



## Notice of meeting of

### Executive Member For Neighbourhood Services and Advisory Panel

**To:** Councillors Lancelott (Chair), Hall, Potter, Waller (Executive Member) and B Watson

**Date:** Wednesday, 18 October 2006

**Time:** 5.00 pm

**Venue:** The Guildhall, York

### AGENDA

#### Notice to Members - Calling In:

Members are reminded that, should they wish to call in any item on this agenda, notice must be given to Democracy Support Group by:

**10:00 am on Tuesday 17 October 2006**, if an item is called in *before* a decision is taken, *or*

**4:00 pm on Friday 20 October 2006**, if an item is called in *after* a decision has been taken.

Items called in will be considered by the Scrutiny Management Committee.

#### 1. **Declarations of Interest**

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

**2. Minutes (Pages 1 - 4)**

To approve and sign the minutes of the meeting held on 7 September 2006.

**3. Public Participation**

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Panel's remit can do so. Anyone who wishes to register or requires further information is requested to contact the Democracy Officer on the contact details listed at the foot of this agenda. The deadline for registering is Tuesday 17 October at 10 am.

**4. Clean Neighbourhoods and Environment Act 2005 - Fixed Penalty Notices (Pages 5 - 14)**

The purpose of this report is to ask Members whether they wish to implement the standard default level for the Fixed Penalty Notices (FPN's); whether to implement the standard default level and offer a reduction for early payment (within 10 days), (in line with local authorities in the North Yorkshire region); or to specify the amount of the FPN's from within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 2). Members are also asked to approve a proposed communication and awareness strategy, and the commencement date of the 20<sup>th</sup> November 2006 for implementation of FPN enforcement.

**5. Contaminated Land Investigation Funding (Pages 15 - 20)**

On 9 February 2005, in compliance with the City of York Council 'Contaminated Land Strategy', and the statutory requirements of the Environmental Protection Act 1990, the Executive Member approved a report which included a proposal for initial ("preliminary") investigation by Environmental Protection Unit (EPU) of three areas of land which historically had been used for domestic and / or commercial waste tipping ("landfilling"). Later that year, the council's EPU in accordance with the decision by the Executive Member, conducted preliminary contaminated land investigations of the following council-owned land, Nun Ings (off Butcher Terrace) in Micklegate ward, King George's Playing Field in Heworth ward, and Tang Hall Primary School Playing Field (at the junction of Eighth

Avenue and Fifth Avenue) in Heworth ward. In March 2006 as a result of preliminary investigations an application was made to the Department for Environment, Food and Rural Affairs (Defra) for grant funding to support more detailed investigation of these areas. In July 2006 Defra replied to say they approved the requested funding (£33,150). A decision is therefore requested from members to accept the grant offered and conduct the detailed investigations.

**6. Any other business which the Chair considers urgent under the Local Government Act 1972**

Democracy Officer

Name : Sarah Kingston

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For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

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City of York Council

Minutes

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MEETING	EXECUTIVE MEMBER FOR NEIGHBOURHOODS AND ADVISORY PANEL
DATE	7 SEPTEMBER 2006
PRESENT	COUNCILLORS LANCELOTT (CHAIR), KING AND WALLER (EXECUTIVE MEMBER)
APOLOGIES	COUNCILLORS HALL AND POTTER

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**16. Declarations of Interest**

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda. No interests were declared.

**17. Exclusion of Press and Public**

RESOLVED: That the press and public be excluded from the meeting during consideration of Annex 2 to Agenda Item 8 on the grounds that it contained information relating to the financial or business affairs for any particular person (including the authority holding that information).

REASON: This information is classed as exempt under Paragraph 3 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

**18. Minutes**

REOLVED: That the minutes of the meeting of the Executive Member for Neighbourhoods and Advisory Panel held on 26 July 2006 be approved and signed by the Chair and Executive Member as a correct record.

**19. Public Participation**

It was reported that there had been no registrations to speak at the meeting, under the Council's Public Participation Scheme.

**20. City of York Council Public Toilets**

Members considered a report that detailed the current budgetary arrangements for public toilets and requested Members to approve proposed savings within those budgets, which are required due to new contractual arrangements.

Officers agreed to provide Members with data on the breakdown of costs of public toilets in the city to demonstrate the higher than average cost of the Union Terrace public toilets.

Advice of the Advisory Panel

That the Executive Member be advised to approve the instigation of savings proposals A and C1 as outlined in Table 3 of the report and to request a report on further considerations of toilet provision be brought to a future Executive Member for Neighbourhoods and Advisory Panel meeting.

Decision of the Executive Member

RESOLVED: That the advice of the Advisory Panel be accepted and the suggested decision above be endorsed

REASON: To ensure that expenditure will remain within present budget provision.

**21. National Service Planning Requirements for Environmental Health and Trading Standards Services**

Members considered a report which presented service plans for the 2006/07 period for food law enforcement, health & safety and animal health enforcement.

Advice of the Advisory Panel

That the Executive Member be advised to approve the service plans and that they be referred to Executive for their approval.

Decision of the Executive Member

RESOLVED: That the advice of the Advisory Panel be accepted and the suggested decision above be endorsed.

REASON: In order that the council meets the requirement of the FSA, HSC and DEFRA

**22. European Sustainable Cities – Sustainable development in a historic city - Update**

Members considered a report which provided an update on progress and activities relating to the Twin Towns event proposed for January/February 2007.

Advice of the Advisory Panel

That the Executive Member be advised to;  
(i) note the contents of the report;

- (ii) give approval for work to continue on this event through the EU Town Twinning budget, or via alternative sources of funding;
- (iii) the event being conducted in partnership with the Energy Efficiency Advice Centre and amended according to funds that can be obtained.

Decision of the Executive Member

RESOLVED: That the advice of the Advisory Panel be accepted and the suggested decision above endorsed.

REASON: To raise awareness of sustainability issues and York.

**23. 2006/07 First Quarter Monitoring Report - Finance and Performance**

Members considered a report which represented two sets of data, the latest projections for revenue and capital expenditure by the Neighbourhoods portfolio and traded accounts, and Quarter 1 (06/07) performance against target for a number of key indicators.

Advice of the Advisory Panel:

That the Executive Member be advised to approve the financial and performance position of the portfolio and to welcome the dramatic increase in recycling levels in the city and to thank all officers in the department for the work that they have done to achieve this increase.

Decision of the Executive Member:

RESOLVED: That the advice of the Advisory Panel be accepted and the suggested decision above be endorsed.

REASON: To accord with budgetary and performance monitoring procedures.

**24. Neighbourhoods Group Legal Actions**

Members considered a report which informed them of the results of legal actions (prosecutions, formal cautions and fixed penalties) undertaken by the Neighbourhoods area of the Directorate of Neighbourhood Services (Environmental Health, Trading Standards, Licensing and Street Environment Services) for the period 1<sup>st</sup> April 2006 – 30<sup>th</sup> June 2006.

Advice of the Advisory Panel:

That the Executive Member be advised to note the content of the report and thank the team for their efforts.

Decision of the Executive Member:

RESOLVED: That the advice of the Advisory Panel be accepted and the suggested decision above be endorsed.

REASON: To inform the Executive Member.

CLLR WALLER  
EXECUTIVE MEMBER

CLLR LANCELOTT  
CHAIR OF ADVISORY PANEL  
The meeting started at 5.00 pm and finished at 5.40 pm.





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## Meeting of Executive Member for Neighbourhood Services and Advisory Panel

18<sup>th</sup> October 2006

Report of the Director of Neighbourhood Services

### Clean Neighbourhoods and Environment Act 2005 – Fixed Penalty Notices

#### Summary

1. The Clean Neighbourhoods and Environment Act 2005 (CN&EA) extended the use of fixed penalty notices (FPN's) for specific environmental offences with effect from 6<sup>th</sup> April 2006. The Act also permits for some offences for the fixed penalty amount to be set (within prescribed limits) at a local level including the offering of discounts for early payment.
2. The purpose of this report is to ask Members whether they wish to implement the standard default level for the FPN's; whether to implement the standard default level and offer a reduction for early payment (within 10 days), (in line with local authorities in the North Yorkshire region); or to specify the amount of the FPN's from within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 2). These ranges are from £50 to £80 for those offences with a default amount of £75 and from £75 to £110 for offences with a default amount of £100. Members are also asked to approve a proposed communication and awareness strategy, and the commencement date of the 20<sup>th</sup> November 2006 for implementation of FPN enforcement.

#### Background

3. Members will be aware of the Government's report Living Places – Cleaner, Safer, Greener. The review of provisions and powers in this area concluded that the powers, duties and guidance for dealing with problems associated with local environmental quality were not working as effectively as they should be. Therefore new powers were introduced in the form of the CN&EA 2005 for providing and maintaining a clean and safe environment, including the ability to issue FPN's, to set at a local level the amount of the fine (within prescribed limits) and the potential to also offer discounts for early payment.
4. FPN's are seen by DEFRA (The Department for Environment Food and Rural Affairs) to be an effective and visible way of responding to low-level environmental crimes provided that they are issued sensibly, enforced even-handedly as a response to genuine problems and included as part of a wider

enforcement strategy. There is, of course, a balance to be struck between resources devoted to fixed penalties and those spent on prosecutions.

5. Annex A, of this report, lists the offences for which fixed penalties apply. This includes details of who can issue the FPN's and the amount (or where appropriate, the default amount) of each fixed penalty. It also details the amount below which discounted penalties should not fall for early payment of fines. From this it can be seen that FPN's can be set locally for litter, street litter control notices and litter clearing notices, the unauthorised distribution of literature on designated land, graffiti, fly-posting and offences concerning waste receptacles, (in effect presenting refuse incorrectly either early or not in correct place). However, if the amount is not set locally the default amounts must be charged.
6. The CN&EA also introduced some relevant technical amendments to statute. The FPN's for littering now applies to all places that are open to the air, private as well as public, rather than being restricted to relevant land and highways. The CN&EA also makes it clear that litter can include smoking related litter such as cigarette ends and cigars and discarded chewing gum or bubble gum.
7. Detailed guidance has been issued by DEFRA about the enforcement of the provisions of the CN&EA 2005 including the use of FPN's and the issuing of fixed penalty notices to juveniles. Although a FPN can be issued to anyone over the age of 10, local authorities are being strongly advised to adopt special procedures for issuing notices to young offenders to ensure compliance with the duties of the Children Act 2004.
8. Street Environment Officers already issue FPN's for litter. Notices are issued at £50, a rate set prior to the introduction of the CN&EA 2005. At present no discount is given for prompt payment, prior to the 14 days allowed for payment.

### **Consultation**

9. On 28<sup>th</sup> April 2006 a meeting was held involving North Yorkshire District and Borough Councils and City of York to discuss conformity in enforcement of the CN&EA 2005 across the region. The representatives discussed the level of fixed penalties to establish a consistent approach to enforcement. It was agreed that the outcome of the meeting would be relayed to Members and Chief Officers of each Authority for consideration in setting the fines at a local level. It was recommended that the default level of fixed penalty should be applied and that authorities should look to implement reduction if payment was received within 10 days of issue. The recommended reduction is detailed in the table below.

Table One – Fixed penalty notice levels recommended by North Yorkshire Chief Officers Group

Description of Offence	Amount if paid within 10 days (£)	Default Amount (£)
Depositing Litter	50	75
Failure to comply with a street litter control notice	60	100
Failure to comply with a litter clearing notice	60	100
Failure to produce waste documents	180	300
Failure to produce authority to transport waste	180	300
Unauthorised distribution of free printed material	50	75
Failure to comply with a waste receptacles notice	60	100
Graffiti and fly-posting	50	75

## Options

10. The options for Members to consider are:
  - a) To set the level for FPN's at the standard default level, in line with surrounding authorities in the North Yorkshire area, including the application of a discount for prompt payment at the minimum level below which the discounted penalties cannot fall, within 10 days of the offence, as detailed in Table One above and Annex A.
  - b) To set the level for the FPN's at the standard default level detailed in Annex A and not to offer a discount for prompt payment.
  - c) To specify the amount of the FPN's from within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 2). These ranges are from £50 to £80 for those offences with a default amount of £75 and from £75 to £110 for offences with a default amount of £100. Annex A provides the details of these ranges for each listed offence. Associated with this is that the amount of the discount should also be specified, should Members so wish.
11. In deciding on the level for a fixed penalty, account needs to be taken of the deterrent effect of the different levels and also peoples' readiness to pay.

## Analysis

12. The advantage of using FPN's as envisaged by the CN&EA 2005 is that Street Environment Officers (or other delegated officers), will be able to deal with a variety of environmental crime issues more swiftly, with immediate results, whilst allowing them to allocate time and resources to more serious matters such as fly-tipping, or dealing with persistent offenders by prosecution.

13. The use of fixed penalties is not appropriate for persistent offending or for second time offences where prosecution would be more appropriate. The FPN's should only be issued therefore where there is sufficient evidence to support prosecution if the notice is not paid. The Government wishes to encourage their use by local authorities and other agencies and will be monitoring how local authorities utilise these new powers.
14. The government believe that the public as a whole welcomes the use of such penalties. However, it is recommended by DEFRA that local authorities should have a well-publicised lead-in period raising awareness of this enforcement action, as specified within the DEFRA statutory guidance. Additional training of staff will be necessary especially in relation to the issuing of FPN's to juveniles. The current enforcement policy for issuing FPN's will need to be amended to take account of the DEFRA statutory guidance issued, including the use of FPN's with juveniles. A report containing a Street Environment Enforcement policy and procedures of enforcement for areas such as littering, fly-tipping, graffiti, waste presentation, fly-posting etc will be presented to the December 2006 EMAP for approval.
15. Setting the fixed penalties at the default amounts will have the advantage of conformity of enforcement with other authorities in the region. DEFRA's guidance encourages consultation with others when considering the level of fixed penalties. The default levels are recognised as being appropriate in most instances. Uniform levels negate arguments from the public that they are being dealt with unfairly by different authorities.
16. The advantage of the introduction of a discount for early payment, within 10 days of the notice, is that it allows the fixed penalty limits to be set at the uniform default rate whilst in effect allowing the lowest rate to be paid. This takes into account factors such as ability/willingness to pay. In addition such discounts may assist in the general acceptance by the public of the use of these penalties to combat environmental crime.

#### Communication and Awareness Campaign

17. To satisfy DEFRA statutory guidance a well publicised lead in period is required to raise awareness of the changes to the enforcement action. The following steps will be taken to achieve this.
  - i) Enforcement information will be available on the CYC web
  - ii) Press releases – The first of which was issued with this report. From this it is hoped that the Press and other media such as local radio stations will feature information on enforcement action within the street environment.
  - iii) Information will be placed in council produced external and internal publications, such as YourWard (subject to Ward member approval), and YourCity, at the next possible opportunity.

- iv) Posters will be produced and displayed at sites such as libraries, bus stops and council receptions.
  - v) For offences in relation to waste receptacles and the presentation of waste, leaflets detailing the new enforcement powers will be sent to all addresses on streets where previous enforcement action has been necessary, to ensure that occupiers are aware that FPN's will be issued where sufficient evidence is gained of an offence.
18. FPN's will then be issued, when there is evidence of an offence from the 20<sup>th</sup> November 2006, after this 4 week awareness and communications campaign.

### **Corporate Priorities**

19. The additional enforcement powers provided by the CN&EA, including the use of FPN's support the Council's corporate objectives of creating a safer city and improving quality and sustainability. The aim of the CN&EA 2005 is at one with the corporate priorities; - to improve the actual and perceived condition and appearance of the city's streets, housing estates and publicly accessible spaces, and reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.
20. The implication of the Fixed Penalty Notices with effect from 20<sup>th</sup> November will support the Neighbourhood Pride initiatives, and also tie in with the outcomes of the Street Scene Review.

### **Implications**

- 21.
- **Financial** – To be met from existing budgets as there are no significant implications associated with this report.
  - **Human Resources (HR)** - There are no human resources implications
  - **Equalities** -There are no equalities implications other than those around the issuing of FPN's to juveniles. Clarification on the application of this will be taken from the DEFRA statutory guidance and included within the Street Environment Enforcement Policy.
  - **Legal** - There are no legal implications
  - **Crime and Disorder** – No additional implications
  - **Information Technology (IT)** – None
  - **Property** - None
  - **Other** - None

## Risk Management

22. There are no known risks.

## Recommendations

23. It is recommended that Members approve option (a), outlined in paragraph 10 setting the FPN's at the default amounts as provided by the CN&EA 2005 and a discount applied for prompt payment payment.

**Reason:** This will enable uniformity of enforcement in the region whilst allowing in effect the lower rate to be paid.

24. It is also recommended that members approve the communication and awareness strategy, as detailed above in paragraphs 17 and 18, along with the commencement date of issuing FPN's of 20<sup>th</sup> November 2006.

**Reason:** In order to progress work in this area.

## Contact Details

**Author:**

**Author's name :** Liz Levett

**Title:** Acting Street Environment Manager

**Dept Name:** Neighbourhood Pride Unit

**Tel No:** 1825

**Chief Officer Responsible for the report:**

**Chief Officer's name:** Andy Hudson

**Title:** Assistant Director (Neighbourhoods)

**Report Approved**

Yes

**Date**

19<sup>th</sup>  
2006

September

**Co-Author's Name;** Zoe Burns

**Title:** Head of Neighbourhood Pride

**Dept Name:** Neighbourhood Pride Unit

**Tel No:** 1817

**Wards Affected:**

All

All

For further information please contact the author of the report

**Specialist Implications Officers - None**

**Background Papers:**

Meeting of the Executive Member for Environment and Sustainability and Advisory Panel 14<sup>th</sup> December - " Clean Neighbourhoods and Environment Act 2005 Consultation"

## Annexes

Annex A – Offences for which fixed Penalties exist

## Annex A – Offences for which Fixed Penalties Exist

Section and legislation	Description of offence	Who can issue FPN	Amount	Amounts below which discounted penalties cannot fall
s.6(1) Clean Neighbourhoods and Environment Act 2005	Nuisance parking	Local authority authorised officer	Amount fixed at £100	£60
s.2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a vehicle	Local authority authorised officer	Amount fixed at £200	£120
s.88 (1) Environmental Protection Act 1990	Litter	Local authority authorised officers, including persons not directly employed by the authority; Police community support officers and other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002	Can be set at a local level (between £50 and £80) Default level £75	£50
s.94A(2) Environmental Protection Act 1990	Street litter control notices and litter clearing notices	Principal litter authority authorised officers	Can be set at local level (between £75 and £110) Default level of £100	£60
Schedule 3A, para. 7(2) Environmental Protection Act 1990	Unauthorised distribution of literature on designated land	Principal litter authority authorised officers , including persons not directly employed by the authority	Can be set at local level (between £50 and £80) Default £75	£50

Section and legislation	Description of offence	Who can issue FPN	Amount	Amounts below which discounted penalties cannot fall
s.43 Anti-Social Behaviour Act 2003	Graffiti and fly-posting	Local authority authorised officers, including persons not directly employed by the authority; Police Community Support Officers and other persons accredited under the Community Accreditation Schemes under the Police Reform Act 2002	Can be set at local level (between £50 and £80) Default £75	£50
s.5B(2) Control of Pollution (Amendment) Act 1989	Failure to produce authority (waste carriers licence)	Local authority officers and Environment Agency	Amount Fixed at £300	£180
s.34A(2) Environmental Protection Act 1990	Failure to furnish documentation (waste transfer notes)	Local authority officers, Environment Agency	Amount fixed at £300	£180
s.47ZA(2) Environmental Protection Act 1990	Offences in relation to waste receptacles and the putting out of waste	Local authority officers	Can be set at a local level (between £75 and £110). Default £100	£60
s.59(2) Clean Neighbourhoods and Environment Act 2005	Offences under Dog Control Orders	Authorised officers of primary and secondary authorities, including persons not directly employed by the authority; Police	Can be set at a local level (between £50 and £80). Default £75	£50



Section and legislation	Description of offence	Who can issue FPN	Amount	Amounts below which discounted penalties cannot fall
		Community Support Officer and other persons accredited under Community Accreditation Schemes under the Police and Reform Act 2002		
s.73(2) Clean Neighbourhoods and Environment Act 2005	Failure to nominate key-holder (within an alarm notification area) or to notify local authority in writing of nominated key holders details	Local authority authorised officers, including persons not directly employed by the authority.	Can be set at a local level (between £50 and £80) Default £75	£50
s.8 Noise Act 1996	Noise from dwellings	Local authority officers	Can be set at local level between £75 and £110. Default £100	£60
s.8 Noise Act 1996	Noise from licensed premises	Local authority officers	Amount fixed at £500	Not applicable

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## Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

18 October 2006

Report of the Director of Neighbourhood Services

### Contaminated Land Investigation Funding

#### Summary

1. On 9 February 2005, in compliance with the City of York Council 'Contaminated Land Strategy', and the statutory requirements of the Environmental Protection Act 1990, the Executive Member approved a report which included a proposal for initial ("preliminary") investigation by Environmental Protection Unit (EPU) of three areas of land which historically had been used for domestic and / or commercial waste tipping ("landfilling").
2. Later that year, the council's EPU in accordance with the decision by the Executive Member, conducted preliminary contaminated land investigations of the following council-owned land:
  - Nun Ings (off Butcher Terrace) in Micklegate ward
  - King George's Playing Field in Heworth ward
  - Tang Hall Primary School Playing Field (at the junction of Eighth Avenue and Fifth Avenue) in Heworth ward.
3. In March 2006 as a result of preliminary investigations an application was made to the Department for Environment, Food and Rural Affairs (Defra) for grant funding to support more detailed investigation of these areas. In July 2006 Defra replied to say they approved the requested funding (£33,150).
4. A decision is therefore requested from members to accept the grant offered and conduct the detailed investigations.

#### Background

5. Part IIA of the Environmental Protection Act 1990 ("Part IIA") became law in April 2000. This legislation placed a statutory duty on local authorities to undertake an inspection of their areas for the purpose of identifying contaminated land.
6. The areas of land selected for investigation were those noted at Para 2 above. The selection of these three sites was based primarily on their current

land use and their environmental setting (i.e. their proximity to water courses etc).

7. These preliminary investigations were conducted in autumn 2005 and showed the presence of landfill gas in the ground at all three sites. Landfill gas is a mixture of oxygen, carbon dioxide and methane (as well as other substances at "trace" concentrations). Although naturally occurring, in some circumstances, carbon dioxide can have asphyxiant properties if allowed to accumulate (for instance in confined spaces). Methane has explosive properties at certain concentrations.
8. Explosive concentrations of methane were not detected at any of the three sites investigated. However, concentrations of carbon dioxide were such that, whilst not present at the levels to warrant immediate concern, would benefit from long-term monitoring to allow potential future risk to be assessed.
9. Based on the findings of the preliminary investigations, funding was sought from Defra to allow more detailed investigations and assessment to be conducted. On 27 July 2006 Defra agreed to provide the full amount of funding requested (£33,150).

### **Consultation**

10. Nun Ings and King George's Playing Field are both areas of open space, owned by the council. Consultations have therefore been held with the relevant council directorates, to advise them of the investigations and to obtain advice and historical and current information from them. In the case of King George's Playing Field, the local residents' association have been contacted and have been advised of the proposals to conduct more detailed investigations and have been given the opportunity to comment or provide any further local information that they may have.
11. Pupils from Tang Hall Primary School occasionally use the area of land at Tang Hall. The school, plus relevant council officers have been made aware of the proposed investigations. Officers are exploring the opportunity of getting the pupils of Tang Hall Primary School involved in the investigation, for instance by showing how recycling and waste minimisation today could help tackle problems from landfill in the future.
12. Consultations have also been held with the Environment Agency, who conduct technical reviews and assessments of funding applications on behalf of Defra.

### **Options**

13. Two options are available to members:
  - (i) Accept the £33,150 funding grant offered by Defra and conduct further detailed investigation

- (ii) Do not accept the funding grant offered and do not undertake any further detailed investigation

### **Analysis**

- 14. No funding is currently available “in-house” to conduct detailed investigations. This will mean that the Council will not be fully carrying out its statutory obligations under Part IIA of the Environmental Protection Act 1990.
- 15. In addition, new Best Value Performance Indicators (BVPIs 216a and 216b) were introduced by the Office of the Deputy Prime Minister in the financial year 2005/06. These measure the rate at which contaminated land is investigated and dealt with, including land assessed under part IIA.
- 16. If members do decide to accept the grant offered by Defra, the detailed investigations would be carried out within the current financial year (2006/7), allowing long-term monitoring of landfill gas concentrations to be commenced. Monitoring would be conducted at monthly intervals for 12 months in the first instance, by trained and experienced officers. The costs of this monitoring and staff resources are included in the funding offered by Defra. Assessment of risks from any associated contaminants within the landfilled material would also be undertaken.

### **Corporate Priorities**

- 17. The investigation of contaminated land links to the corporate objective to “Take Pride in the City, by improving quality and sustainability, creating a clean and safe environment” and to the service objective “to protect residents and our environment from pollution and other public health and safety hazards”. BVPIs 216a and 216b are in the Council Plan. Since most of the former landfill sites are currently open space and playing fields, this links to the corporate priority to “improve the actual and perceived condition and appearance of the city’s streets, housing estates and publicly accessible spaces”. It is also hoped that the investigations can provide a learning exercise to pupils at Tang Hall Primary School relating to disposal of waste and environmental sustainability. The ultimate outcome of the investigations will also be to ensure that two major areas of publicly accessible space (Nun Ings and King George’s Playing Field) are shown to be free from risk.

### **Implications**

#### **Financial**

- 18. The amount of grant offered by Defra (£33,150) will cover the cost of the council employing specialist subcontractors, as well as internal costs for matters such as internal project management by officers and the associated costs for on-going monitoring.
- 19. The grant that Defra have offered the Council is a capital grant, which cannot normally be spent on revenue items, such as internal project management and

resources for on-going monitoring. However, in such circumstances Defra normally issue a section 16 notice which allow the grant to be spent in this way. However, the Treasury are tightening the rules surrounding section 16 notices as they impact on the Chancellors "golden rule", whereby government borrowing can only be used for capital investment over the economic cycle. As such the Treasury will not decide on whether individual section 16 notices can be issued until they have assessed the total number requested. Government departments will be informed of whether they are successful in the application by March 2007. If the ruling is against the request then the Council will have to spend the grant on capital items in accordance with the grant, and therefore not on revenue items as planned. The Council is therefore taking a risk that this grant will be converted to revenue.

### **Human Resources (HR)**

20. The Council employs one specialist contaminated land officer. The investigation and monitoring of this site will require additional staffing resources of 0.5 FTE contaminated land assistant on a temporary basis until the investigation is completed. The costs of this additional resource is contained within the grant, subject to the conditions explained at para 19 above.

### **Equalities**

21. There are no Equalities implications.

### **Legal**

22. There are no specific legal implications.

### **Crime and Disorder**

23. There are no Crime and Disorder implications.

### **Information Technology (IT)**

24. There are no IT implications.

### **Property**

25. As noted above, the council are the landowners of all three sites.

### **Other**

26. There are no other implications falling outside those noted above.

## **Risk Management**

27. Members should be aware that if the detailed investigations do show that any of these areas are causing (or have the potential to cause) significant harm to human health or the environment, the council as a land owner would become responsible for any required clean-up (“remediation”). Defra currently have funding available to local authorities for remediation in some circumstances, but long-term funding is subject to review by government.
  
28. It is possible, therefore, that the council could ultimately have financial liability for any required remediation which Defra may (or may not) support. At this stage it is not possible to estimate the costs for any such remediation

## **Recommendations**

29. That the Advisory Panel advise the Executive Member :
  - (i) To accept the grant funding offered by Defra.

REASON :

This will allow the council to investigate the three areas of land identified at para 2, in accordance with obligations placed on the council by Part IIA of the Environmental Protection Act 1990.

- (ii) To note that the Director of Neighbourhood Services exercises his delegated powers to appoint a part-time contaminated land assistant on a temporary basis as detailed at para 20.

REASON : To update the Executive Member.

**Contact Details**

**Author:**  
**Jason Drake**  
**Senior Contaminated Land**  
**Officer**  
01904 551533

**Chief Officer Responsible for the report:**  
**Andy Hudson**  
**Assistant Director (Neighbourhoods)**

**Report Approved**  **Date** 20 September 2006

**Specialist Implications Officer(s)**

*Risk Management*  
*David Walker*  
*Risk & Insurance Manager*  
552261

*Finance*  
*Tom Wilkinson*  
*Corporate Finance Manager*  
551187

*HR*  
*Nick Carter*  
*HR Advisor*  
553291

*Property*  
*Maggie Tansley*  
*Head of Planning & Resources*  
554214

*Dave Meigh*  
*Head of Parks and Open Spaces*  
553386

**Wards Affected:** Micklegate, Heworth

**All**

**For further information please contact the author of the report**

**Background Papers:**

Review of the Contaminated Land Strategy, February 2005.

**Annexes**

None