

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive for Decision 05 November 2018

<b>Portfolio:</b>	Health and Public Protection
<b>Subject:</b>	<b>Public Spaces Protection Order (Dog Control) Consultation</b>
<b>Report of:</b>	Head of Streetscene
<b>Corporate Priorities:</b>	Protect and enhance the environment

**Purpose:**

To address the issue of dog control within the borough of Fareham, authorisation is sought to undertake a formal consultation on making a Public Spaces Protection Order (Dog Control), in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014.

**Executive summary:**

At its meeting on the 7 March 2016, the Executive authorised the making of a Public Spaces Protection Order (Dog Fouling) 2016. A PSPO can be made for a maximum duration of three years, after which it may be extended.

The current PSPO will expire on 31 March 2019 unless it is extended. However, instead of extending this current order, there is an opportunity to make a new order that not only includes dog fouling but other restrictions covering dog control at the same time.

The proposed PSPO would include restrictions on the following:

- Fouling and means of pick up
- Dogs on lead by direction
- Maximum number of dogs
- Dogs on leads and
- Exclusion of dogs

Appendix A outlines what the proposed PSPO could consist of and includes three schedules of proposed locations where the restrictions would apply.

Before introducing a PSPO the Council is required to carry out a consultation. It is proposed that an 8-week consultation will be publicised widely through the Council's website and E-panel, Twitter, Facebook, press releases to local media and emails to community groups. Contact will also be made with mandatory consultees, such as the police and HCC as well as vets and organisations affected by the restrictions

contained within the order. Consideration will also be given to the affect the order will have on people who rely on assistance dogs.

Copies of the order will be placed in the main reception of the Civic Offices. The consultation will also ask residents to identify areas that they think are dog fouling hot spots or areas where dog control has been issue.

**Recommendation/Recommended Option:**

It is recommended that the Executive approves that a consultation exercise be run between 19 November 2018 and 14 January 2019 on a draft Public Spaces Protection Order (Dog Control), in accordance with section 72 of the Anti-Social Behaviour Crime Policing Act 2014

**Reason:**

To seek views from members of the public on the renewal of the existing PSPO for dog fouling as well as the extension of a new order to include measures to control dogs in specific areas where members of the public have expressed concerns.

**Cost of proposals:**

The cost of the proposal can be met from within existing budgets

**Appendices:**

**A:** Draft Public Space Protection Order (Dog Control)

**Reference papers:**

Report to Executive 2 November 2015, Dog Fouling Strategy and Public Spaces Protection Order Consultation

Report to Executive 7 March 2016 Dog Fouling Public Spaces Protection Order

# FAREHAM

## BOROUGH COUNCIL

### Executive Briefing Paper

<b>Date:</b>	05 November 2018
<b>Subject:</b>	Public Spaces Protection Order (Dog Control) Consultation
<b>Briefing by:</b>	Head of Streetscene
<b>Portfolio:</b>	Health and Public Protection

#### INTRODUCTION

1. At its meeting on 2 November 2015, the Executive authorised the commencement of necessary consultation on a Public Spaces Protection Order (PSPO) relating to dog fouling within the borough. This consultation was carried out in accordance with section 72 of the Anti-Social Behaviour Crime and Policing Act 2014.
2. At its meeting on the 7 March 2016, the Executive authorised the making of a Public Spaces Protection Order (Dog Fouling) 2016.
3. A PSPO can be made for a maximum duration of three years, after which it can be reviewed, varied and/or extended for a further three years. If it is to be extended a further consultation exercise is required. The current PSPO expires on 31 March 2019.

#### BACKGROUND

4. Fareham Borough Council introduced an Enforcement Team in 2004, to patrol the Borough to enforce legislation relating to a wide range of environmental issues. The Enforcement team was also given the task of helping to educate the public to try and reduce the problem of dog fouling.
5. There are currently two Enforcement Officers in the Streetscene Team who are empowered to issue Fixed Penalty Notices (FPNs) for littering and dog fouling offences. The Animal (Enforcement) and Pest Control Officers, who cover both Fareham and Gosport Boroughs could issue FPNs if authorised to do so.
6. Originally, several local byelaws dealt with dog fouling offences. On a wider scale, dog fouling offences were covered by the Dogs (Fouling of Land) Act 1996 or by Dog Control Orders introduced under the Clean Neighbourhoods & Environment Act 2005 ('CNEA').
7. However, in October 2014 the Anti-Social Behaviour Crime & Policing Act 2014 repealed the ability to adopt new Dog Control Orders under the CNEA and set a limit on all existing Orders to expire within 3 years. Fixed Penalty Notices(FPN) under the 1996 Act could no longer be issued because of this piece of legislation.

8. To control dog fouling, the Council used new powers introduced in the 2014 Act to make a PSPO to replace a Dog Control Order or to replicate the type of offence that would have been covered by the Dogs (Fouling of Land) Act 1996. This meant that FPNs can now be issued again by the Council.

## **CURRENT DOG CONTROL MEASURES**

9. The current PSPO only covers the issue of dog fouling and does not include restrictions relating, for example, to where dogs are required to be on a lead or are excluded from time to time.
10. Historically, these dog control measures have been covered by several different byelaws.
11. Some older recreation grounds are covered by a byelaw dated August 1975. This byelaw was made under section 164 of the Public Health Act, 1875 and under sections 12 and 15 of the Open Spaces Act 1906.
12. This byelaw covers numerous restrictions, but Paragraph 10 of the byelaw specifically states that dogs shouldn't enter the listed recreation grounds unless they are under control and effectively restrained from causing a nuisance to any person or animal.
13. Obviously, any areas of open space that the Council has taken on since 1975 wouldn't be covered by any byelaws at all. A large proportion of Fareham's open spaces would fall into this category, i.e. all of Whiteley and most of the Western Wards.
14. With regard to dogs on the beach and promenade, between the 1 May and 30 September, dogs are prohibited from accessing the identified beach area and dogs should only be on the promenade if on a lead.
15. The above is covered by a byelaw dated December 1989 and was made under section 82 and 83 of the Public Health Amendment Act 1907 and section 235 of the Local Government Act 1972.
16. Due to the fact that these byelaws were both made more than 28 years ago, they are not really relevant to the areas of land that the Council currently owns or relate to the concerns that members of the public have.

## **PUBLIC SPACES PROTECTION ORDER**

17. As the current PSPO expires on 31 March 2019, it was considered an appropriate time to make a new order that not only included dog fouling but other dog control measures as well.
18. A PSPO is designed to make public spaces more welcoming. A local authority may make a PSPO if satisfied on reasonable grounds that two conditions are met.

"The first condition is that—

- a) 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
- b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities—

- a) is, or is likely to be, of a persistent or continuing nature,
- b) is, or is likely to be, such as to make the activities unreasonable, and
- c) justifies the restrictions imposed by the notice”

19. It is proposed that a PSPO is introduced, in accordance with the Act, which will make it an offence to fail to remove dog faeces in any public space within the Borough as well as other dog control measures in specific locations as indicated in Appendix A.
20. For clarity, the Act defines a public space as “any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission”.
21. Before introducing a PSPO the Council is required to carry out a consultation. It is proposed that an 8-week consultation will be publicised widely through the Council’s website, E-Panel, Twitter, Facebook, press releases to local media and noticeboards. Community groups and dog walking organisations and interest groups will also be consulted.
22. The mandatory consultees include, Chief officer of police, Police and Crime Commissioner, Community representatives, Hampshire County Council, and owners/occupiers of land within the restricted area.
23. Consultation will also be undertaken with dog law and welfare experts such as local vets, animal welfare officers and any organisations affected by the restrictions. The Kennel Club will also be consulted. Where possible, notices will be placed in the locations that will be affected by the restrictions.
24. As part of the consultation, consideration will be given to how any dog walking restrictions being proposed would affect those that rely on assistance dogs, ensuring any prohibition or requirement is compliant with the provisions of Equality Act 2010.
25. Copies of the order will be available in the main reception of the Civic Offices. In addition, the Council plans to publish a notice of its intention to make a PSPO in the local free newspaper, which covers the whole Borough. This is not required by the legislation, but guidance from the Department for Environment, Food & Rural Affairs suggests that this is best practice.
26. Once responses to the consultation have been received and considered the order may be amended and the final proposals will be presented to the Executive for approval in the new year.
27. Whilst a PSPO is in force any existing local byelaws will cease to have effect. A PSPO can only be in effect for a period of up to 3 years; however, that period can be extended for a further 3 years if it continues to be necessary following review during its period of operation.

## **WHAT IS PROPOSED IN THE PSPO?**

### **Fouling and means of pick up**

28. A current PSPO is already in place for both fouling and means to pick up but it is due to expire on 31 March 2019. The proposed new PSPO will again include these two areas.

29. As part of the consultation, when making of the current PSPO, the Communications Team ran a campaign called take the 'Oops out of the Poops'. This campaign was aimed at re-educating, informing and encouraging dog owners to change existing habits.
30. There were a mixture of fun and serious messages and this was very successful in highlighting the problems of dog fouling. There may be an opportunity to build on this and reiterate the 'clean up after your dog' message whilst undertaking further consultation.

### **Dogs on leads by direction**

31. This will give Enforcement Officers and any other officers, given the relevant powers, the ability to direct a person in charge of a dog to keep it on a lead if they consider it to be necessary to prevent a nuisance to other persons or animals.
32. There are many examples of when a person might be asked to put their dog on a lead, such as allowing them to stray on to a sports pitch, when they are worrying livestock or other dogs, when they are jumping up at people and children in particular.
33. This would be used in areas that aren't specifically listed in the schedules attached to the proposed PSPO.

### **Maximum dogs**

34. There has been an increase in the number of persons and businesses walking numbers of dogs together, and some of these have exercised poor control over these dogs.
35. This has caused problems for other dog owners and has also resulted in dog foul not being picked up. It is proposed to place limits on the number of dogs which may be walked together to enable greater control.

### **Dogs on leads**

36. Currently, there is an order made under section 27 of the Road Traffic Act 1988 that states "A person who causes or permits a dog to be on a designated road without the dog being held on a lead is guilty of an offence." A road includes the footway as well as the carriageway.
37. There is also a specific byelaw that relates to the keeping of dogs on leads along a section of the promenade at Hill Head between the Gosport boundary and the western most point of Salterns Road car park between 1 May – 30 September.
38. However, this is not the case along the other section of promenade in Hill Head between Hove car park and Gibley Ore. Residents and visitors have expressed concern about this particular area.
39. Other areas have been identified in Appendix A and these include areas that may be sensitive due to wildlife for example the around the lakes at Holly Hill or pieces of land that may have from time to time grazing animals.

### **Exclusion of dogs**

40. Currently, there is a specific byelaw that relates to the exclusion of dogs on the beach at Hill Head between the Gosport boundary and the western most point of Salterns Road car park between 1 May – 30 September.

41. However, this is not the case along the other section of beach in Hill Head between Hove car park and Giblet Ore. Residents and visitors have expressed concern about this particular area as it is heavily used during spring and summer.
42. These two proposed exclusion areas wouldn't prevent dogs being able to be taken onto two other stretches of beach easily accessible in the local vicinity.
43. The other areas that are proposed for dog exclusion will be play areas. Generally, residents already perceive that these areas are covered by legislation to prevent dogs from entering them, but this is not the case. Most play areas are fenced, have self-closing gates and associated signage. Complaints are still received about dogs entering play areas, both on leads and running loose.
44. Due to the majority of the play areas being fenced, it would not preclude dogs being able to run free on the remaining areas of open space adjacent to the play areas.
45. There are exemptions in all of the proposed exclusion areas for people who rely on assistance dogs and registered blind people.

## **CONCLUSION**

46. Dog fouling was highlighted as an issue within the Borough and the Council approved making use of the changes in legislation to implement a PSPO to provide improved powers to the Enforcement Officers and other authorised Officers for issuing FPNs. However, there is a need to expand these powers to enforce other dog control measures.
47. Complaints received directly from members of the public and the experience of the Enforcement Officers has informed the proposed areas to be included in the draft PSPO.
48. After the consultation, there may be alterations, deletions or even additions to the proposed PSPO depending on the feedback that is received.

## **Enquiries:**

For further information on this report please contact Mark Bowler. (Ext 4420)

# DRAFT

## ANTI SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

### PART 4, SECTION 59

#### PUBLIC SPACES PROTECTION ORDER (DOG CONTROL) 2019

This Order comes into force on the [ ] and will remain in force for a period of three (3) years from that date unless extended by further order under the Council's statutory powers.

Fareham Borough Council ("the Council") in exercise of its powers under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act") being satisfied that the conditions set out in section 59 of the Act have been met makes the following Order: -

#### 1. General provisions

##### Definitions

- 1.1 "Authorised Officer" means any officer of the Authority authorised by the Chief Executive of the Authority for the purposes of paragraphs 4 and 5 of the Order.
- 1.2 "Public Place" means any place in the administrative area of the Authority to which the public or a section of the public has access, on payment or otherwise, as of right by virtue of express or implied permission. The administrative area of the Authority is the land edged black in Schedule 1.
- 2.1 "Person in Charge" A person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.

##### Offence and Penalty

- 2.2 It is an offence under Section 67 of the Act for a person without reasonable excuse, (i) to do anything that they are prohibited from doing under the Order or (ii) to fail to comply with a requirement which they are subject to under the Order. A person guilty of an offence under section 67 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 3. Fouling
  - 3.1 The public health implications of dog fouling are well documented. This part and part 4 of the order are designed to prevent contamination of public spaces by dog faeces.
  - 3.2 If a dog defecates at any time on any Public Place the person who is in charge of the dog at the time must remove the faeces forthwith unless;
    - (a) they have a reasonable excuse for failing to do so; or
    - (b) the owner, occupier or other person or authority having control of the Public Place has consented (generally or specifically) to them failing to do so.

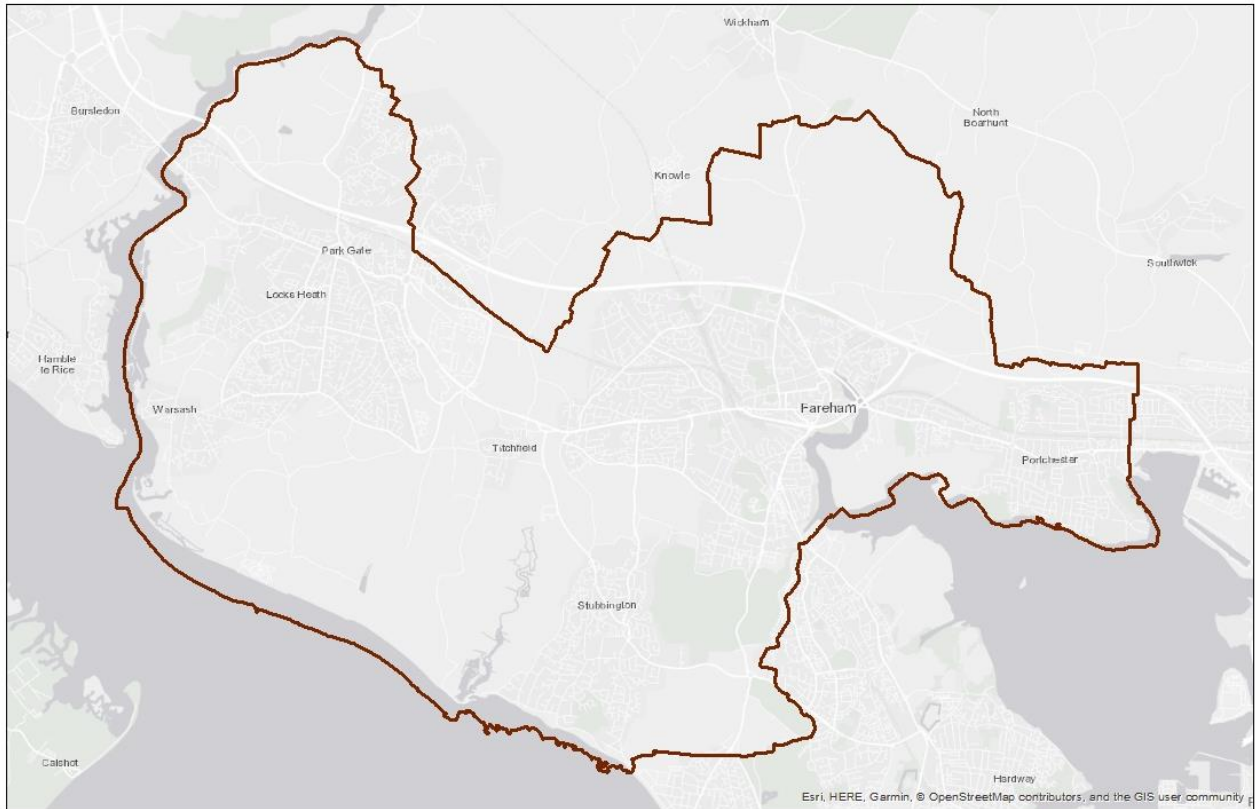
- 3.3 Placing the faeces in a receptacle which is provided for that purpose, or for the disposal of waste, shall be sufficient removal from the Public Place
- 3.4 Not being aware of the defecation or not having a device for or suitable means of removing the faeces shall not be a reasonable excuse for failing to remove it.
- 4. Means of pick up
  - 4.1. A person in charge of a dog on any Public Space must have with him an appropriate means to pick up dog faeces deposited by that dog unless;
    - (a) they have a reasonable excuse for failing to do so; or
    - (b) the owner, occupier or other person or authority having control of the Public Space has consented (generally or specifically) to them failing to do so.
  - 4.2 The obligation is complied with if, after a request from an Authorised Officer, the person in charge of the dog produces an appropriate means to Pick up the dog faeces.
- 5. Dogs on Lead by Direction
  - 5.1. In public places in the Borough of Fareham where dogs are permitted off leads, a minority of persons in charge of dogs allow them to cause damage to property, and cause problems for pedestrians and other dog owners. This part of the Order is designed to enable authorised Council Officers to direct that such a person put their dog on a lead.
  - 5.2 An Authorised Officer may on any Public Place (other than those specified in Schedules 2 and 3 of the Order from which dogs are excluded from or must be kept on a lead in any event) direct a person in charge of a dog to keep the dog on a lead if such restraint is in the opinion of the Authorised Officer necessary to prevent nuisance to other persons or worry to animals.
  - 5.3 A person issued with a direction under paragraph 5.1 of the Order must comply unless;
    - (a) they have a reasonable excuse for failing to do so; or
    - (b) the owner, occupier or other person or authority having control of the Public Place has consented (generally or specifically) to them failing to do so.
- 6. Maximum of four dogs
  - 6.1 There has been an increase in the number of persons and businesses walking numbers of dogs together, and some of these persons have exercised poor control over these dogs. This has caused problems for other dog owners and has also resulted in dog foul not being picked up. This part of the Order seeks to place limits on the number of dogs which may be walked together to enable greater control.
  - 6.2 A person shall not at any time take more than four dogs on to any Public Place (other than those specified in Schedule 3 of the Order from which dogs are excluded in any event)

- 6.3 A person must comply with the requirement in paragraph 6.1 of this Order unless;
- (a) they have a reasonable excuse for failing to do so; or
  - (b) the owner, occupier or other person or authority having control of the Public Place has consented (generally or specifically) to them failing to do so.
7. Dogs on Leads
- 7.1 In some public places within the Borough of Fareham that are sensitive because of their nature or usage, or which are fragile environments, close control of dogs by their being on a lead is necessary to prevent damage or undue disturbance. The restrictions in this Order are designed to facilitate a sharing of these public places, whilst recognising that dogs do need to be exercised off lead.
- 7.2 A person in charge of a dog on any Public Place specified in Schedule 2 to the Order must keep the dog on a lead unless
- (a) they have a reasonable excuse for failing to do so; or
  - (b) the owner, occupier or other person or authority having control of the place has consented (generally or specifically) to them failing to do so.
8. Exclusion of dogs
- 8.1 There are specific public places in the Borough of Fareham from which dogs should be excluded for their safety and that of members of the public, and for public health and aesthetic reasons. This part of the Order states the relatively few places from where dogs will be excluded.
- 8.2 A person in charge of a dog must not take it into or keep it in any Public Place specified in Schedule 3 to the Order unless
- (a) they have a reasonable excuse for doing so; or
  - (b) the owner, occupier or other person or authority having control of the Public Place has consented (generally or specifically) to them failing to do so.
9. Exemptions
- 9.1 Nothing in this Order shall apply to a person who: -
- (a) is registered as a blind person in a register compiled under S.29 of the National Assistance Act 1948, or
  - (b) has a disability as defined by the Equality Act 2010 or its successor and who relies upon an accredited assistance dog trained by an accredited member of Assistance Dogs International (ADI) or the International Guide Dog Federation (IGDF).

EXECUTED AS A DEED BY AFFIXING THE COMMON SEAL OF FAREHAM BOROUGH COUNCIL IN THE PRESENCE OF:

SOLICITOR

-SCHEDULE 1-  
Administrative Area of the Borough of Fareham



**FAREHAM**  
BOROUGH COUNCIL

**Administrative Area of Fareham**

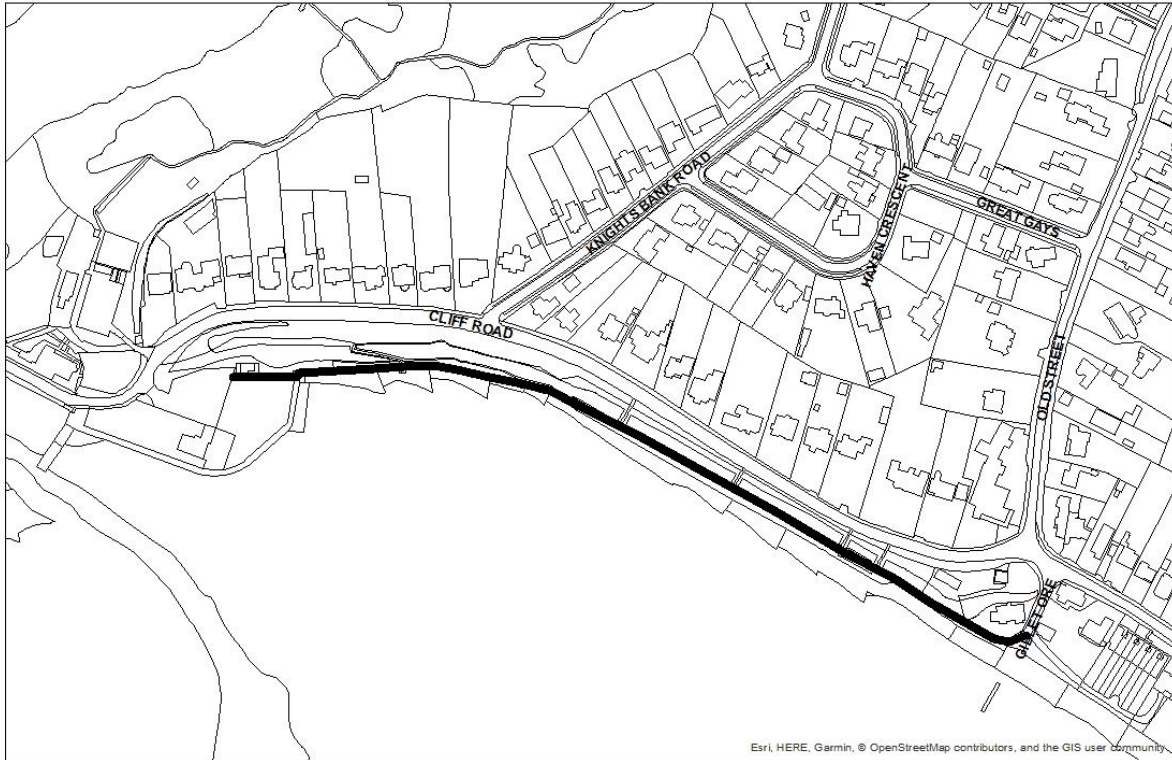
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-SCHEDULE 2-

PARAGRAPH 7 "DOGS ON LEADS"

This Order applies to the following Public Places in the Borough of Fareham

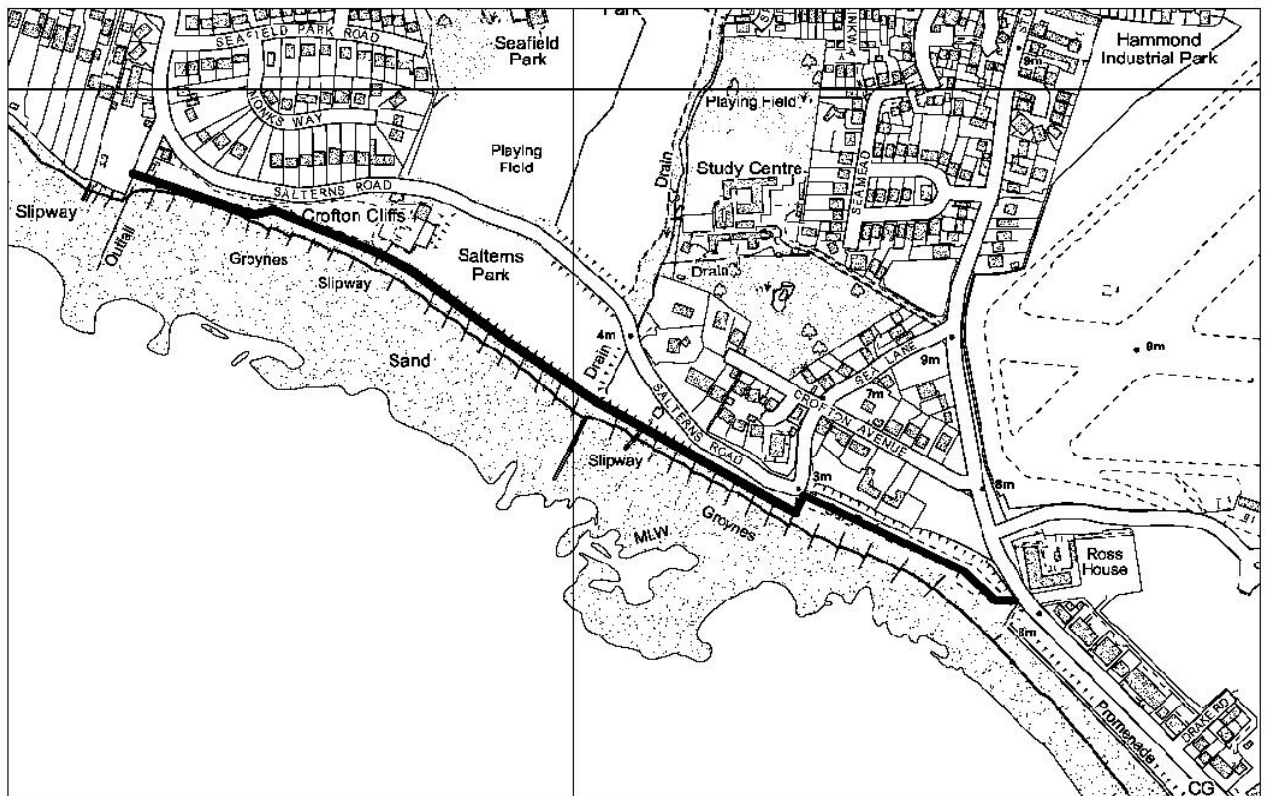
1. Any cemetery or churchyard  
Crofton Cemetery, Oakcroft Lane, Stubbington  
Wickham Road Cemetery, Fareham  
St Peter's Cemetery, Church Street, Titchfield  
Posbrook Lane Cemetery, Titchfield  
Roman Grove Cemetery, Castle View Road, Portchester  
St Johns Cemetery, St Johns Road, Locks Heath  
St Paul's Cemetery, Barnes Lane, Sarisbury  
Holly Hill Cemetery, Barnes Lane, Sarisbury  
  
St Peter and St Paul's Churchyard, Osborn Road, Fareham  
St Peter's Churchyard, Church Street, Titchfield  
Crofton Churchyard, Lychgate Green, Stubbington  
St Mary's Churchyard, Castle Street, Portchester  
St Paul's Churchyard, Barnes Lane, Sarisbury
2. Westbury Manor Museum Garden, Fareham Town Centre
3. Sensory Garden of Reflection, Osborn Road, Fareham
4. Cliff Road Promenade, Hill Head (*refer to plan*)
5. Salterns Road Promenade, Hill Head (*refer to plan*)
6. Holly Hill Woodland Park (*refer to plan*)
7. Holly Hill Play Area (*refer to plan*)
8. Burridge Pond (*refer to plan*)
9. Coldeast Open Space (*refer to plan*)
10. Any area within Fareham that is:
  - i). Designated as a Site for Special Scientific Interest ("SSSI") or; ii), where the Authority keep animals and where signage is present;
    - a) Portchester Common (*refer to plan*)
    - b) Abbey Meadows (*refer to plan*)



**FAREHAM**  
BOROUGH COUNCIL

**Cliff Road Promenade, Hill Head**

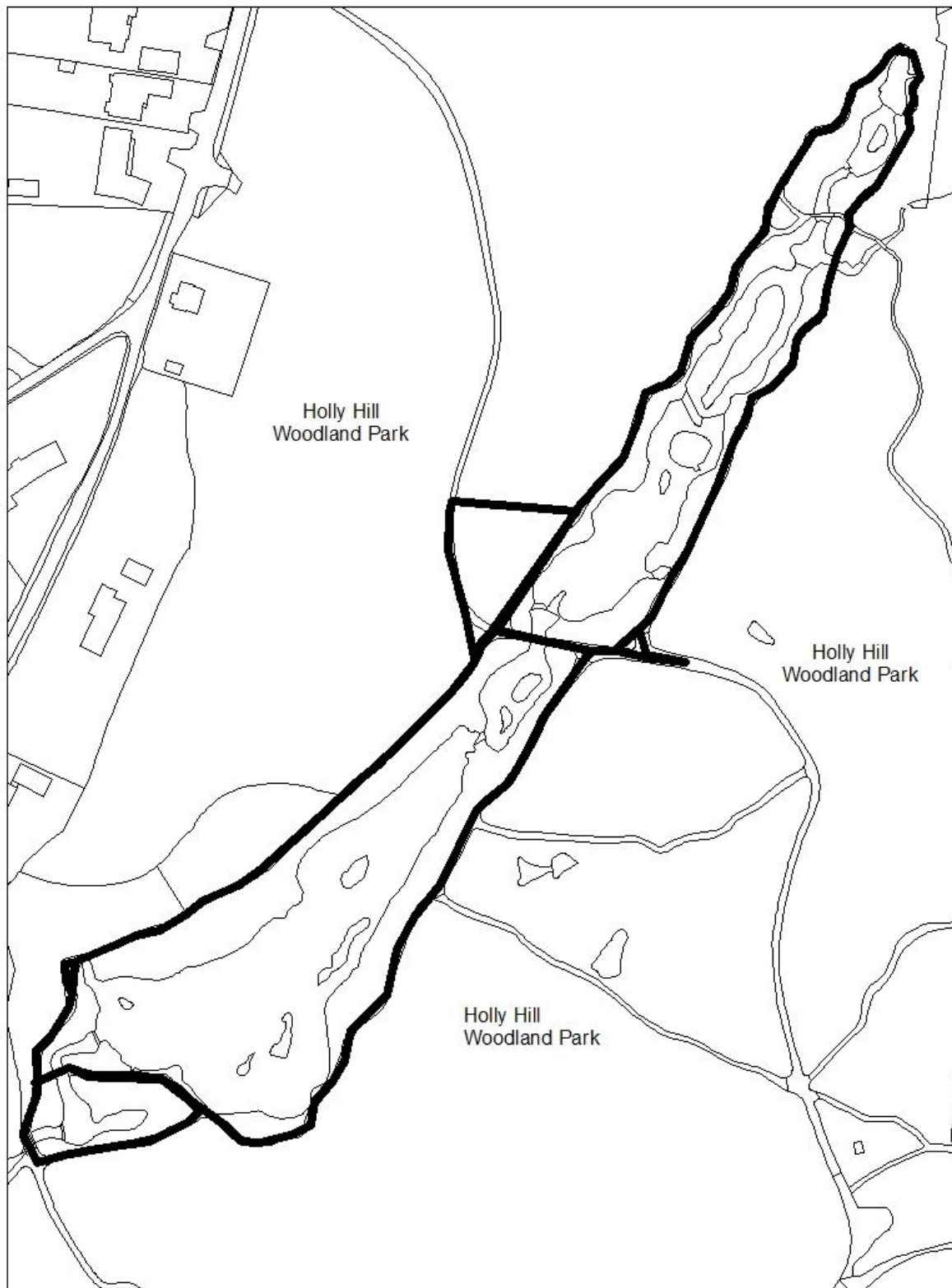
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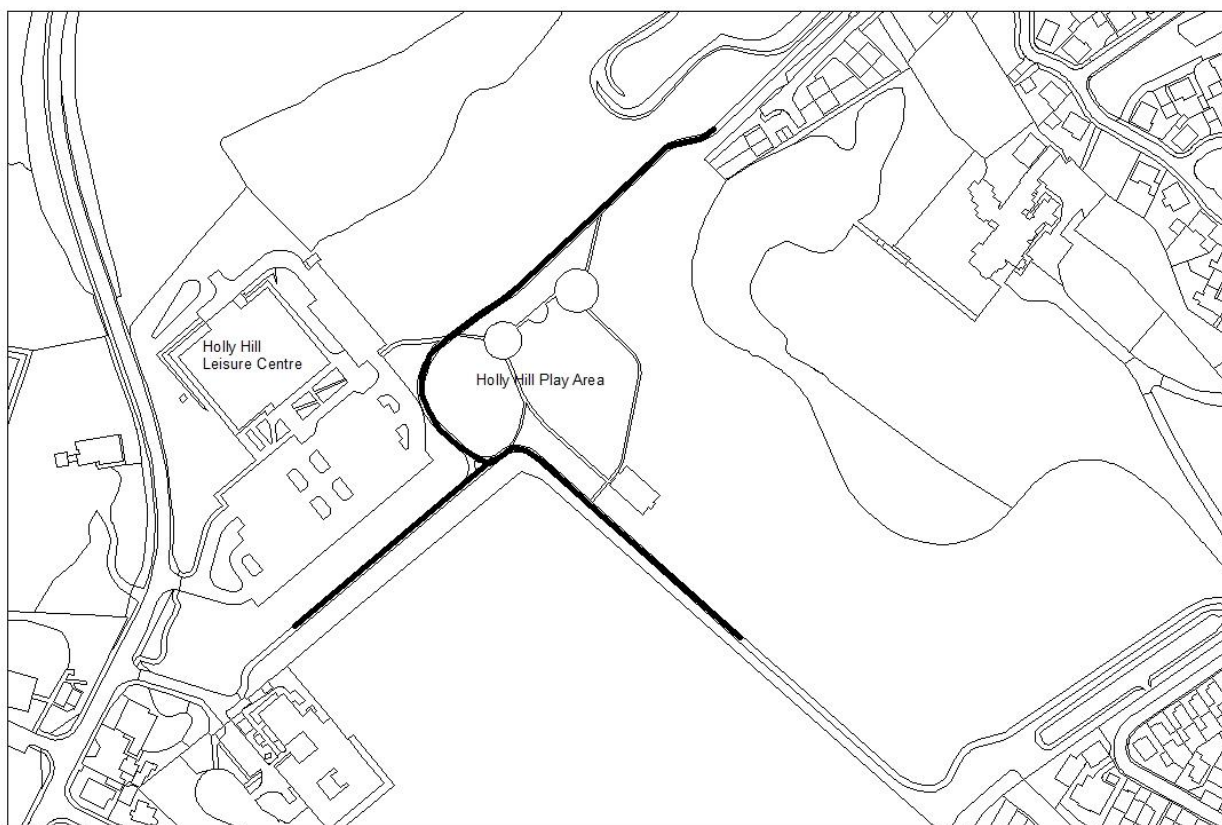


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**Salterns Road Promenade, Hill Head**

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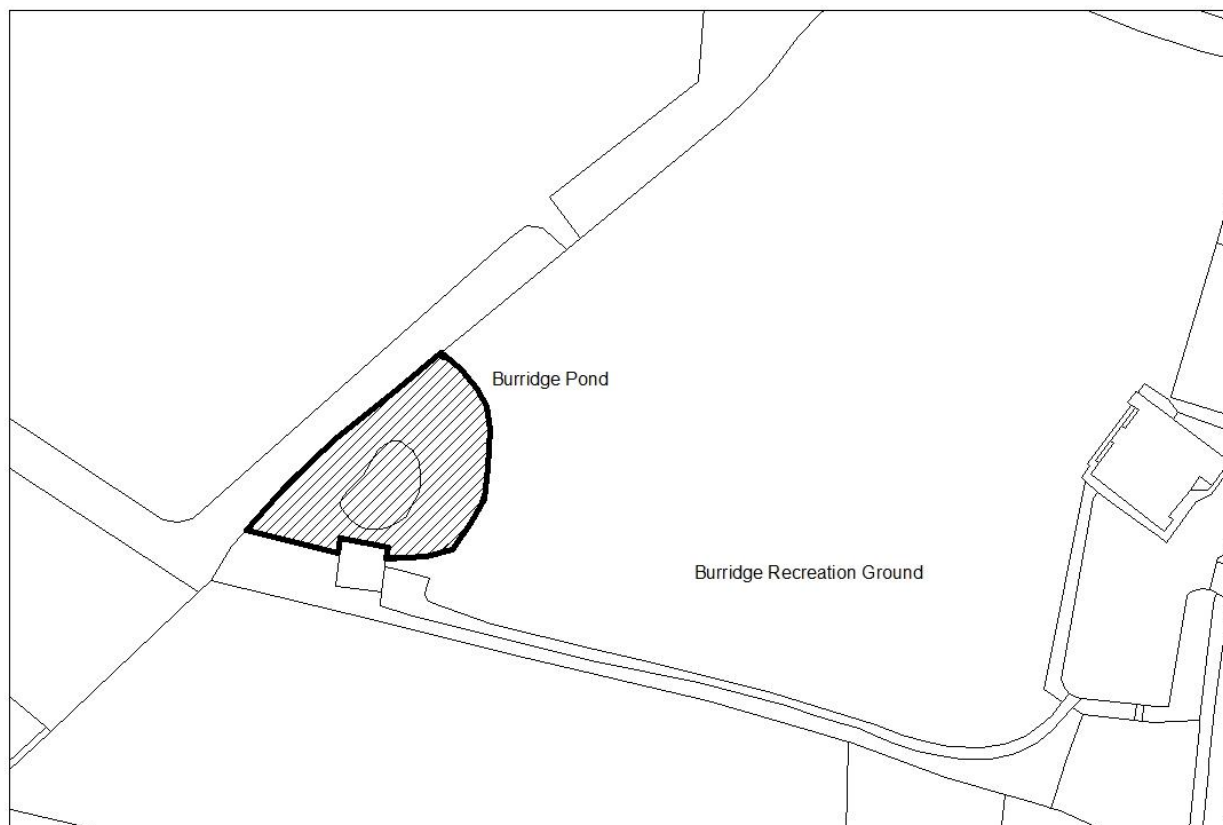




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### Holly Hill Play Area

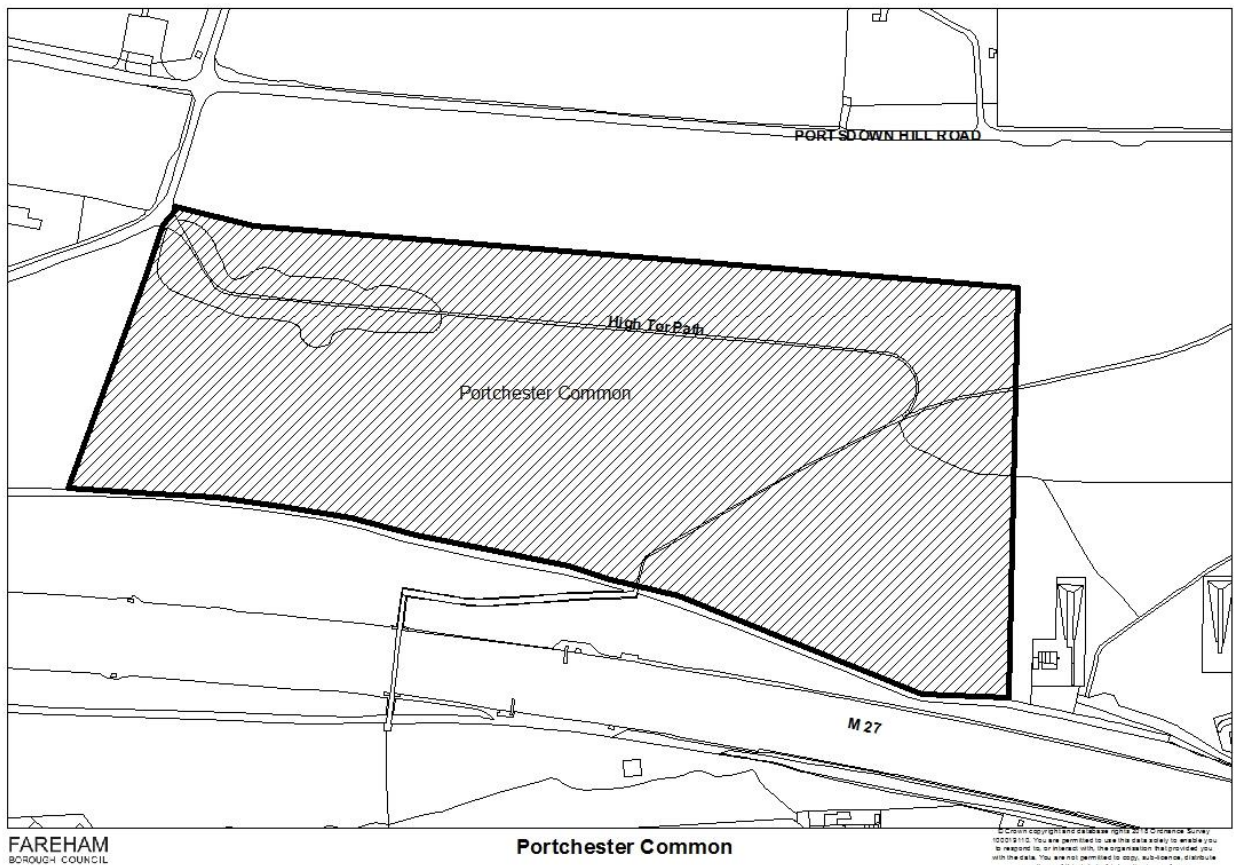
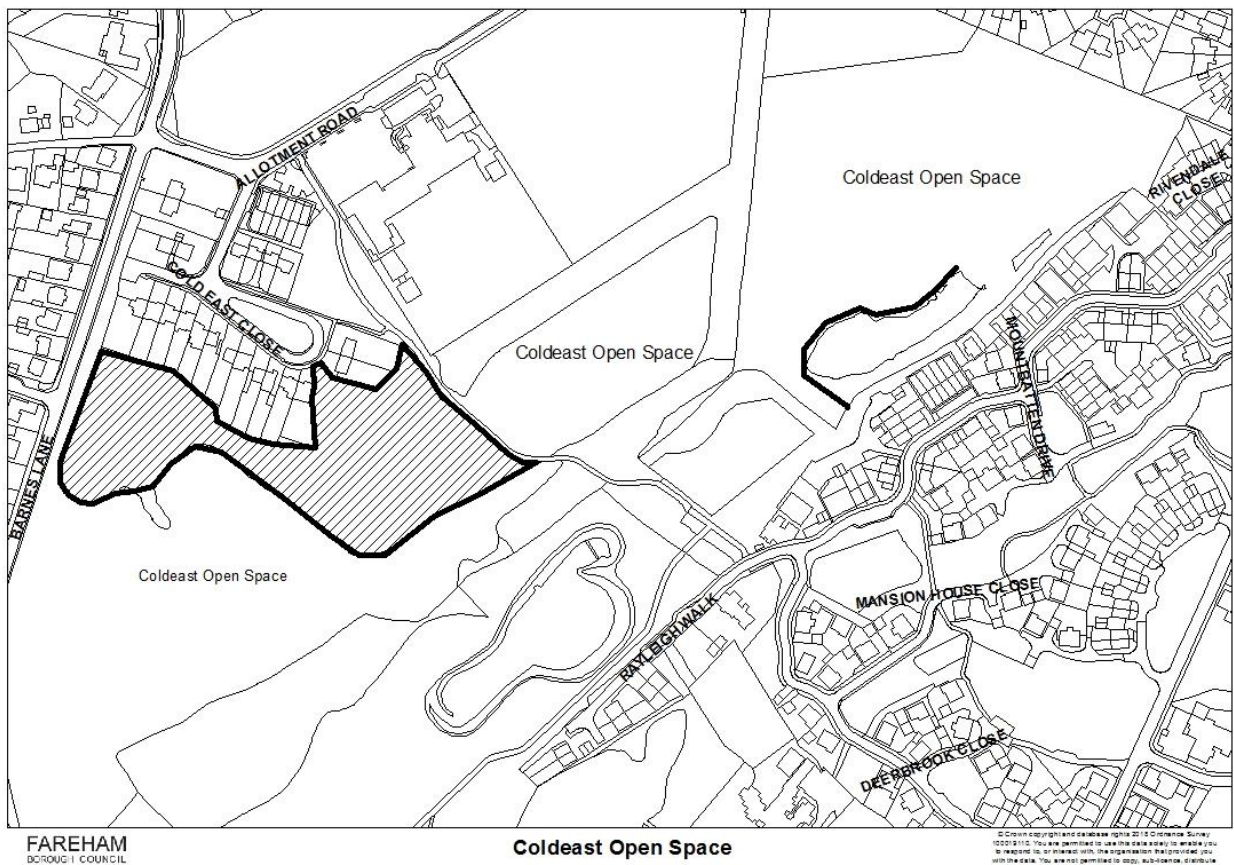
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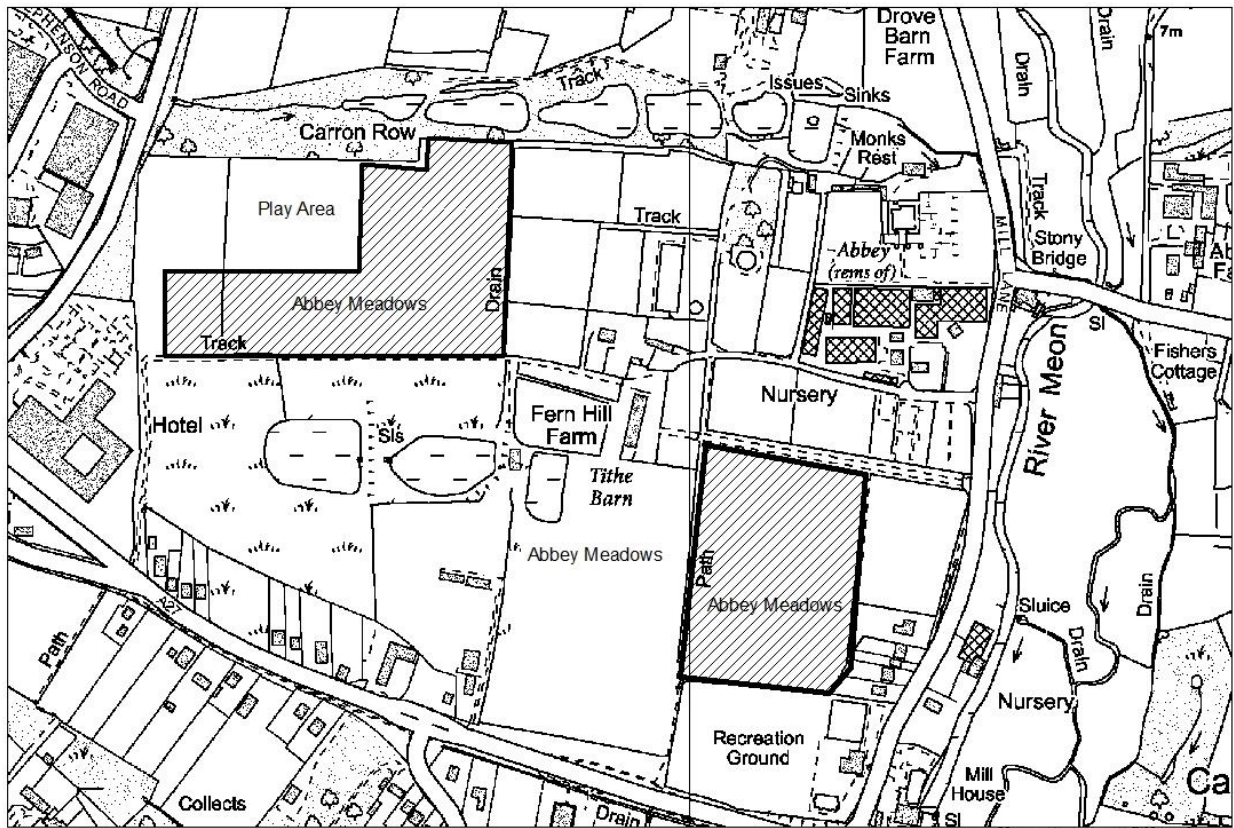


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### Burridge Pond, Burridge Recreation Ground

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# Abbey Meadows, Titchfield

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## SCHEDULE 3

### PARAGRAPH 8 EXCLUSION OF DOGS

This Order applies to the following Public Places in the Borough of Fareham

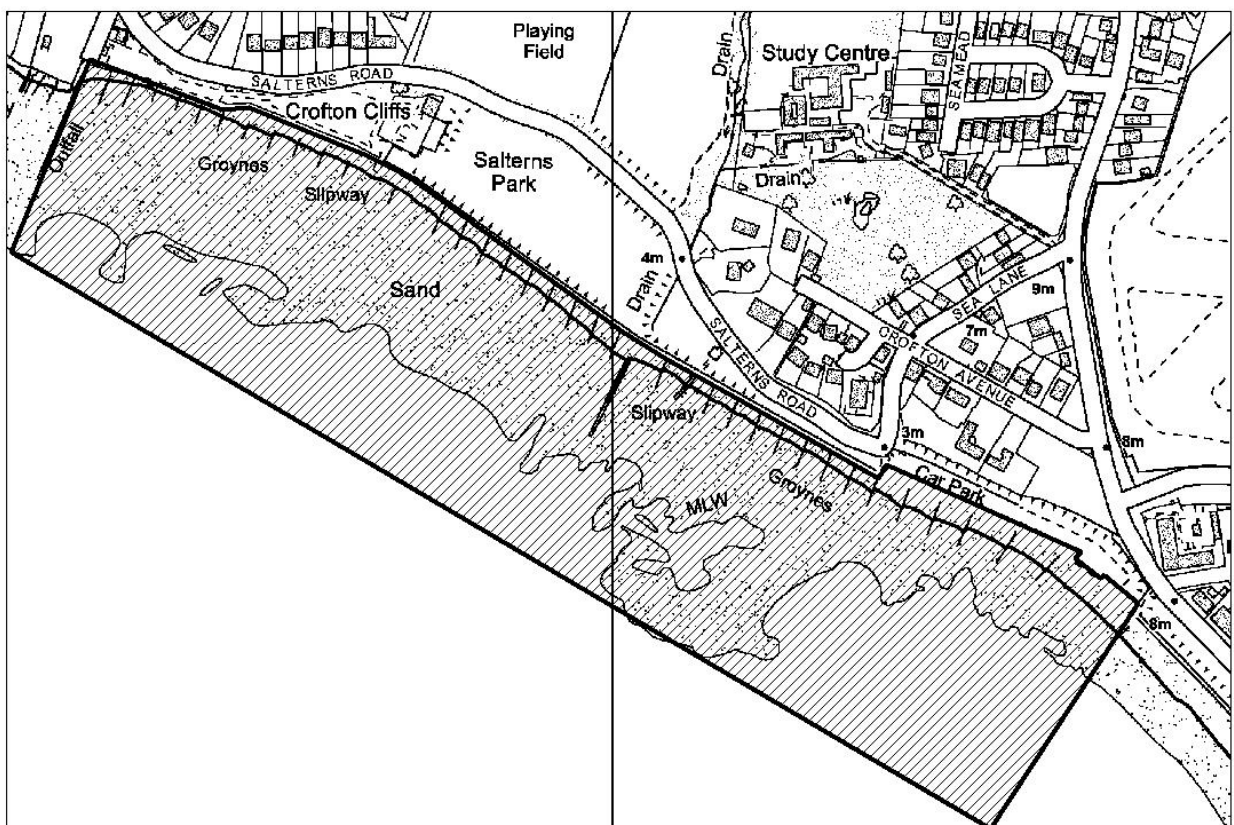
1. Between 1 May and 30 September inclusive in any year the following beach areas;
  - i). any area of beach between the promenade and Low Water Mark of Medium Tides and contained between the points enclosed with notional lines extending from the westernmost point of Hove To car park and Gibley Ore which is shown outlined in black on the accompanying plan.
  - ii). any area of beach between the promenade and Low Water Mark of Medium Tides and contained between the points enclosed with notional lines extending from the westernmost of Salterns Road car park and the Borough Boundary with Gosport which is shown outlined in black on the accompanying plan.
2. Any enclosed area designated solely for the purpose of children's play on which there is fixed play equipment or apparatus installed and where signage refers.
3. Any unenclosed area designated for the purpose of children's play on which there is fixed play equipment or apparatus installed and where signage refers. *(please refer to the plan(s))*
  - i. Holly Hill Play Area
  - ii. Abbey Meadows Play Area



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Cliff Road Beach

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Salterns Road Beach

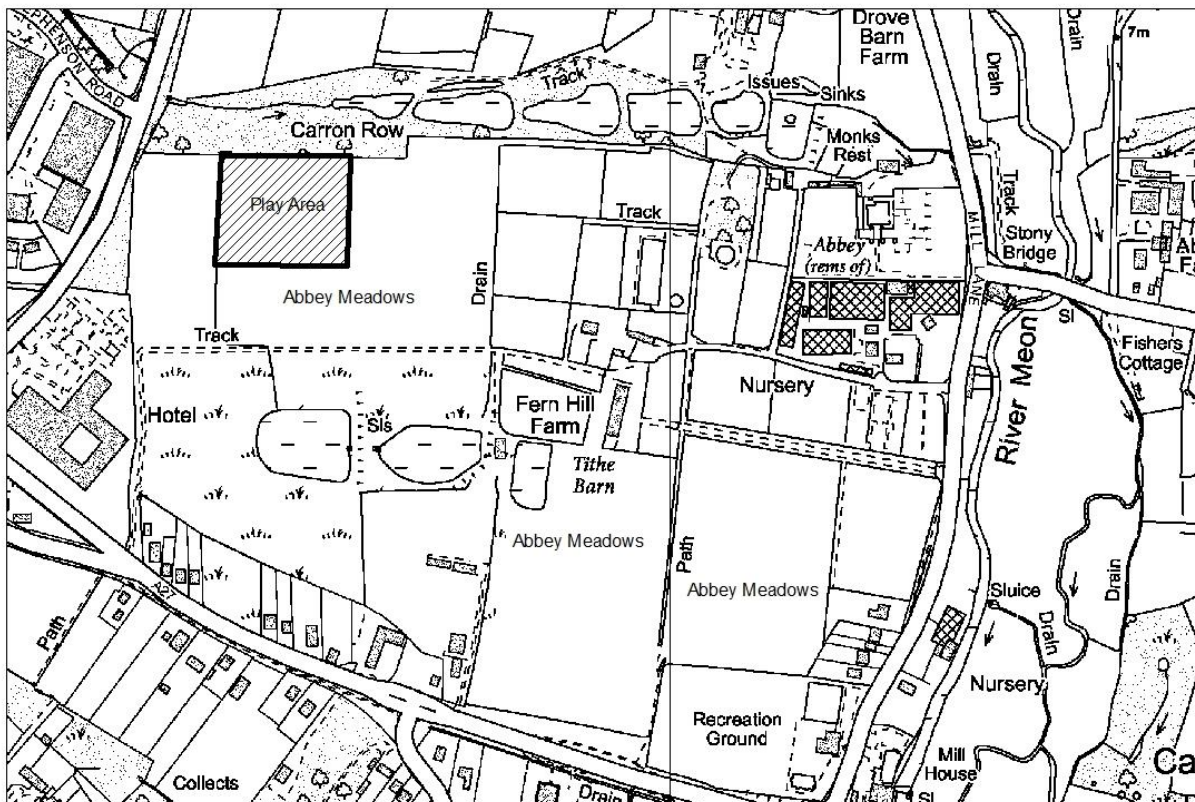
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Holly Hill Play Area

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Abbey Meadows Play Area, Titchfield

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