

**RESPONSE TO DEFRA CONSULTATIONS ON THE UNLAWFUL
DISPOSAL OF WASTE
(Report by Head of Operations)**

1. INTRODUCTION

1.1 This report informs Cabinet of proposed responses to DEFRA on behalf of the Council following consultation on:

- (a) New Fly Tipping Strategy and as part of that strategy, -
- (b) Proposed new statutory directions to the Environment Agency (EA) and Waste Collection Authorities (WCA) changing the current responsibilities in respect of the unlawful disposal of waste.

1.2 Responses to the consultations were initially requested by 14 May 2004 but will now be accepted until the end of May 2004. Both consultations deal with similar issues so are dealt with here as a single topic.

2 BACKGROUND

2.1 As part of a package of measures grouped broadly under the heading of Anti Social Behaviour, DEFRA has consulted Local Authorities on a broad range of issues in the past year related to littering and fly tipping.

2.2 DEFRA has now brought together the results of last year's consultations in the form of a proposed Fly Tipping Strategy.

2.3 The strategy reflects the government's view that, in recent years, it has provided a range of powers to Local Authorities and the EA to take action in respect of fly tipping and illegally dumped waste which have not been used effectively.

2.4 Statutory responsibility for the removal of fly tipped material is currently divided between WCA's and the EA. The current division in respect of 'who does what' divides along the lines that the waste collection authority deals with all inert fly tipped material. The EA deals with all contaminated waste, large volume waste and waste in the area of watercourses or likely to cause pollution of watercourses. The agency has wide powers and is supported by a very large legal department with expertise in prosecuting these types of offence.

2.5 In areas where fly tipping is a major problem, these divisions of responsibility have caused problems and delays in dealing with fly tipped material (not the case in Huntingdonshire). To address these problems, the EA and the Local Government Association developed a voluntary 'Fly Tipping Protocol' to define more clearly, who dealt with what. Although this protocol has helped those WCA's that undertake active enforcement, experience has shown, that proactive policies do not necessarily eliminate fly tipping but 'displace' it to adjacent areas where less enforcement is taking place.

- 2.6 In areas of the country where fly tipping is on a much smaller scale and presents less of a problem, (such as Huntingdonshire) councils have tended to establish systems that provide for quick removal, which has been proven to be effective in stopping 'dumping areas' becoming established. In cases where large volumes are dumped, or materials of a suspicious or dangerous nature are found, the WCA works with the EA to arrange safe removal and disposal.
- 2.7 DEFRA is of the view that the existing voluntary protocol is diverting the EA from its principle role of pollution control and results in the EA having to 'spread it's resources' very thinly on a National basis in order to cope with it current responsibilities.
- 2.8 The proposed new statutory directions, made under the Anti Social Behaviour Act 2003, will move responsibility for the removal of the majority of fly tipped material from the EA to WCA's, leaving the EA with responsibility for only the most serious cases (chemicals/pollution of watercourses and similar).
- 2.9 It also places requirements on WCAs to use powers within both the Environmental Protection Act and the Anti Social Behaviour Act to identify and prosecute offenders, extending those powers to some areas of land in private ownership where previously the WCA had no direct power to intervene, but the EA did. The aim of the directions is to force all WCAs to apply the same rules to eliminate, rather than displace, fly tipping and dumping.
- 2.10 The proposals within the new Statutory Directions are intended to produce a 'level playing field' and ensure that nationally a single standard is applied when dealing with Fly Tipping and dumping.
- 2.11 The consultation document envisages that the effect of these new directions will be cost neutral and no additional funding to meet the new responsibilities is proposed. The view taken in the consultation is similar to that used in previous consultations, in that by undertaking proactive enforcement, the amount of dumping within a WCA's area will reduce and money currently spent on clearing this will balance the cost of enforcement.

3. PROPOSED RESPONSE

- 3.1 Responses to the detailed questions asked in the consultation are contained within the consultation documents attached as Annex 1 to this report.
- 3.2 In addition, it is proposed to include the following paragraphs as an 'overview response'.
- 3.3 Huntingdonshire District Council welcomes and supports the underlying intentions of the proposed Tipping Strategy in reducing the illegal dumping of waste but are deeply concerned that the proposals, as outlined in the consultation documents, shift responsibility for the majority of enforcement to Waste Collection Authorities without matching funds to establish the infrastructure necessary to do so.

- 3.4 Our concern is reflected in DEFRA's own admission that a key reason for doing so, is that the Environment Agency has insufficient resources to discharge its current responsibilities effectively.
- 3.5 The assumption that proactive enforcement at a more local level will generate cost savings to fund the process is naive. To comply with these new Statutory Duties will require us to establish new inspection and enforcement roles that do not exist at present, requiring new capital and revenue funding.
- 3.6 Whilst, in the longer term, some net savings *may* accrue from proactive enforcement, the costs in the early years of establishing the infrastructure necessary to undertake the necessary enforcement will not be cost neutral and will need to be met by local tax increases if funding is not provided.
- 3.7 The Council is already this year having to absorb the cost increases associated with developing new systems to collect and collate details of all fly tipped material as required by DEFRA for the new 'flycapture' national database. The recent consultation document relating to the proposed code of practice related to litter from fast food outlets will if introduced add further cost. It is unreasonable to expect us to absorb the cost of further changes.

4. LOCAL IMPLICATIONS

- 4.1 If these new directions are made, the District Council will be required to deal with the majority of cases of fly tipping that occur within the district, regardless as to where they occur or the scale of the event, many of which are currently dealt with by the Environment Agency.
- 4.2 To discharge the responsibilities imposed by the directions, it would be necessary to establish a dedicated and specialised enforcement role together with appropriate funding to meet the costs associated with removal, transportation and disposal. These could not be met from existing resources without reducing current service levels in respect of current cleansing activity.

5. RECOMMENDATION

- 5.1 That the Cabinet be requested to:
- a) endorse the proposed consultation response; and
 - b) authorise appropriate representations on the matter to be made to the Local Government Association.

Background Papers

DEFRA consultation - Statutory directions to the Environment Agency and waste collection authorities on the unlawful disposal of waste. February 2004.

DEFRA consultation – Fly Tipping Strategy. March 2004

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