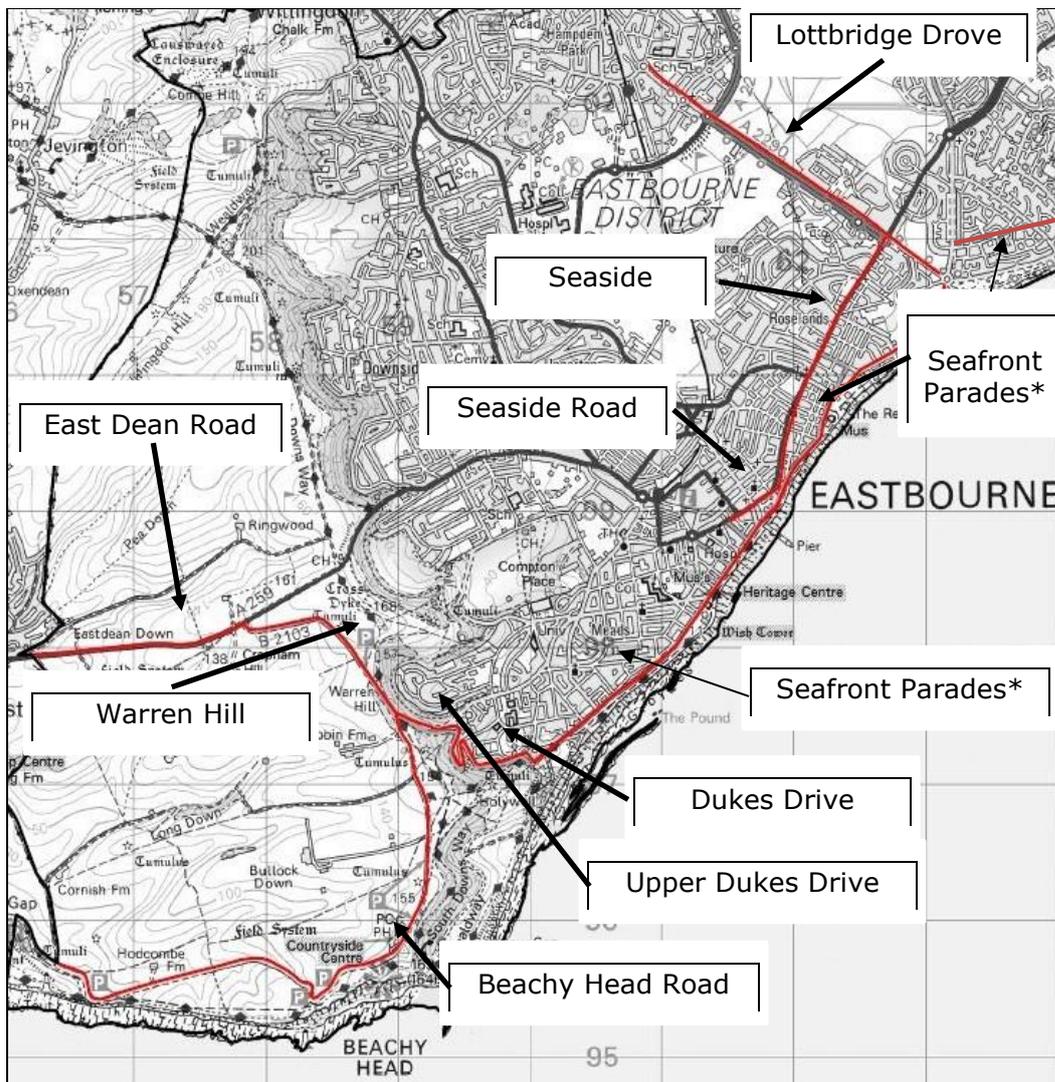
Authorised signatory.....

Print Name.....

Job Title.....



Appendix C / Schedule – Map of proposed restricted area [roads]



*Seafront Parades include – King Edward’s Parade; Grand Parade; Marine Parade; Royal Parade; Prince William Parade.