



## CABINET REPORT

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| <b>Report Title</b> | <b>Policy on the removal of fly tipping from private land</b> |
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**AGENDA STATUS: PUBLIC**

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|------------------------------------|---------------------------|
| <b>Cabinet Meeting Date:</b>       | 8 October 2014            |
| <b>Key Decision:</b>               | YES                       |
| <b>Within Policy:</b>              | YES                       |
| <b>Policy Document:</b>            | YES                       |
| <b>Directorate:</b>                | Customers and Communities |
| <b>Accountable Cabinet Member:</b> | Cllr Mike Hallam          |
| <b>Ward(s)</b>                     | All Wards                 |

### 1. Purpose

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- 1.1 The Council is responsible for investigating reports of all alleged fly tipping. Currently the Council investigates reports of fly tipping on private land but has no obligation to clear this waste, and in practice does not remove waste from private land.
- 1.2 Approval is sought to change this operational policy in order that where fly tips are reported in private alleyways, the Council will, where possible, remove the waste. Where appropriate the Council will then recover the cost of such clearance from those responsible for the fly tips or the land owner(s).

### 2. Recommendations

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- 2.1 That Cabinet approve an amendment to the current operational policy so that, in the case of fly tipping on sites that are shared ownership alleys or other shared ownership entrances such as common courts, the Council may where permissible and considered appropriate in the circumstances clear and dispose of the fly tipped material.

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1 Fly tipping is the illegal deposit of waste on land. It invariably involves the removal of waste from premises where it was produced with the deliberate aim of disposing of it unlawfully or as a result of legitimate outlets not being available. The offence of fly tipping and additional offences of “knowingly causing” and “knowingly permitting” are set out in section 33 (1) of the Environmental Protection Act 1990.
- 3.1.2 The Council receives a significant number of service requests regarding fly tipping. Between February and August 2014, 4074 reports were received. Of these 234 were confirmed to relate to fly tipping in private alleyways or similar areas.

#### **3.2 Issues**

- 3.2.1 Many of the reports related to fly tips in alleyways between residential properties. The majority of these alleyways are in private ownership and often the responsibility for the alleyways rests jointly with the owners of all the properties backing onto the alleyway.
- 3.2.2 The Council investigates such reports and officers check for evidence to identify those responsible. Where evidence is found, enforcement action is taken. To date, in these circumstances, the waste has been left in situ. However, if this operational policy change is approved as recommended, the waste may be removed by the warden service if this was possible, using the warden service’s existing facilities and budgets.

#### **3.3 Choices (Options)**

- 3.3.1 The current operational policy on the removal of fly tipped material is amended such that the service is extended to include the removal of fly tips from private alleyways and other shared ownership entrances such as common courts.

or

- 3.3.2 Continue with the operational policy as it is.

### **4. Implications (including financial implications)**

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#### **4.1 Policy**

- 4.1.1 This report amends current operational policy and has potential implications for the Contract for the provision of Environmental Services which can be managed using the contract variation process.

## 4.2 Resources and Risk

- 4.2.1 Waste disposal costs are approximately £100 per tonne. Specialist disposal costs for some types of waste are considerably higher. Other costs include staff time, vehicle and equipment costs.
- 4.2.2 The actual total cost is difficult to estimate at present and is likely to be higher in the first two years to clear existing accumulations.
- 4.2.3 It is expected that the proposed change in policy will be managed within existing budgets. However officers will monitor the demand on this service to determine if any financial implications arise outside existing budgets. If necessary and appropriate, consideration will be given to submitting a growth bid for consideration as part of the budget setting process for 2016/17 and beyond.
- 4.2.4 Recovery of cost requires a legal process and is subject to a perpetrator being identified which is difficult in most cases.
- 4.2.5 The other alternative, in the case of shared alley ways, would be to proportion the cost to each shared owner/occupier. The legal notice process would have to be followed in these cases. However the recipient of any notice can successfully appeal the notice and the notice can be quashed if the Magistrates are satisfied that for example, the recipient neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste.
- 4.2.6 NBC contractors at present are contracted to collect fly tip materials from public land, not private land.
- 4.2.7 If a legal process notice has not been served and the Council removes something it could subsequently be considered not to be waste by the owner.
- 4.2.8 It is important that the proposed change in policy is managed effectively so as not to inadvertently encourage more fly tipping. A holistic approach needs to be taken that deals with both cause and effect and focuses on factors such as community engagement, deterrents and sanctions and education.

## 4.3 Legal

- 4.3.1 Under Section 33 of the Environmental Protection Act 1990, it is an offence to:

*Deposit controlled waste or extractive waste or knowingly cause or knowingly permit controlled waste or extractive waste to be deposited in or on any land unless an environmental permit authorising the deposit is in force and the deposit is in accordance with the permit.*

- 4.3.2 The legislation allows the Court to order the clean-up costs against any convicted offender.

4.3.3 Under section 59 of the Environmental Protection Act 1990, a local authority can, by serving a notice, require an occupier to remove waste that they have knowingly caused or permitted to be deposited illegally and/or can require them to take steps with a view to eliminating the consequences of the deposit of the waste. (A person on whom such a requirement is imposed can appeal to the Magistrates' Court and the notice will be quashed if the court is satisfied that they neither knowingly deposited nor knowingly permitted the deposit of the waste, or if there was a material defect in the notice).

4.3.4 If the occupier does not comply with the notice issued by the local authority and does not remove the waste or take the required steps, then the local authority can enter on to the land, clean up the waste and charge them the costs of so doing. The local authority can also enter land to clear it of waste in the circumstances described in paragraph 4.3.5 below.

4.3.5 Under Section 59(7) of the Environmental Protection Act 1990:

*If it appears to a waste regulation authority or waste collection authority that waste has been deposited in or on any land in contravention of Section 33 (above) and that:*

*(a) in order to remove or prevent pollution of land, water or air or harm to human health it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both: or*

*(b) there is no occupier of the land or the occupier cannot be found without the authority incurring unreasonable expense; or*

*(c) the occupier neither made nor knowingly permitted the deposit of the waste;*

*the authority may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit, or as the case may require, to remove the waste and take those steps.*

4.3.6 The power to enter land under section 59(7) is only available if one of the circumstances set out in that section exists. It will therefore be necessary for officers to assess this in detail on a case by case basis, prior to entering the land to clear it of waste.

4.3.7 *Where an authority exercises any of the powers conferred on it by section 59(7) it shall be entitled to recover the cost incurred by it in removing the waste or taking the steps or both and in disposing of the waste*

*(a) in a case falling within Section 59(7)(a) above, from the occupier of the land unless he proves that he neither made or knowingly caused nor knowingly permitted the deposit of the waste;*

*(b) in any case from any person who deposited or knowingly caused or knowingly permitted the deposit of any of the waste;*

*except such of the cost as the occupier or that person shows was incurred unnecessarily.*

- 4.3.8 Section 59 states that any waste removed by an authority under section 59(7) as outlined above shall belong to that authority and shall be dealt with accordingly.

#### **4.4 Equality and Health**

- 4.4.1 The service would be provided to all residents who occupy properties which are served by private alleyways. Fly tipping is a significant concern to residents and is an indicator of poor environmental quality.

#### **4.5 Consultees (Internal and External)**

- 4.5.1 LGSS Legal and Financial services  
4.5.2 NBC Partnership Unit  
4.5.3 Environmental services contractors

#### **4.6 How the Proposals deliver Priority Outcomes**

- 4.6.1 Cleaner safer Northampton

#### **4.7 Other Implications**

- 4.7.1 None.

### **5. Background Papers**

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- 5.1 None

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