

Board/Committee:	Full Council
Date of meeting:	22 June 2022
Title:	Seashore Byelaws
Author:	Borough Solicitor and Monitoring Officer
Status:	For Decision

Purpose

This report provides an update to the Council as to the current status of the Seashore Byelaws following receipt of the response from the Secretary of State and end of the formal consultation period. The report also recommends that the Council approve the proposed Seashore Byelaws attached and also that the Council makes the approved Seashore Byelaws, which will subsequently be executed as a formal legal document.

Recommendation

That the Council:

- A. Makes the Seashore Byelaws as approved by the Secretary of State to come into effect 30 days from the date of the resolution**
- B. Delegates authority to the Borough Solicitor to give no less than 7 days' notice of the date of commencement of the Seashore Byelaws by way of making such advertisements as are appropriate.**
- C. Instructs the Head of Streetscene to commission appropriate signage to advertise the application and scope of the byelaws at appropriate locations in the Borough**

1.0 Background

- 1.1** In January 2020 a report to Community Board proposed the review of the Council's Byelaws to ensure that these were up to date and effective. It was determined that any obsolete or out of date Byelaws should be revoked.
- 1.2** It was identified that the Seashore Byelaws which are dated 8 January 1958, were in need of updating to ensure that they refer to activities which require regulation and also so that enforcement powers are sufficiently robust and create a deterrent.
- 1.3** Following two informal consultations and a regulatory assessment (Appendix 1) which were reported to the Council draft Seashore Byelaws were formally submitted to the Secretary of State for approval in January 2022.
- 1.4** The Secretary of State took the view that Clause 15 relating to Drones would prevent the byelaws being made as existing legislation dealt with

this issue sufficiently; Byelaws cannot be made where they would replicate or overlap with existing legislation. Clause 15 of the draft byelaws was deemed to overlap as The Civil Aviation Authority's Drone Code already includes a requirement for a valid license and is enforced by the Air Navigation (Amendment) Order 2018.

- 1.5** Accordingly, amended Seashore Byelaws were submitted to the Secretary of State removing clause 15 (the Drone clause) in April 2022.
- 1.6** On 5 May 2022 Gosport Borough Council's application to make the Seashore Byelaws was approved and the Council was formally granted leave by the Secretary of State to make the byelaws. A copy of the final Seashore Byelaws as approved by the Secretary of State are attached to this report (Appendix 2) along with the correspondence from the Secretary of State granting leave (Appendix 3).
- 1.7** Having been given leave to make the Seashore Byelaws a formal consultation was commenced on 13 May 2022 and notice of the consultation was given in the Hampshire Independent as well as placed on the Council's website (Appendix 4). The consultation was an open consultation inviting any comments and ended on 10 June 2022. No responses were received and this is likely to be due to the fact that there had been two detailed informal consultations prior to formal submission to the Secretary of State and as such interested parties had been given opportunity to express their views and opinions. These had been reported to the Community Board and the Council at earlier meetings and where appropriate they had been incorporated into the draft Seashore Byelaws prior to formal submission.

2.0 Report

- 2.1** Should the Board resolve to make the byelaws as approved by the Secretary of State the Borough Solicitor will need to formalise this by executing the Seashore Byelaws (Appendix 2) as a legal document on behalf of the Council.
- 2.2** The Council will also need to ensure appropriate signage is placed in the relevant areas clearly indicating that the Seashore Byelaws are in force as well as identifying the areas where activities are either specifically prohibited or permitted. For example, no launching of personal water crafts and jet skis, no parking signs on the seashore and shingled areas around Jackie Spencer Bridge and Little Anglesey and signs showing areas specifically designated for BBQ.
- 2.3** The Council is reminded that the map contained in the approved Seashore Byelaws is designed to demark the general area of the Seashore Byelaws and cannot not be taken as an exact measurement.

Officers will have an element of discretion as to whether they are able to deal with breaches of the Seashore Byelaws informally and without the

need to issue fixed penalty notices or refer to the Borough Solicitor to consider prosecution.

It is recommended that the Head of Streetscene is tasked with dealing with the signage especially given that it will fall on the Council's enforcement officers to ensure that the byelaws are enforced.

- 2.4** Having been granted leave to make the Seashore Byelaws, and no objections having been received during the 28 formal consultation as advertised it is for the Council to resolve whether to make the Seashore Byelaws. (Appendix 2)
- 2.5** Should the Council determine to make any amendments to the approved Seashore Byelaws the entire document would need to be resubmitted to the Secretary of State for approval, thereby restarting the process.
- 2.6** Seashore Byelaws are local enactments that may result in a prosecution in the courts and a fine. Publicising the Seashore Byelaws is an integral part of ensuring that any new Seashore Byelaws that will soon come into force are brought to the attention of the wider local community. The Council must therefore publicise the fact that new Seashore Byelaws have been made at least 7 days before the day on which they come into force by placing signs and publicising them on its website. Seashore Byelaws would come into force 30 days after the date they are made.

3.0 Risk Assessment

- 3.1** The Seashore Byelaws need to be updated in order to be effective in regulating the activities set out within them. If the Seashore Byelaws are not approved the older version of the Seashore Byelaws will remain in place.
- 3.2** Failure to properly publicise or adequately signpost areas covered by the Seashore Byelaws will risk enforceability of the same and negate the process.

4.0 Conclusion

- 4.1** The Council is asked to determine whether to make the Seashore Byelaws as approved by the Secretary of State.

If Approved the Seashore Byelaws will come into effect 30 days from the date of this meeting.

The Council is to give notice of date of commencement of the Seashore Byelaws no less than 7 days from the date they are to come into effect.

The Head of Streetscene is tasked with ensuring appropriate signage is in place.

The Borough Solicitor is tasked with executing the Seashore Byelaws as a formal legal document and to give notice of their commencement.

Financial Services comments:	NA
Legal Services comments:	Contained within the report
Crime and Disorder:	Contained within the report
Equality and Diversity:	NA
Service Improvement Plan implications:	NA
Climate Change implications:	NA
Corporate Plan:	Contained within the report
Risk Assessment:	See section 3.
Background Papers:	Community Board Report January 2020, Council July 2020 Community Board report March 2021.
Appendices:	Appendix 1: Regulatory Assessment and outcome of formal consultations. Appendix 2: Approved Seashore Byelaw Appendix 3: Letter from Secretary of State Appendix 4: Notice of Formal Public Consultation
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