

RESPONSE TO THE USE OF NITROUS OXIDE AS A PYSCHOACTIVE SUBSTANCE

1. Summary

- 1.1 To receive a report on the current situation and the implications to the use of Nitrous Oxide as a psychoactive substance across the Borough.

2. RECOMMENDATIONS

- 2.1 That the report be noted and relevant observations be offered as to future actions by February 2021

3. Background and Discussion

- 3.1 Nitrous oxide, also known as 'laughing gas', is a substance with a number of legitimate uses in medicine and catering. It is also the second most popular recreational drug amongst young people, with 7.6% of 16-24 year olds responding to the 2013/14 Crime Survey for England and Wales reporting nitrous oxide use in the previous year. When inhaled, this substance can make users feel euphoric and relaxed, with some reporting hallucinations.

- 3.2 It is a medical gas (a medicinal product) and, mixed with oxygen, is used to treat analgesia and as an anaesthetic. Use as a medicinal product typically involves large cylinders containing the gases which are administered to the patient using a face mask in a variety of settings such as hospitals, dental surgeries and by ambulance crews.

- 3.3 Nitrous oxide is also an approved food additive (E942) when used as a propellant for whipped cream. While there are no provisions in food additives legislation which would provide a basis for seizing nitrous oxide, there are a number of other enforcement options.

Nitrous oxide is also used in vehicle engines.

- 3.4 Nitrous oxide is now being used recreationally in a number of settings such as clubs, private residences and parks, and is particularly prevalent at music festivals. It is commonly sold in small metal canisters containing the gas, which is then either transferred into a balloon for inhalation using a dispenser or a 'cracker' These small metal canisters are sold in bulk online and presented for use as a whipped cream propellant.
- 3.5 Inhaling nitrous oxide can be dangerous, and can lead to loss of blood pressure, fainting and even heart attack. Prolonged exposure to nitrous oxide may also result in bone marrow suppression and poisoning of the central nervous system. These risks are likely to be exacerbated if the exposure to the gas is combined with alcohol or other drugs.
- 3.6 The legislation on the use of nitrous oxide is contained within The Psychoactive Substances Act 2016. Section 5 of The Act makes it an

CRIME AND DISORDER (OVERVIEW AND SCRUTINY) COMMITTEE
12 February 2020

offence to supply or offer to supply a psychoactive substance to another person. It is not an offence to possess or use nitrous oxide.

- 3.7 The use of nitrous oxide presents challenges to three main agencies: health services in relation to the harmful effect of the substance's use; the Police in terms of the supply of the substance and associated behaviors; and the Council in terms of littering through the discarding of spent canisters, seen by many communities as being associated with criminal activity (see section 3.9).
- 3.8 A request has been made to Kent Public Health for information as to the number of A&E admissions where ingestion of nitrous oxide is a contributing factor. A representative of Kent Public Health has been invited to attend the meeting, but at the time of writing this report attendance has yet to be confirmed.
- 3.9 The Council's ability to respond to the use of nitrous oxide revolves around users who will regularly throw the canister away immediately after its use, thereby committing a litter offence. The volume of litter, combined with the highly visible nature of the discarded canisters has a significant impact on the public's perception of safety within an area, making it a signal crime (defined as any criminal incident that causes change in the public's behavior and/or beliefs about their security)
- 3.10 Currently, where a canister is seen to be discarded by a Civil Enforcement (including Kingdom operating on behalf of the Council), Police or Police and Community Support Officers, the Officer is empowered to issue a fixed penalty notice for litter. The reality is that the modus operandi around the use of the nitrous oxide is not conducive to this type of enforcement being effective. Where evidence of a litter offence is recorded on CCTV, the environmental enforcement team will conduct a proportionate investigation which will lead to an appropriate level of sanction (i.e No further action, caution, fixed penalty ticket or court appearance). In the period 1st Jan 2019 to 31st December 2019, two fixed penalty notices have been issued for offences in Westgate car park (£75 fine per notice), one caution for an offence at the same location (one canister dropped) and a fly-tipping fixed penalty notice (£250 fine) for an offence at the New Barn recycling point.
- 3.11 The Council introduced a Public Space's Protection Order (PSPO) for Town ward in October 2017. The PSPO prohibits the ingestion, inhalation, injection, smoking, processing or otherwise using intoxicating substances, which are defined as "substances with the capacity to stimulate or depress the central nervous system (i.e. illegal drugs or psychoactive substances, the latter being commonly referred to as "legal highs"). To date, there have been no prosecutions for this element of the PSPO.
- 3.12 Where discarded canisters are reported to the Council the numbers are recorded, and cleared by the Borough's Waste Team. As part of the CSU's work with the police this information has been used to identify and

CRIME AND DISORDER (OVERVIEW AND SCRUTINY) COMMITTEE
12 February 2020

map repeat locations. The local policing team have absorbed these locations into their patrol strategy. Locally produced posters outlining the law in relation to psychoactive substances have been designed and placed at the repeat locations.

- 3.13 Since the change of waste contractor in July 2019, records have been maintained, but are yet to be mapped. Between July 2019 and 19/01/2020 there have been 39 reported incidents of canisters being dumped. It took an average of 1.77 days from the time of report to clearance. The information as to location of the littering can be summarised as follows:

Five of the reports concerned previously reported locations

- Oakfield Lane,
- Woodlands Car Park Eagles Road, Greenhithe
- Westgate Car Park.
- Castle Hill, Swanscombe
- Town Car Park Eagles Road Greenhithe

Eleven of the reports identified 4 new repeat locations

- Teynham Road
- Shirehall Road Wilmington
- PowderMill Lane Wilmington
- Ship Lane, Sutton at Home

The areas with the most frequent reports are

- Swanscombe
- Wilmington
- Sutton at Hone
- Greenhithe

- 3.14 Nitrous oxide is not classified as a controlled drug, making its possession legal. The Police's "live-time" response to reports of its usage is therefore limited. Where it is associated with allegations of anti-social behavior (ASB), it will draw a response that is prioritized against other incidents and priorities occurring at the time. Whilst the legislation criminalizes the supply of the nitrous oxide (in some circumstances) the supply for this type of usage is principally web-based, making it very difficult to enforce. The intoxicating effect of nitrous oxide on an individual is generally very short lived (normally about 30 seconds), which makes it almost impossible for Police officers to provide evidence of impairment to a standard required by a criminal court to secure any prosecution in relation to the effect it's inhalation has on an individual driving a motor vehicle.

CRIME AND DISORDER (OVERVIEW AND SCRUTINY) COMMITTEE
12 February 2020

3.15 Going forward, it is difficult to see how the Council Authority can better respond to the nuisance caused by nitrous oxide use without an uplift investment in a patrolling or surveillance capability. Even then, it is questionable there would be a justifiable return on such an investment. The Council have recently widened the powers of Kingdom Officers to enforce the PSPO, but these powers are restricted to the Town Centre, and the majority of offences appear to be committed outside Kingdom's core working hours. Given current legislation the Police are unlikely to change its approach to this issue. It is hoped that the response from colleagues in the health sector to the problem will be clarified at the meeting.

4. Relationship to the Corporate Plan

Effective management of nitrous oxide consumption contributes to the Safer Communities Objective and Strategic Aim to create a safer Borough in which to work and live.

5. Financial, legal, staffing and other implications and risk assessments*

Financial Implications	None
Legal Implications	None
Staffing Implications	None
Administrative Implications	None
Risk Assessment	Failure to provide a solution will further impact on The Council's resources and undermine the Safer Communities objective

6. Appendices

Appendix A – Map Showing repeat dump sites for Nitrous Oxide Canisters (July 2019)

BACKGROUND PAPERS

<u>Documents consulted</u>	<u>Date/ File Ref</u>	<u>Report Author</u>	<u>Section and Directorate</u>	<u>Exempt Information Category</u>
	January 2020	Tony Henley Ext. 3502	External Strategic Community Safety/EARS CSU	

CRIME AND DISORDER (OVERVIEW AND SCRUTINY) COMMITTEE
12 February 2020

Map Showing repeat dump sites for Nitrous Oxide Canisters (July 2019)

Appendix A

