



<b>Subject:</b>	Update on Fly-Tipping and New Legislative Powers
<b>Date:</b>	14 <sup>th</sup> January 2020
<b>Reporting Officer:</b>	Nigel Grimshaw, Strategic Director, City and Neighbourhood Services
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<b>Restricted Reports</b>	
<b>Is this report restricted?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>If Yes, when will the report become unrestricted?</b>	
<b>After Committee Decision</b>	<input type="checkbox"/>
<b>After Council Decision</b>	<input type="checkbox"/>
<b>Sometime in the future</b>	<input type="checkbox"/>
<b>Never</b>	<input type="checkbox"/>

<b>Call-in</b>	
<b>Is the decision eligible for Call-in?</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
1.1	<p>The purpose of this report is to update the Committee on the Notice of Motion that was brought to Council on the 5th March 2019 regarding the Council's approach to dealing with fly tipping throughout the city. The motion, proposed by Councillor Murphy, was as follows:</p> <p><b>"This Council notes the frustration caused by fly tipping across the city and the visual impact it has on local areas.</b></p> <p><b>Councils are responsible for the enforcement and policing of fly tipping and currently we can only enforce this by checking through what has been dumped and getting names and addresses from that. This can carry a fine of up to £2,500.</b></p>



3.3 The Council has a team of nine enforcement officers who adopt a robust approach to dealing with incidents of fly-tipping using the limited powers available under the Litter (NI) Order 1994. Enforcement officers will investigate any case of fly-tipping which includes any waste that is found in entries, streets or on any land open to the air throughout the Council area, for example, bagged waste, cardboard, packaging etc. Where there is sufficient evidence to progress such cases, a fixed penalty notice will be issued. The officers work in geographic areas and proactively monitor their assigned areas for illegal waste deposits, however, it is widely acknowledged that the detection of fly-tipping activity together with obtaining sufficient evidence is challenging as these illegal activities tend to occur in remote areas under the hours of darkness. The table below indicates the level of enforcement activity that has been undertaken by the Council's enforcement team within the past five years.

3.4 **Enforcement Activity 2014-2019**

Year	2014	2015	2016	2017	2018	2019
<b>Investigations into Fly-tipping</b>	2921	3120	2338	1919	2376	1967
<b>Fixed Penalties Issued (For Fly-Tipping)</b>	661	837	742	619	814	713

3.5 Models of best practice include the deployment of surveillance cameras to assist in the detection of environmental crime and the enforcement team has previously deployed covert cameras in hotspot areas in an attempt to detect offenders, however this activity ceased when there were changes to the legislation which meant that investigations were no longer compliant. The use of any cameras to undertake surveillance activities is governed by stringent rules under the Regulation of Investigatory Powers Act 2000 ("RIPA") and the Council complied with the requirements of RIPA when undertaking covert activity and when the covert cameras were deployed. Such activities were only permissible for the more persistent fly-tipping activity and were undertaken in accordance with legal advice, which stated that we were required to comply with RIPA for this type of surveillance.

3.6 The Council made approximately 13 RIPA requests from 2006 to 2011 to carry out directed surveillance under RIPA for the deployment of covert cameras at hot spots for the illegal deposit of waste for short periods of time, ranging from 2 to 5 days. The use of this technology did not provide any useful evidence at the sites when deployed and there were particular challenges in deploying such equipment in built up areas within a

	<p>city environment due to possible theft or vandalism of the cameras. Visibility at night time was also reduced using the available camera technology at that time.</p>
3.7	<p>The rules governing RIPA changed with the introduction of the Protection of Freedoms Act 2012, which imposed more stringent conditions around the deployment of covert cameras. The Council's use of covert cameras to investigate fly tipping offences under The Litter (NI) Order 1994 was no longer permissible under the new legislation and the practice of deploying covert cameras ceased.</p>
3.8	<p>Following receipt of the above Notice of Motion, a bench marking exercise was undertaken with eight councils in Northern Ireland to determine if they were using any technology to assist in the detection of fly-tipping activity within their respective areas. The following information was established.</p> <ul style="list-style-type: none"> <li>• Five out of the eight councils deployed some form of CCTV surveillance within their council areas at hotspot locations to detect fly-tipping activity.</li> <li>• Three out of the eight councils did not undertake CCTV surveillance due to cost constraints and the perceived lack of useful evidence to take further action.</li> <li>• Three out of the five councils that did use cameras, used them in an overt way, along with signage. Out of the three councils only one council indicated that they had been able to issue fixed penalty notices as a result of the use of the cameras. The other two councils indicated that the cameras acted as a deterrent but did not yield any evidence that could be used against the perpetrators.</li> <li>• Two out of the five councils used signage and covertly placed cameras which resulted in either fixed penalty notices or legal proceedings.</li> </ul>
3.9	<p>In addition to bench marking with other Councils, a legal opinion on the use of cameras was sought to clarify how cameras could be deployed to detect fly-tipping offences whilst ensuring that we complied with our legal duties under RIPA and any other associated legislation aimed at protecting the privacy of individuals.</p>
3.10	<p>The legal opinion has provided some clarity on the use of cameras to detect fly-tipping offences and the advice is sufficient for officers to consider the deployment of cameras at some hotspot locations.</p>
3.11	<p>In light of the legal opinion, officers will explore the options for deployment of cameras at sites where there is persistent fly-tipping activity with a view to undertaking some</p>

monitoring at those sites. This can be done providing adequate signage is displayed stating that cameras are deployed for the purposes of detecting fly-tipping activity.

3.12 Council officers have recently received notification from the NIEA that the Department of Agriculture, Environment and Rural Affairs intends to bring forward a Commencement Order on the 20<sup>th</sup> February 2020 which will give Councils the same powers that are available to the NIEA to address illegal waste disposal under Articles 4 & 5 of the Waste and Contaminated Land Order 1997.

3.13 The Department previously consulted with Councils on the proposed changes to the legislation in 2009 and the new powers that will enable Councils to prosecute for the illegal disposal of waste and to prosecute for duty of care offences. A further report will be brought to Committee in the next few months to outline the new powers and sanctions available to Council. Under the new powers, Councils will have the powers to issue fixed penalty notices in respect of fly-tipping and duty of care offences. **The Council will be making representation to DAERA in respect of the need for additional funding to carry out this function**

3.14 The introduction of dual responsibilities between the Councils and the NIEA requires a partnership working arrangement to ensure that the function is managed with clear lines of responsibility and that there is a demarcation of roles between the two enforcement bodies. In advance of commencing the legislation, the Department has written to all Councils seeking each Council to commit to a "Fly-Tipping Protocol" which sets the operational framework between the NIEA and the Councils regarding enforcement roles.

3.15 Under these arrangements, Councils will investigate illegal waste deposits less than 20 cubic metres and the NIEA will investigate waste deposits exceeding 20 cubic metres and all hazardous waste deposits. Councils will also be required to provide quarterly statistical returns to DAERA as part of this agreement; BCC would require significant additional resources to enable it to provide the necessary statistics. We are not therefore proposing to commit to the protocol. However the Council welcomes the additional powers available to it under the Waste and Contaminated Land (NI) Order 1997 and will work within the principles of the protocol and in partnership with the NIEA to ensure that we adopt a seamless approach in our response to illegal waste disposal in the Belfast City Council area.

#### **Financial & Resource Implications**

3.16 The deployment of surveillance cameras to detect fly-tipping activity will require additional resources. Detailed costs will need to be established through a quotation exercise and we will keep this under review.

3.17	The enforcement of the new powers under the Waste and Contaminated Land (Northern Ireland) Order 1997 will be undertaken within existing budgets and resources.
3.18	<p>However the additional responsibilities and the potential for an increase in complaints could have an impact on revenue budgets and representations will be made to DAERA in respect of the need for additional funding to carry out this function.</p> <p><b><u>Equality or Good Relations Implications/ Rural Needs Assessment</u></b></p>
3.19	None
<b>4.0</b>	<b>Appendices – Documents Attached</b>
	None