



## CABINET - 17TH OCTOBER 2018

**SUBJECT: THE RECOVERY OF FLYTIPPING CLEAN UP COSTS**

**REPORT BY: INTERIM CORPORATE DIRECTOR, COMMUNITIES**

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### 1. PURPOSE OF REPORT

- 1.1 To advise Cabinet and to seek a decision regarding the options available to the Council to recover the costs of cleaning up flytipping from perpetrators.

### 2. SUMMARY

- 2.1 At its meeting of 28<sup>th</sup> February 2018 Cabinet considered a report regarding fixed penalty notices for unauthorised deposits of waste and resolved to implement a fixed penalty for relevant fly tipping offences at the maximum level of £400 with no discount for early payment. Cabinet also requested that a further report be brought to Cabinet in relation to recovering the costs of cleaning up fly tipping offences.
- 2.2 The law of trespass offers a potential civil cause of action in order to pursue the recovery of flytipping clean-up costs. Trespass deals with interference with the enjoyment of land, but it is a proprietary claim and so is only an option in circumstances where the Council owns the land upon which waste is deposited.
- 2.3 Cabinet are therefore asked to consider a recommendation that the Council takes steps to recover the costs of flytipping against perpetrators of flytipping incidents on Council land where the amount being pursued is above the economical debt recovery threshold.

### 3. LINKS TO STRATEGY

- 3.1 Fly tipping blights our communities and it damages our environment. The prevention of fly tipping contributes to the following well-being goals within the Well-being of Future Generations Act (Wales) 2015:
- A sustainable Wales
  - A prosperous Wales
  - A more equal Wales
  - A Wales of more cohesive communities
  - A globally responsible Wales
- 3.2 Tackling flytipping supports the four Well-being Objectives within the Caerphilly Public Services Board Well-being Plan 2018-23, *The Caerphilly We Want* and also contributes to all of the Well-being Objectives within the Council's Corporate Plan 2018-23.

## **4. THE REPORT**

- 4.1 In 2016/17 local authorities in Wales received 38,614 reports of fly tipping, costing the Welsh Tax payer over £2.18 million to clear. Caerphilly received 1992 reports of fly tipping, a reduction of 15% on the previous year's 2359, costing in excess of £150,000 to clear.
- 4.2 In response to public concerns about fly tipping and appropriateness of sanctions available the Welsh Government brought forward the Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017. These Regulations introduce a new power enabling local authorities to serve a fixed penalty notice on a person found to be responsible for fly tipping offences. The Regulations provide local authorities with a more efficient and proportionate response to small scale fly tipping of waste instead of enforcement by prosecution. In addition it allows an individual to discharge their liability for conviction of the offence by payment of the fixed penalty. Unlike fines issued by the courts, receipts from fixed penalty notices issued under these Regulations are retained by the Local Authority.
- 4.3 At its meeting of 28th February 2018 Cabinet resolved to implement a fixed penalty for relevant fly tipping offences at the maximum level of £400 with no discount for early payment. Fixed penalty notices can be appropriate for offences involving small fly tips of non-hazardous waste, for example; it is expected that larger scale incidents would continue to be prosecuted through the courts. Cabinet also requested that this further report be brought to Cabinet in relation to recovering the costs of cleaning up fly tipping offences.
- 4.4 Legal Services advise that whilst acceptance and payment of a fixed penalty notice discharges criminal liability, the Courts have ruled that it does not amount to an admission of guilt (see R –v- Hamer [2010] EWCA Crim 2053). Therefore the Council could not rely on the payment of the fixed penalty as proof of any civil claim. This would still need to be proven on the balance of probabilities.
- 4.5 In order to pursue the recovery of flytipping clean-up costs it would be necessary to establish a cause of action in civil law. In terms of civil causes of action there are potentially two to consider: trespass and common law public nuisance. Trespass deals with interference with the enjoyment of land, but it is a proprietary claim and so is only an option in circumstances where the Council owns the land upon which waste is deposited. Common law public nuisance only becomes actionable in law if the claimant suffers 'particular damage' over and above the damage suffered by the public generally. Whilst this may be a possible cause of action on which to base any recovery of clean-up costs it is not designed for these circumstances, is rarely used since the introduction of specific environmental health legislation over the last few decades, and no precedent of the law being used in this way has been identified.
- 4.6 Corporate Finance advise that it is not economical to pursue County Court proceedings for smaller debts and these are proposed to the Head of Corporate Finance for write off.
- 4.7 It is therefore recommended that the Council takes steps to recover the costs of flytipping against perpetrators of flytipping incidents on Council land where the amount being pursued is above the economical debt recovery threshold. Each claim is to be considered on its merits by the Head Public Protection, Community & Leisure Services in consultation with the Head of Legal Services having regard to need for it to be proven on the balance of probabilities and the prospects of a successful recovery.

## **5. WELL-BEING OF FUTURE GENERATIONS**

- 5.1 The Well-being of Future Generations (Wales) Act commenced in April 2016. The Act is about improving the social, economic, environmental and cultural well-being of Wales. It aims to make public bodies listed in the Act think more about the long term; work better with people and communities and each other; look to prevent problems and; take a more joined-up approach.

5.2 The Council's approach to addressing flytipping aims to be consistent with the five ways of working as defined within the sustainable development principle in the Act:

- Involvement - This would include actively encouraging individuals to report issues and incidents.
- Collaboration – working with partners including Natural Resources Wales, Fly Tipping Action Wales and local stakeholders.
- Long Term - aiming to reduce both short term and long term risks to the public from fly tipping and will seek to improve the living environment.
- Integration - contributing to health objectives through minimising the exposure to fly tipping and also contributing to resilient objectives by promoting and ensure a clean safe environment.
- Prevention - aiming to minimise the public to the exposure to risk that illegally deposited materials can generate.

## **6. EQUALITIES IMPLICATIONS**

6.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan 2016-2020.

## **7. FINANCIAL IMPLICATIONS**

7.1 As stated above, in 2018/19 the Council spent approximately £1xx, xxx cleaning up flytipping and any recovery of those costs from perpetrators will reduce the burden on Council tax payers.

## **8. PERSONNEL IMPLICATIONS**

8.1 There are no personnel implications arising from this report.

## **9 CONSULTATIONS**

9.1 This report has been sent to the consultees listed below and all comments received are reflected in this report.

## **10. RECOMMENDATIONS**

10.1 It is recommended that Cabinet agree:

- (i) that the Council takes steps to recover the costs of flytipping against perpetrators of flytipping incidents on Council land where the amount being pursued is above the economical debt recovery threshold.
- (ii) each claim is considered on its merits by the Head of Public Protection, Community & Leisure Services in consultation with the Head of Legal Services, having regard to need for it to be proven on the balance of probabilities and the prospects of a successful recovery.

## **11. REASONS FOR THE RECOMMENDATIONS**

11.1 In order to recover costs incurred by the Council and to deter flytipping.

## **12. STATUTORY POWER**

### **12.1 Local Government Act 2000.**

Author: Rob Hartshorn, Head Public Protection, Community & Leisure Services  
Consultees: Councillor Eluned Stenner, Cabinet Member for Environment & Public Protection  
Councillor Nigel George, Cabinet Member for Neighbourhood Services  
Mark S. Williams, Interim Corporate Director, Communities  
Rob Tranter, Head of Legal Services and Monitoring Officer  
Hayley Jones, Waste Strategy and Operations Manager  
Ceri Edwards, Environmental Health Manager  
Mike Headington, Green Spaces and Transport Services Manager  
James Williams, Senior Solicitor  
Lisa Lane, Solicitor  
Anwen Cullinane, Senior Policy Officer (Equalities & Welsh Language)  
Mike Eedy, Finance Manager  
Craig Verrier, Senior Income Officer  
Shaun Watkins, Human Resources Manager

#### **Background Papers:**

Cabinet Report – “Fixed Penalty Notices for the Unauthorised Deposit of Waste” 28th February 2018