

REPORT TO: BEST VALUE SUB-COMMITTEE of the POLICY AND RESOURCES COMMITTEE - 18th OCTOBER 2005

REPORT ON: BEST VALUE REVIEW OF METHODS OF DEALING WITH FLY-TIPPING

REPORT BY: ASSISTANT CHIEF EXECUTIVE (MANAGEMENT) HEAD OF WASTE MANAGEMENT

REPORT NO: 645-2005

1.0 PURPOSE OF REPORT

1.1 This report seeks approval of the Best Value Review of the current approach to tackling the problems of fly-tipping, including the more effective use of legal powers, staff and financial resources.

2.0 RECOMMENDATIONS

It is recommended that the sub-committee:-

2.1.1 Agree to the Council's participation in the national "Flycapture" Register, which gathers information on incidents of fly-tipping and the costs associated with its removal.

2.1.2 Agree to the continuation of a multi agency "fly-tipping forum" led by Waste Management and including representatives from Tayside Police, Scottish Environment Protection Agency (SEPA), Keep Scotland Beautiful (KSB) and relevant Council Departments.

2.1.3 Authorise the Rapid Response Team to remove fly tipped material from areas of private land where no owner can be traced.

2.1.4 Authorise the Head of Waste Management to develop a protocol with Tayside Police for the issuing of fixed penalty notices for fly-tipping.

2.1.5 Authorise the Head of Waste Management to explore funding opportunities to extend the life of the Temporary Waste Enforcement Officer posts.

3.0 FINANCIAL IMPLICATIONS

3.1 Where the owners of private land cannot be traced, the Council may be required to take direct action to remove fly-tipped material. This will have a financial implication in terms of staff time and disposal costs. Initially this expenditure will be met from within the Waste Management Departments Revenue Budget.

4.0 DUNDEE 21 IMPLICATIONS

4.1 Improved methods for dealing with fly-tipping will have a positive impact on the following Local Agenda 21 themes:-

- Resources are used effectively and waste is minimised.
- Health is protected by creating a safe, clean and pleasant environment, and :
- Pollution is limited to levels at which natural systems can cope.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 None

6.0 BACKGROUND

6.1.1 Fly-tipping can be defined as "the illegal deposit of waste onto land which does not have a licence to accept waste". The types of material which are typically fly-tipped include general household and garden refuse, larger domestic items including fridges and mattresses and commercial waste such as builder's rubble and tyres. Such waste can occur in any quantities, in any mixture and in any location.

6.1.2 Fly-tipping poses a number of environmental problems, some examples of which are as follows:

- Illegally deposited hazardous or toxic waste can pose a major threat to public safety
- Fly-tipping can pollute watercourses or contaminate underlying soil
- Fly-tipped material looks unsightly and can detract from the amenity of an area
- Fly-tipping undermines legitimate waste management activities

6.1.3 A recent study carried out in Scotland, England and Northern Ireland showed that 73% of Local Authorities questioned felt that fly-tipping was a "significant" or "major" problem. The feeling was that this problem is likely to escalate as legitimate disposal of waste becomes ever more strictly controlled, and the cost of landfill tax increases year on year.

6.1.4 There are many reasons why fly-tipping occurs. In some cases it results from producers of waste being ignorant of their responsibilities, but in most cases it is due to the high costs associated with legitimate disposal. There also exists amongst offenders a perceived low risk of detection and prosecution, making fly-tipping an attractive option.

6.2 National Situation

6.2.1 In the United Kingdom, waste comes under strict legislative controls that impose a "Duty of Care" on waste producers to ensure that waste is transported and disposed of appropriately. Under Section 33 of the Environmental Protection Act 1990, waste can only be deposited at officially licensed sites, therefore anyone who fly-tips is committing a criminal offence and is liable on conviction to a fine of up to £40,000.

6.2.2 In 2003/04 the Scottish Executive commissioned a review of fly-tipping to firstly determine if the current legislation (primarily the Environmental Protection Act 1990) was effective in achieving its purpose, but also to determine if the legislation was being fully utilised by Local Authorities.

6.2.3 The outcome of this review suggested that the existing legal framework was generally sufficient, but was not being used as widely and as effectively as it could be. The review also highlighted the fact that every Local Authority addressed the issues of investigation and enforcement differently, and that there was a lack of collaboration between the various agencies involved, particularly between Local Authorities and SEPA.

6.3 Recent Developments

6.3.1 One of the main recommendations from the national review was the creation of a Fly-tipping Forum consisting of key stakeholders such as CoSLA, the Scottish Executive, the Police, Keep Scotland Beautiful and Land Owners. The purpose of this Forum was to develop a model agreement between regulators and enforcers and to build upon best practice.

6.3.2 To improve communications, a new post of "National Fly-tipping Officer" was created to co-ordinate the work of the forum and liaise with key staff from Local Authorities. It was

further recommended that each Local Authority should establish a Local Fly-tipping Forum with a similar membership and remit to the National body to co-ordinate action locally in the event of the detection or reporting of fly-tipping incidents.

- 6.3.3 A national "Flycapture" database was launched in 2004/05. One of the main purposes of establishing this database was to provide Local Authorities with a robust mechanism by which to gather evidence relating to the incidence and associated costs of fly-tipping in their areas. This evidence could then be used to support funding applications to the Scottish Executive that would give Local Authorities the resources required to tackle the problem effectively.
- 6.3.4 The Environmental Protection (Duty of Care) Amendment (Scotland) Regulations 2003, extended the power to inspect Duty of Care documentation to Local Authorities. This power was previously only available to SEPA. The Anti Social Behaviour etc (Scotland) Act 2004, introduced new powers to Local Authorities, SEPA and the Police to issue Fixed Penalty Notices for fly-tipping
- 6.3.5 In March 2004, the Scottish Executive launched a major education and awareness campaign entitled "Dumb Dumpers". As part of the campaign, a national "stopline" phone number was issued and members of the public were encouraged to pass on details of fly-tipping incidents. The phone calls were co-ordinated nationally, then distributed to individual local authorities for action.

6.4 Local Situation

- 6.4.1 The types of fly-tipping problem commonly experienced in Dundee range from small isolated pockets of material deposited on gap sites, to large scale problems on prominent areas of land.
- 6.4.2 At present little investigation or enforcement action is taken. This is due to a combination of factors such as a lack of staff resources, difficulty in gathering evidence, and until recently, complicated legal processes requiring court action. This situation has changed significantly in recent months due to the introduction of a Fixed Penalty Notice option by the Scottish Executive, and the creation of two temporary Waste Enforcement Officer posts within the Waste Management Department. These Officers will play a key role in the investigation of fly-tipping incidents, and where appropriate the issuing of Fixed Penalty Notices or instigation of formal legal proceedings.
- 6.4.3 The Rapid Response Team was created in October 2000 to deal with a range of environmental problems including fly-tipping. The Team have been very successful in reacting promptly to complaints from members of the public and elected members, and also have a remit to deal with fly-tipping incidents proactively by targeting known hot spots on a regular basis.
- 6.4.4 The Team are contacted through the Councils Customer Service Centre and have a target response time of three working days to deal with fly-tipping complaints. The Teams performance against this target is reported annually through the Waste Management Departments Service Plan Performance Report, and during 2004/05 the Team achieved a 99% success rate.
- 6.4.5 The costs of removing fly-tipping can vary tremendously depending on the volume and nature of material dumped. In most cases, where the fly-tipping occurs on areas of common ground, it is removed by the Councils Rapid Response Team at minimal cost. Larger deposits, however, or those containing hazardous waste such as asbestos, can require the use of specialised plant and equipment and costs can be considerable, occasionally running into thousands of pounds.

6.4.6 In many instances the owners of land are either unknown or untraceable, and the removal and disposal costs are borne by the Council. When a landowner can be traced then they may be required to clear the waste themselves, or else the Council can clear the waste and recover costs. Recovering costs from landowners is a sensitive issue as they themselves have often been the victims of crime in the first instance. Penalising the landowner could be argued to be against the "polluter pays" principle.

6.5 Stakeholder Consultation

6.5.1 In line with Scottish Executive best practice guidance, and in order to seek the views of all major stakeholders, a decision was taken to establish a multi agency local fly-tipping forum in January 2004. This forum was led by the Waste Management Department and comprised representatives from SEPA, Tayside Police, Keep Scotland Beautiful and various other Council Departments. The purpose of the forum was to keep everyone abreast of national developments, to gather information on the extent of the problem in Dundee, and to develop a formal procedure to deal with fly-tipping problems efficiently that had the agreement of all parties.

6.5.2 Prior to the creation of the Local Fly-tipping Forum, there was little cohesion between the various agencies involved in how incidents of fly-tipping were documented and costs recorded. There was also a degree of confusion in many cases regarding who was responsible for investigation, enforcement, and ultimately meeting the costs of removal. This led to a fragmented approach resulting in the inefficient use of resources and delays in dealing with the problem. It also made it virtually impossible to say for certain the true extent of fly-tipping in the city, and the financial burden placed on the Local Authority as a result.

6.5.3 In particular, the forum looked at the following issues:

- How are fly-tipping complaints currently recorded and investigated?
- Is the ownership of the waste traced?
- Are efforts made to trace landowners?
- Is surveillance carried out?
- Who removes the material?
- Is the existing legislation fully utilised?
- Can a "one stop shop" for fly-tipping complaints be established?
- Is there a list of known problem sites?
- What are the budget and staffing implications?
- Should a lead department be appointed?
- Are staff sufficiently well trained in how to investigate complaints?

6.5.4 The forum has met on a number of subsequent occasions, and significant progress has been made in addressing each of the above issues. In particular, agreement has been reached between all parties on how fly-tipping incidents should be recorded, and a protocol has been agreed between Waste Management and Environmental Health and Trading Standards in relation to investigation and enforcement action.

6.5.5 It is recommended that the forum continue to meet at regular intervals, and that should particular problems arise then the forum should meet to discuss the best strategy for dealing with these on a case by case basis.

6.5 Option Appraisal

6.5.1 The Options considered for this review were as follows:

6.5.2 (a) Status Quo. Continue with the situation prior to the creation of the local forum, whereby each Department or Agency deals with complaints on an ad hoc basis making best use of the powers and resources available to them at the time.

(b) Adopt the recommendations made by the Scottish Executive following the national fly-tipping review, including examining the possibility of issuing Fixed Penalty Notices where appropriate, continuing with the local fly-tipping forum and participating in the "Flycapture" register.

- 6.5.3 It is clear that the fly-tipping review has delivered significant improvements to existing legislation and data gathering processes. These improvements were developed after drawing on current best practice, and were subjected to an extensive and robust consultation process to which Dundee City Council contributed. It is therefore recommended that option (b) be selected.

7.0 CONSULTATION

- 7.1 The Chief Executive, Depute Chief Executive (Finance) and Depute Chief Executive (Support Services) have been consulted on this report, as have the partner organisations referred to in 6.5.1 above.

8.0 BACKGROUND PAPERS

- 8.1 None

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(DATE) 10th October 2005

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(DATE) 10th October 2005