

Overview and Scrutiny Management Committee

Thursday, 14th December, 2017
at 5.30 pm

PLEASE NOTE TIME OF MEETING

Council Chamber - Civic Centre

This meeting is open to the public

Members

Councillor Fitzhenry (Chair)
Councillor Moulton (Vice-Chair)
Councillor Fuller
Councillor Furnell
Councillor Hannides
Councillor Whitbread
Councillor Murphy
Councillor Coombs
Councillor Morrell
Councillor T Thomas

Appointed Members

Rob Sanders, Church of England
Catherine Hobbs, Roman Catholic Church
Vacancies

- Primary Parent Governor Representative;
and
- Secondary Parent Governor Representative

Contacts

Judy Cordell
Senior Democratic Support Officer
Tel. 023 8083 2766
Email: judy.cordell@southampton.gov.uk

Mark Pirnie
Scrutiny Manager
Tel: 023 8083 3886
Email: mark.pirnie@southampton.gov.uk

PUBLIC INFORMATION

Overview and Scrutiny Management Committee

The Overview and Scrutiny Management Committee holds the Executive to account, exercises the call-in process, and sets and monitors standards for scrutiny. It formulates a programme of scrutiny inquiries and appoints Scrutiny Panels to undertake them. Members of the Executive cannot serve on this Committee.

Role of Overview and Scrutiny

Overview and Scrutiny includes the following three functions:

- Holding the Executive to account by questioning and evaluating the Executive's actions, both before and after decisions taken.
- Developing and reviewing Council policies, including the Policy Framework and Budget Strategy.
- Making reports and recommendations on any aspect of Council business and other matters that affect the City and its citizens.

Overview and Scrutiny can ask the Executive to reconsider a decision, but they do not have the power to change the decision themselves.

Use of Social Media:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting. By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

Procedure / Public Representations

At the discretion of the Chair, members of the public may address the meeting on any report included on the agenda in which they have a relevant interest. Any member of the public wishing to address the meeting should advise the Democratic Support Officer (DSO) whose contact details are on the front sheet of the agenda.

Smoking Policy:- The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones:- Please switch your mobile telephones to silent whilst in the meeting

Fire Procedure:-

In the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

The Southampton City Council Strategy (2016-2020) is a key document and sets out the four key outcomes that make up our vision.

- Southampton has strong and sustainable economic growth
- Children and young people get a good start in life
- People in Southampton live safe, healthy, independent lives
- Southampton is an attractive modern City, where people are proud to live and work

Dates of Meetings: Municipal Year 2017/18

2017	2018
15 June	11 January
13 July	15 February
10 August	15 March
14 September	12 April
12 October	
9 November	
14 December	

CONDUCT OF MEETING

TERMS OF REFERENCE

The general role and terms of reference for the Overview and Scrutiny Management Committee, together with those for all Scrutiny Panels, are set out in Part 2 (Article 6) of the Council's Constitution, and their particular roles are set out in Part 4 (Overview and Scrutiny Procedure Rules – paragraph 5) of the Constitution.

RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules and the Overview and Scrutiny Procedure Rules as set out in Part 4 of the Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 4.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

- (iv) Any beneficial interest in land which is within the area of Southampton.

- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

1 APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)

To note any changes in membership of the Panel made in accordance with Council Procedure Rule 4.3.

2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

3 DECLARATIONS OF SCRUTINY INTEREST

Members are invited to declare any prior participation in any decision taken by a Committee, Sub-Committee, or Panel of the Council on the agenda and being scrutinised at this meeting.

4 DECLARATION OF PARTY POLITICAL WHIP

Members are invited to declare the application of any party political whip on any matter on the agenda and being scrutinised at this meeting.

5 STATEMENT FROM THE CHAIR

6 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING) (Pages 1 - 6)

To approve and sign as a correct record the Minutes of the meeting held on 9th November, 2017 and the Special meeting held on 29th November and to deal with any matters arising, attached.

7 ALTERNATE WEEKLY BIN COLLECTIONS - REVIEW OF THE IMPACT AND EFFECTIVENESS (Pages 7 - 24)

Report of the Service Director - Legal and Governance recommending that the Committee note and discuss the findings of the review of the impact and effectiveness of the change to Alternate Weekly Bin Collections.

8 PLANNING ENFORCEMENT (Pages 25 - 40)

Report of the Service Lead - Infrastructure, Planning and Development setting out the Council's approach to planning enforcement.

This page is intentionally left blank

Agenda Item 6

To approve and sign as a correct record the Minutes of the following meetings:

- 9th November 2017
- 29th November 2017 – Special – Call-in

SOUTHAMPTON CITY COUNCIL
OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE
MINUTES OF THE MEETING HELD ON 9 NOVEMBER 2017

<u>Present:</u>	Councillors Fitzhenry (Chair), Fuller (except items 27(b) (part) and 28), Furnell, Hannides, Whitbread, Murphy, Coombs, Morrell and White and Appointed Member Rob Sanders (except items 27(b) (part) and 28)
<u>Apologies:</u>	Councillors Moulton and T Thomas and Appointed Member Catherine Hobbs
<u>Also in attendance:</u>	Councillor Payne, Cabinet Member for Housing and Adult Care Councillor Chaloner, Cabinet Member for Finance

25. APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)

The Committee noted the apologies of Councillors Moulton and T Thomas. The Committee also noted that following receipt of the temporary resignation of Councillor Moulton from the Overview and Scrutiny Management Committee, the Service Director, Legal and Governance, acting under delegated powers, had appointed Councillor White to replace him for the purposes of this meeting.

The Committee also noted that Putting People First, with immediate effect, had taken up the two seats allocated to their Group.

26. MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)

RESOLVED that the minutes of the 14th September 2017 Overview and Scrutiny Management Committee be approved and signed as a correct record.

27. FORWARD PLAN

The Committee considered the report of the Service Director, Legal and Governance detailing the following items for discussion from the current Forward Plan:

- a) Future of the Kentish Road Respite Service; and
- b) Update of Medium Term Financial Strategy and Budget 2017/18 to 2020/21

a) Future of the Kentish Road Respite Service

The Cabinet Member for Housing and Adult Care was present as well as carers, parents and interested parties of Kentish Road respite services and with the consent of the Chair addressed the meeting.

The Committee discussed with the Cabinet Member suitable alternative arrangements that had been identified for the remaining individuals who were using Kentish Road for

respite care, following an assessment of their needs and the further development of a range of alternatives.

RESOLVED that:

- (i) the Cabinet Member investigates why expressions of interest in operating the supported respite provision at Weston Court from Mencap and the Rose Road Association were not referred to the Cabinet Member prior to the determination of the operator;
- (ii) at the 14 November 2017 meeting, Cabinet withdraw the report and keep the Kentish Road Respite Service open;
- (iii) if the report was not withdrawn from the Cabinet meeting, anonymised information was provided for the 14 November 2017 Cabinet meeting outlining the costs to the Authority relating to the individuals that had transitioned from Kentish Road Respite Service to permanent placements since the resolutions made by Cabinet on 16 December 2014;
- (iv) if the report was not withdrawn from the Cabinet meeting, a comprehensive and fully costed assessment, that clearly identified the assumption that the cost savings were predicated on, was provided for the 14 November Cabinet meeting;
- (v) if the report was not withdrawn from the Cabinet meeting, information be provided to the Cabinet meeting that explained:
 - a) How the proposed closure of the Kentish Road Respite Service would lead to better outcomes for service users;
 - b) The measurements that were being used to determine 'better outcomes'; and
 - c) How the removal of the Kentish Road Respite Service would improve choice for adults living with a learning disability in Southampton.

b) Update of the Medium Term Financial Strategy and General Fund and Housing Revenue Account Revenue Budgets 2017/18 to 2020/21

The Committee discussed with the Cabinet Member for Finance the major changes in the Medium Term Financial Strategy and overall General Fund and Housing Revenue budgets 2017/18 to 2020/21 which included major forecast variances against the approved estimates.

The Committee noted the current increase by £4.7m within the General Fund programme and £0.91m within the HRA programme and how these pressures were being managed at this mid-year point.

28. **MONITORING SCRUTINY RECOMMENDATIONS TO THE EXECUTIVE**

The Committee received and noted the report of the Service Director, Legal and Governance detailing the actions of the Executive and monitoring progress of the recommendations of the Committee.

SOUTHAMPTON CITY COUNCIL
OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE
MINUTES OF THE MEETING HELD ON 29 NOVEMBER 2017

Present: Councillors Fitzhenry (Chair), Moulton (Vice-Chair), Furnell, Whitbread, Murphy, Coombs, Morrell, T Thomas, P Baillie and White and Appointed Member Rob Sanders

Apologies: Councillors Fuller, Hannides and Appointed Member Catherine Hobbs

Also in attendance: Councillor Payne, Cabinet Member for Housing and Adult Care

29. APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)

The Committee noted the apologies of Councillors Fuller and Hannides. The Committee also noted that following receipt of the temporary resignation of Councillors Fuller and Hannides from the Overview and Scrutiny Management Committee, the Service Director, Legal and Governance, acting under delegated powers, had appointed Councillors P Baillie and White to replace them for the purposes of this meeting.

30. CALL-IN OF EXECUTIVE DECISION CAB 17/18 19659 - FUTURE OF THE KENTISH ROAD RESPITE SERVICE

The Committee considered the report of the Service Director, Legal and Governance detailing the call-in of Executive Decision CAB 17/18 19659 – Future of the Kentish Road Respite Service.

Alex Isles (MENCAP), Clare Mar-Molinero, Dan Mar-Molinero, Amanda Guest, Lisa Stead and other carers, parents and other interested parties were present and with the consent of the Chair addressed the meeting.

RESOLVED that Cabinet reconsider the called in decision at the next decision meeting.

The following points were made to be addressed by Cabinet if, at the meeting on 30th November 2017, Cabinet confirm the decision taken on 14th November 2017:

- (a) That Cabinet agrees to keep Kentish Road Respite Service open whilst it undertakes a wide ranging procurement exercise for the existing site. The Cabinet then has the opportunity to move the service to the smaller annex (known as 32b) dependent upon the occupancy levels and demand following the operation of the site by the chosen provider. In addition, Cabinet works with providers to mitigate risks associated with this exercise.
- (b) That effective and proactive transition plans are put in place immediately and resourced appropriately.
- (c) That a detailed protocol was developed detailing the range of services to be provided at Weston Court and how usage was to be prioritised.

- (d) That Cabinet reviews the processes that have been followed relating to the Kentish Road Respite Service decision and identifies any lessons that need to be learnt for any future decisions of this nature.

DECISION-MAKER:		OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE	
SUBJECT:		ALTERNATE WEEKLY BIN COLLECTIONS – REVIEW OF THE IMPACT AND EFFECTIVENESS	
DATE OF DECISION:		14 DECEMBER 2017	
REPORT OF:		SERVICE DIRECTOR – LEGAL AND GOVERNANCE	
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Mark Pirnie	Tel: 023 8083 3886
	E-mail:	Mark.pirnie@southampton.gov.uk	
Director	Name:	Richard Ivory	Tel: 023 8083 2794
	E-mail:	Richard.ivory@southampton.gov.uk	
STATEMENT OF CONFIDENTIALITY			
None			
BRIEF SUMMARY			
At the meeting the Committee will be considering the attached briefing paper that outlines the findings from a review of the impact and effectiveness of the decision, implemented from 5 June 2017, to change to Alternate Weekly Bin Collections.			
RECOMMENDATIONS:			
	(i)	That the Committee note and discuss the findings of the review of the impact and effectiveness of the change to Alternate Weekly Bin Collections, attached as Appendix 1.	
REASONS FOR REPORT RECOMMENDATIONS			
1.	To enable the Committee to discuss the issues with the Cabinet Member.		
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED			
2.	None.		
DETAIL (Including consultation carried out)			
3.	At the May 2017 meeting of the Overview and Scrutiny Management Committee (OSMC) members requested that: <i>‘A review is undertaken of the impact of the change to alternate weekly bin collections with the findings reported to the December 2017 meeting of the OSMC.’</i>		
4.	As requested, attached as Appendix 1 is a briefing paper outlining the findings from the review of the impact and effectiveness of the introduction of Alternate Weekly Bin Collections.		
5.	The Committee are requested to consider the attached report and discuss the findings with the Cabinet Member.		
RESOURCE IMPLICATIONS			
<u>Capital/Revenue</u>			

6.	Outlined in the attached briefing paper		
<u>Property/Other</u>			
7.	Outlined in the attached briefing paper		
LEGAL IMPLICATIONS			
<u>Statutory power to undertake proposals in the report:</u>			
8.	The duty to undertake overview and scrutiny is set out in Part 1A Section 9 of the Local Government Act 2000.		
<u>Other Legal Implications:</u>			
9.	Outlined in the attached briefing paper		
RISK MANAGEMENT IMPLICATIONS			
10.	N/A		
POLICY FRAMEWORK IMPLICATIONS			
11.	Outlined in the attached briefing paper		
KEY DECISION		No	
WARDS/COMMUNITIES AFFECTED:		None directly as a result of this report	
<u>SUPPORTING DOCUMENTATION</u>			
Appendices			
1.	Briefing Paper – Review of the impact and effectiveness of Alternate Weekly Bin Collections		
Documents In Members' Rooms			
1.	None		
Equality Impact Assessment			
Do the implications/subject of the report require an Equality and Safety Impact Assessments (ESIA) to be carried out.			No
Privacy Impact Assessment			
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.			No
Other Background Documents			
Equality Impact Assessment and Other Background documents available for inspection at:			
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)	
1.	None		

SUBJECT: Review of the impact and effectiveness of Alternate Weekly Bin Collections

DATE: 14 December 2017

RECIPIENT: Overview & Scrutiny Management Committee

THIS IS NOT A DECISION PAPER

SUMMARY:

1. The purpose of this paper is to provide information about how Alternate Weekly Collections (AWC) are working across the city since the change to collections took place on 5 June 2017. These changes meant general waste is now collected one week and recycling and glass the next week. This paper will also review impact on recycling and general waste rates, provide feedback from residents and also explain how else the service is improving what and how residents can recycle.
2. AWC was implemented with properties that have wheeled bins and at the same time, residents also had a change to their collection day. Properties with wheeled bins are mainly houses, houses in multiple occupation (HMOs) and low rise housing blocks, including pensioner's blocks. Properties that have large communal bins (usually larger blocks of flats) in the main retained weekly collections.
3. Changes to bin collections has reduced collection costs and by encouraging residents to recycle is reducing disposal costs, it will increase income from recyclable materials and reducing further landfill and the incineration of waste will help to protect the environment. One of the Council's four priority outcomes is for 'Southampton to be a modern, attractive city where people are proud to live and work'.

BACKGROUND AND BRIEFING DETAILS:

4. What has been the impact of AWC?

The implementation of AWC has overall gone well and after six months of changes to collections, residents are managing their collections and not experiencing any issues. The following points are considered positive achievements and that AWC has been effective:

- The Revised Medium Term Financial Strategy report to Council on 15 February 2017 reduced the one-off General Fund saving to £180,000 to reflect the part year effect of introducing the change in service from 5 June 2017 and to allow for some investment in support of the introduction of AWC. In addition, there was a proposal for a further investment of £250,000 in 2017/18 and £225,000 ongoing in a dedicated team to support waste collection and street cleaning following the introduction of AWC. This saving has been achieved and will be surpassed in this financial year.
- From 2018/19 onwards cost reductions are anticipated to be achieved in order to replace the £800,000 contribution from the WCSS funding.
- There has been a 5% reduction in the amount of general waste generated and a 2% increase in the amount of materials recycled. When metal is added from incinerator bottom ash at

the end of the financial year, this is expected to add a further 1 – 1.5% to the recycling rate. The table below outlines this:

Recycling rate	2016/17	29%
Recycling rate	Apr – May 2017*	30%
Recycling rate	June – Oct 2017 *	32%
General waste	Apr – May 2017 *	0.2% reduction in waste in comparison to Apr – May 2016
General waste	June – Oct 2017 *	5% reduction in waste in comparison to 2016/17

* Data is not confirmed until waste data flow is validated March 2018.

Bournemouth and Plymouth Councils went live with AWC in April/May prior to Southampton's go live in June 2017. Currently there is only tonnage data available in waste data flow for these authorities for quarter one (April – June). Plymouth is indicating a 4.5% reduction in waste and Bournemouth a 9% reduction. Bournemouth also provide a food waste collection. They are both also exhibiting a similar increase in recycling rates. Coventry only went live in September and there is no data available at this point in time.

We now have similar collection methods to the majority of other authorities across the country and within Hampshire and 77% of APSE members have implemented AWC.

- The majority of residents have got to grips with changes to collections. Targeted work has been undertaken where residents have found it harder to adjust and officers have been working with resident groups to change behaviours. Whilst there is still work to do, it must be recognised that when there was weekly general waste collections, there were parts of the city that struggled to manage their waste. These include areas where there are high number of HMOs and students and where there is population churn.
- The Council must not rest on its laurels and there is more work to be done to improve the quantity and quality of recyclates and further reduce our waste.
- A key priority remains to get residents to not put glass, textiles and aerosols in their general waste bins and this is a key communications message.
- Mixed plastic banks will be put in place at a number of bring sites across the city at the end of January 2018. This will enable all residents to be able to recycle pots, tubs, cartons and tetrapaks until the material recovery facilities are able to take them.

5. What did we set out to achieve?

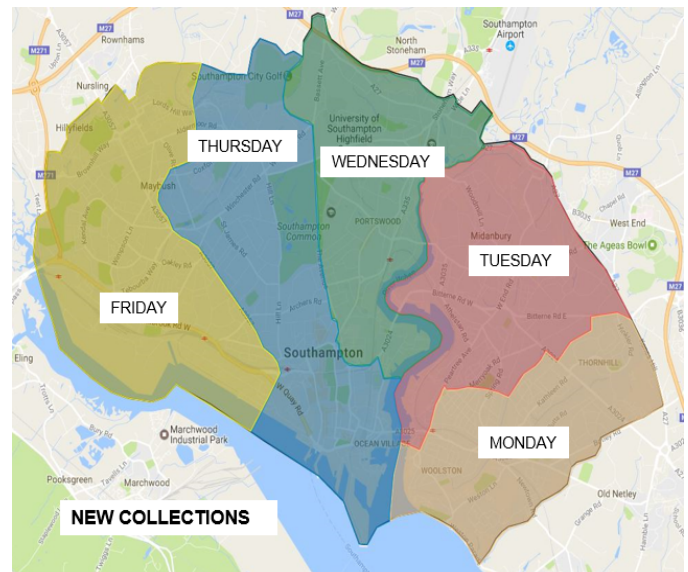
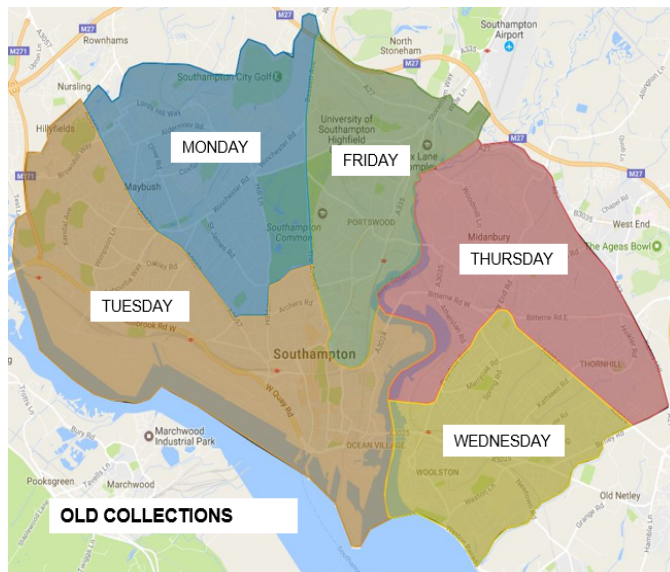
- **To implement fortnightly collection of general waste for properties on mainly wheeled bin collections, which included low rise and pensioner housing blocks.**

The maps on the next page show old collection days and new collection days which came into effect from 5 June 2017.

In week one, each day, half of an area now has a general waste collection and the other half has a recycling and glass collection and this alternates in week 2, so those that had general waste in week 1, have recycling and glass in week 2 and so on.

Issuing a collection calendar to residents before go live paid dividends and residents are putting the right bin out on the right week.

The implementation was successfully achieved.



- **To ensure glass collections take place on the same day as recycling collections every 2 weeks.** This was important to retain as residents were used to having these collections on the same day.
- **To change collection days so they started in the east of the city and finished in the west of the city.** This has worked well and there have been no issues at disposal sites. These changes have also enabled more effective team working between crews.
- **To make no changes to garden waste collections.** No changes have been made to rounds, although rounds are being optimised and rebalanced for when residents renew their subscription next year.
- **To reduce collection and disposal costs.** As already indicated in section 4, costs are being reduced.
- **To ensure households that had a genuine need for extra general waste capacity, were provided with additional space.** This included educational support from Recycling & Compliance Officers. Section 6 provides further information about this.
- **To establish a reactive vehicle and crew to support the collection of side waste and contaminated bins** – In order to react to issues during this change, three reactive vehicles and crews were used at the start of AWC, with a key focus to help keep streets clean and tidy. With the reduction in issues, this has now reduced down to one, which was planned and budgeted for.
- **To produce a new Managing the Local Environment Policy.** The policy is agreed and on the website.
- **To establish an enforcement team, to support side waste and bins on pavements** – the team is in place, and they are working with residents.
- **To provide communications materials, including a collection calendar to residents** – two direct mail communications were issued to residents with the latter providing a collection calendar. Calendars can be downloaded from the Councils website, which residents were used to doing prior to AWC.

- **To promote team working ethos with crews** – crew training, tool box talks and the need to work together have been important pieces of work. Crews have all had new rounds to get used to.
- **To keep streets clean and tidy** – there is no evidence to indicate that streets are less tidy and clean as a result of AWC.

With any major change, it is important to learn and strive to improve how services are delivered. It is useful to note that:

- Whilst there have been issues with some residents taking longer to change their behaviours around side waste/contaminated bins – these have tended to be in the areas we anticipated e.g. Polygon, Portswood, Bevois, Newtown/Nicholstown and also Millbrook. Work has been undertaken with residents and resident/community groups to improve how streets look and this work will continue.
- It has also identified problem roads that have too many containers or containers are kept continually on the pavement – the service is working to deal with these issues, reduce or change the number of containers.
- We are engaging better with residents through face to face contact and provision of information e.g. tags on bins – there haven't been significant numbers of complaints and most have been around extra capacity.
- There has been improved joined up working with housing colleagues along with more communication with Councillors.
- The return of students worked well in September/October, however the end of year arrangements generated significant extra waste (more than usual) just as we were getting to grips with AWC. Plans for next year need to include both universities taking responsibility for the impact their students have on communities.

6. What is the data telling us?

As part of AWC implementation, data has been kept on a range of issues in order to assess the impact and effectiveness of AWC. This has included monitoring:

- Bins not out
- Extra capacity requests
- Additional bins issued
- Service requests
- Complaints
- Side waste
- Contamination of recycling bins
- Enforcement interventions
- Waste and recycling tonnages

A selection of these are provided in graphical format below:

Extra capacity requests

After initial spike around the time of implementation the general trend for extra capacity requests is reducing to pre-implementation levels. Extra capacity requests are processed as follows:

- Requests received from Actionline

- Requests held on spreadsheet coordinated by Business Support and using criteria set out below the following is actioned:
 - Request accepted
 - Request refused
 - Referred for visit by Recycling and Compliance Officer and then accepted/refused after assessing situation on site

As a starting point, the criteria used for accepting or refusing requests is as follows:

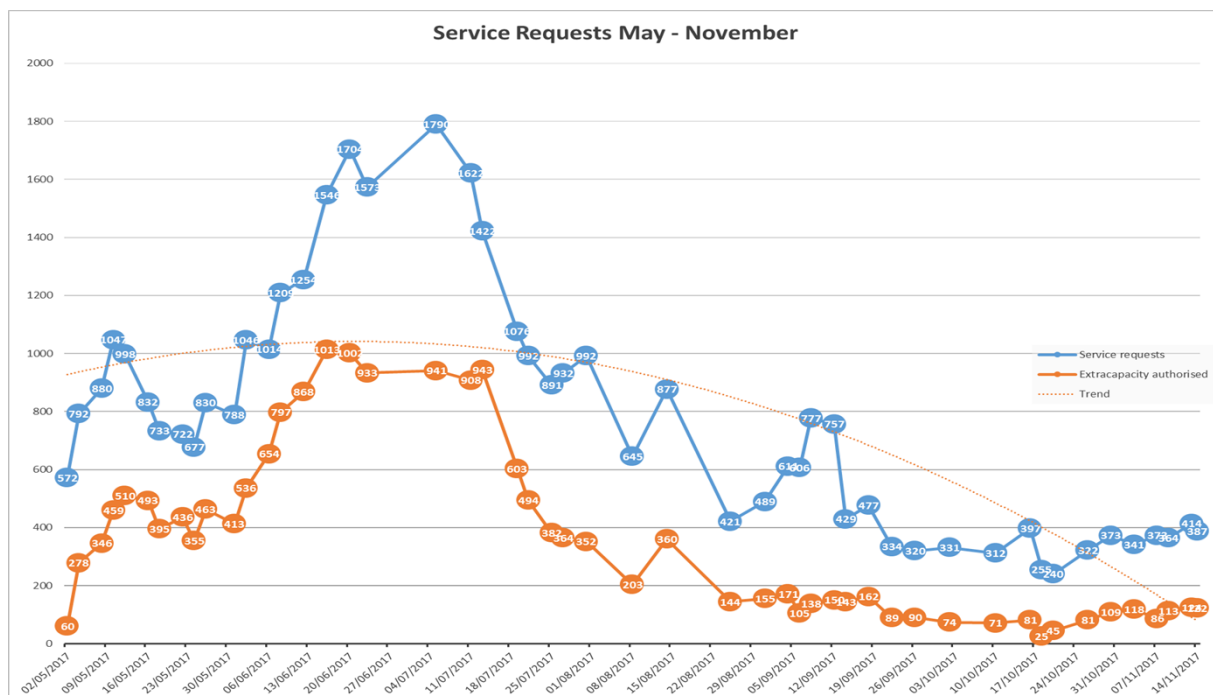
YES	VISIT	NO
<ul style="list-style-type: none"> • 7 or more residents • 2 or more infants in nappies • Excess medical waste detailed • 140>240 litre bin • Larger recycling bin* 	<ul style="list-style-type: none"> • 4-6 residents (including an infant in nappies) • Medical waste but no detail • Bins are stated as overflowing • No detail to assess properly 	<ul style="list-style-type: none"> • 3 or less people • 1 infant in nappies • Resident states that they will not cope but does not provide any detail
<i>*Extra recycling capacity can be agreed if resident has a good recycling record and space to store a larger bin</i>		

Number of requests	5,044
Number requests approved	4,507
Number of larger bins delivered	3,341 - 1,821 general waste - 1,520 recycling
Approximate number of larger bins issued to residents initially rejected	70 - 80

Service Requests and Extra Capacity Requests

Extra capacity requests (and service requests in general) steadily increased in the lead up to implementation on 5th June 2017. Numbers peaked shortly after implementation at the end of June and thereafter has reduced to business as usual levels. The trend line graphically shows this decrease over time.

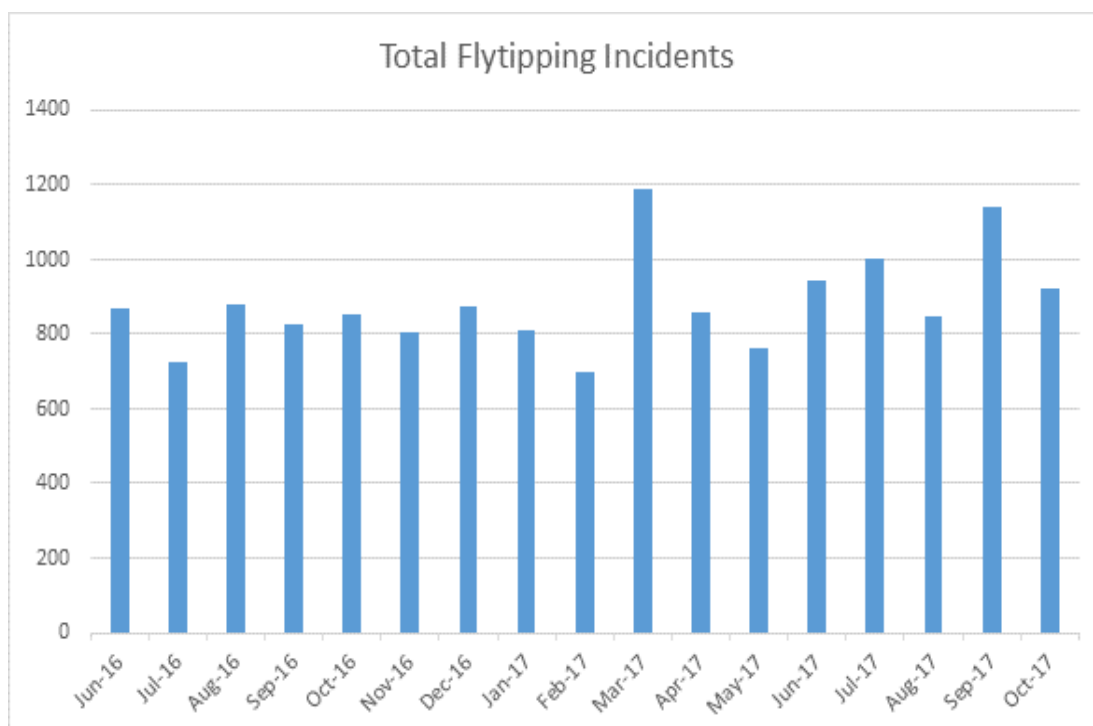
The increase in requests was expected as other authorities' experienced similar numbers while implementing AWC. Contingency measures such as additional dedicated staff in Capita Call Centre, AWC-specific web pages, focused service resource and prioritising site visits all contributed to meeting increased demand in a seamless, professional manner.



Fly tipping

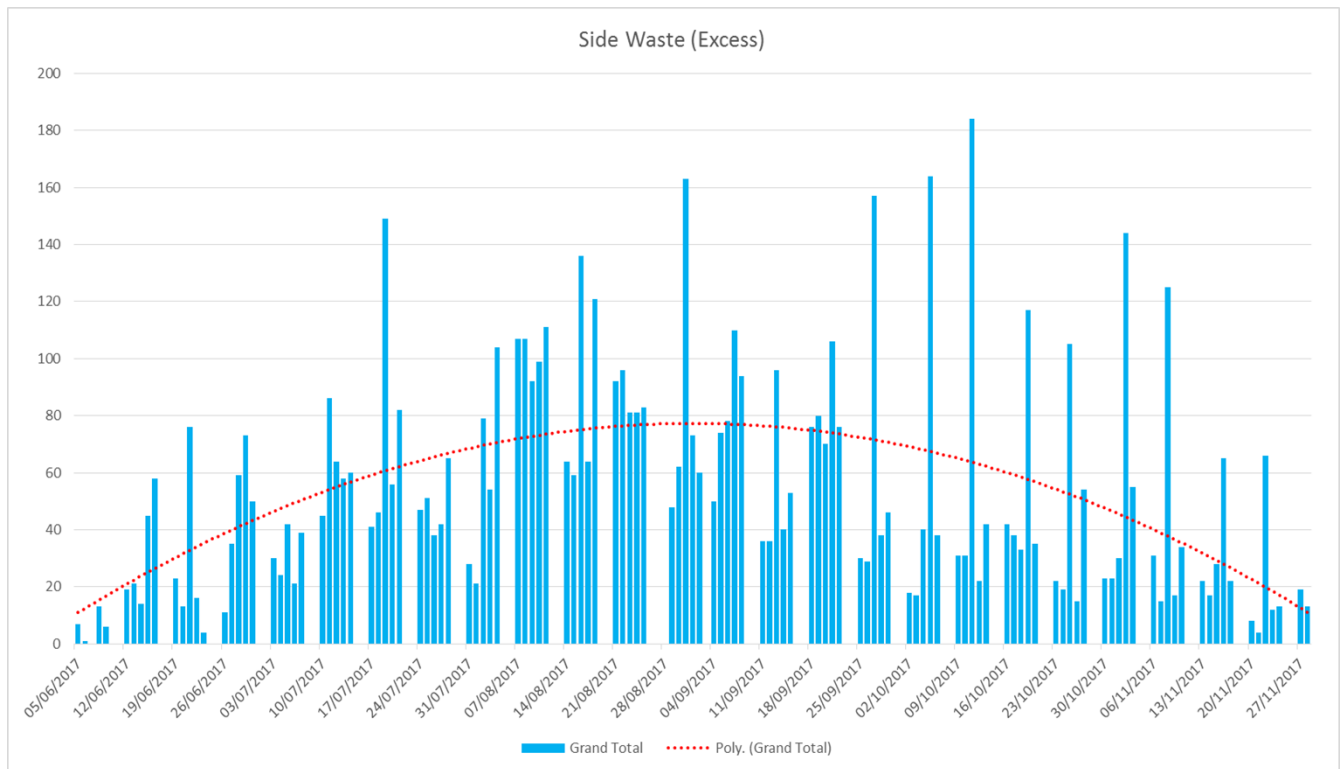
A comparison of the main fly tipping statistics from June 2016 to October 2017 gauging the impact of AWC indicates the following:

- Since the implementation of AWC the number of incidents of single black bags being fly tipped has increased as indicated below by approximately 100 bags per month. These have been picked up as part of the routine work undertaken by the current street sweeping crews and additional resources made available to assist the implementation of AWC.
- It is also noted that during the same period the number of large fly tips in Southampton have significantly reduced and with the majority of these being separately collected has led to cost savings for collection and disposal.

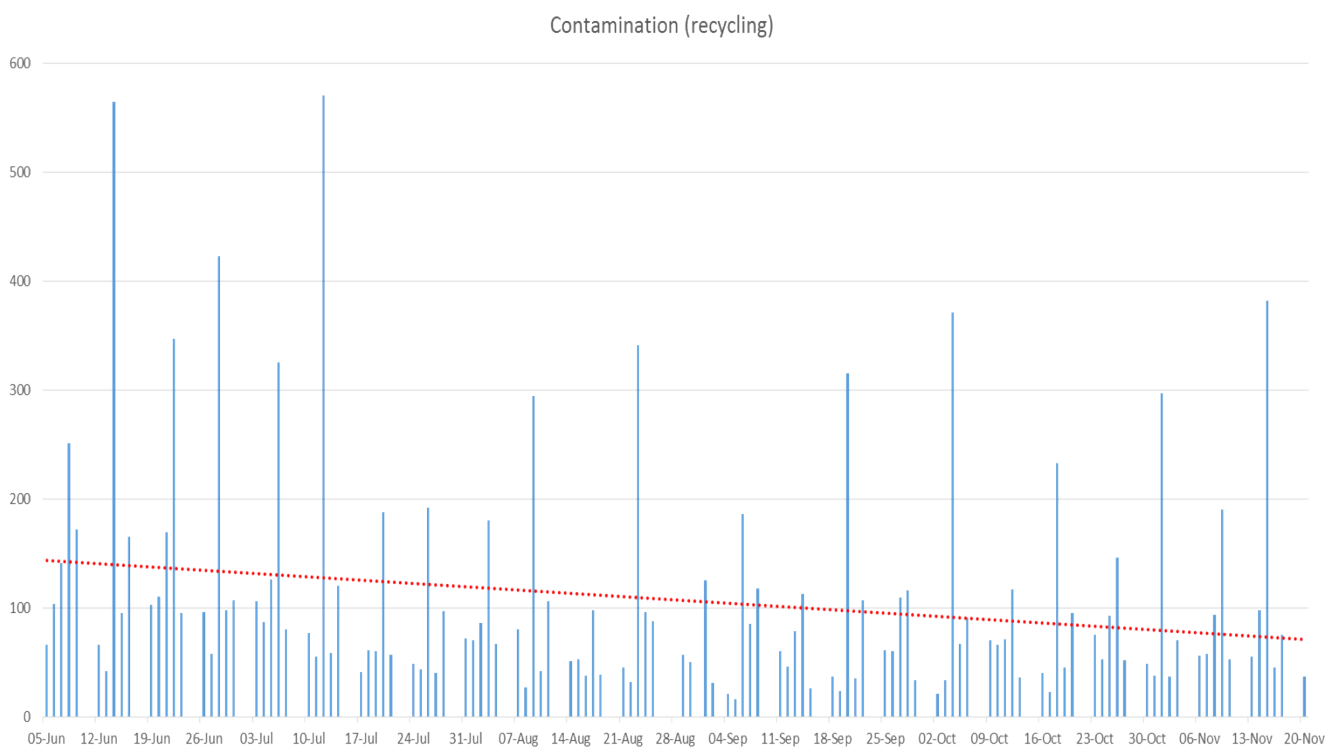


Side waste and red events

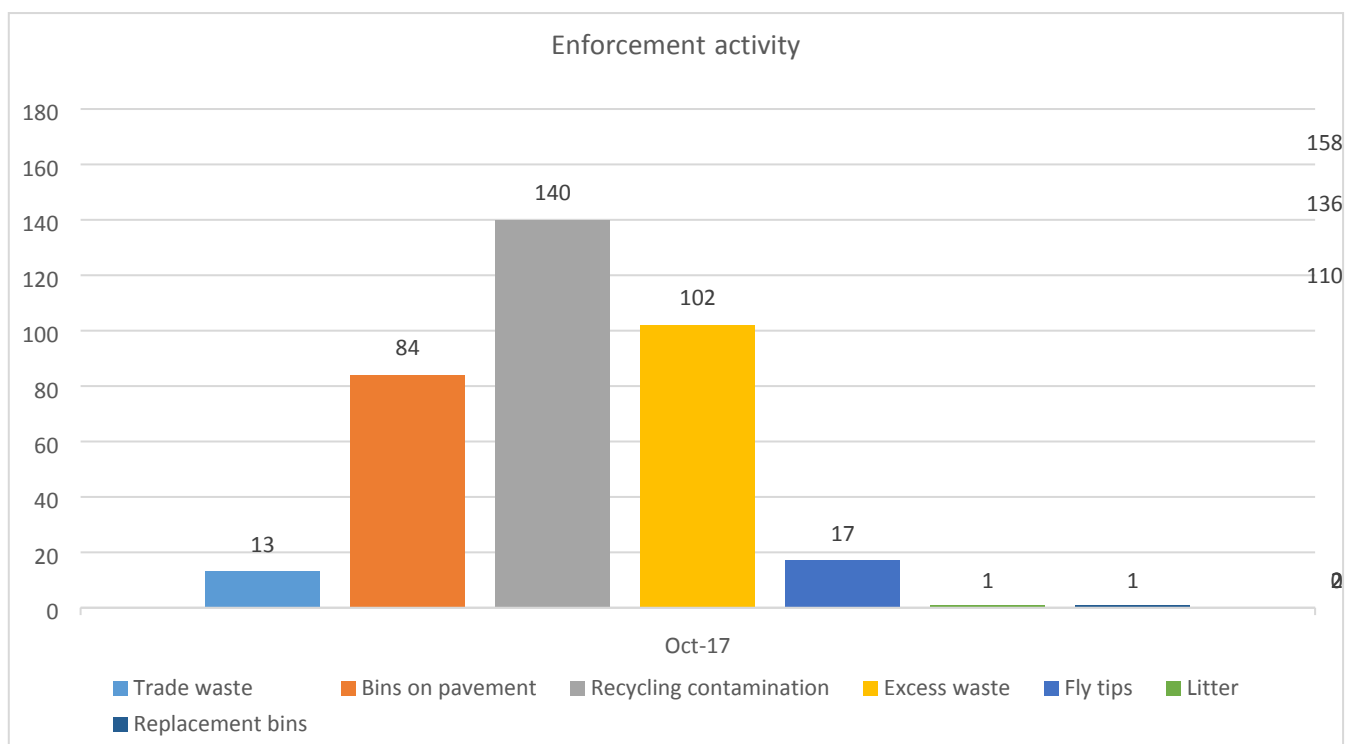
Side waste and recycling contamination incidents have been decreasing (side waste increased initially after implementation) over time since AWC implementation as shown by the red trend lines. The peaks on the graph correspond to collections in challenging areas such as Polygon/Portswood/Bevois but note that these are decreasing as a result of planned education and reactive enforcement activity which is ongoing.



Recycling contamination (red events)



Enforcement and compliance interventions (Oct-Nov)



The current enforcement process is:

Side Waste

- Crews record excess waste and how much and then tag if first offence
- Reactive crew and enforcement officer collect the day after and engage with residents where possible

Contamination

- Crews tag bins that are contaminated and log a red event on the in cab computer
- Reactive crew and enforcement officer collect these the day after collection and engage with residents on the doorstep where possible - providing education, waste minimisation and recycling advice.
- Recycling and Compliance officers engage with face to face or written advice and provide additional support where appropriate.

Bins on Pavements

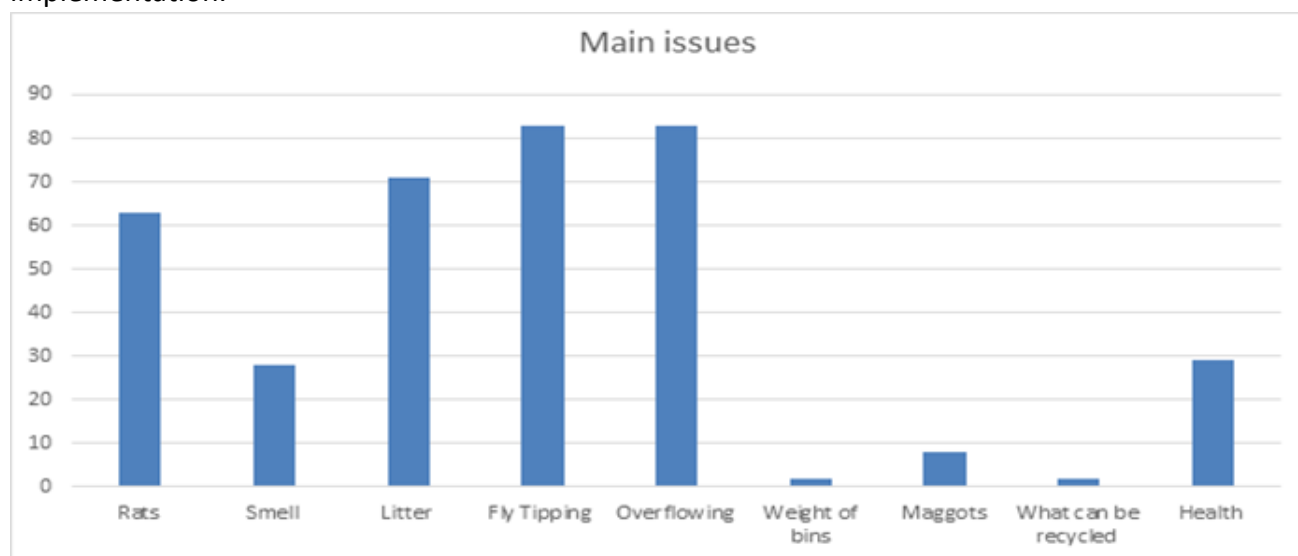
From the New Year when the Section 46 is in place, this is an area we will be focussing on.

- Currently the enforcement team target areas the day after scheduled collection day, engage with residents and tidy the streets.
- Enforcement team reactively respond to individual complaints
- All are logged to monitor success rates and target repeat offenders

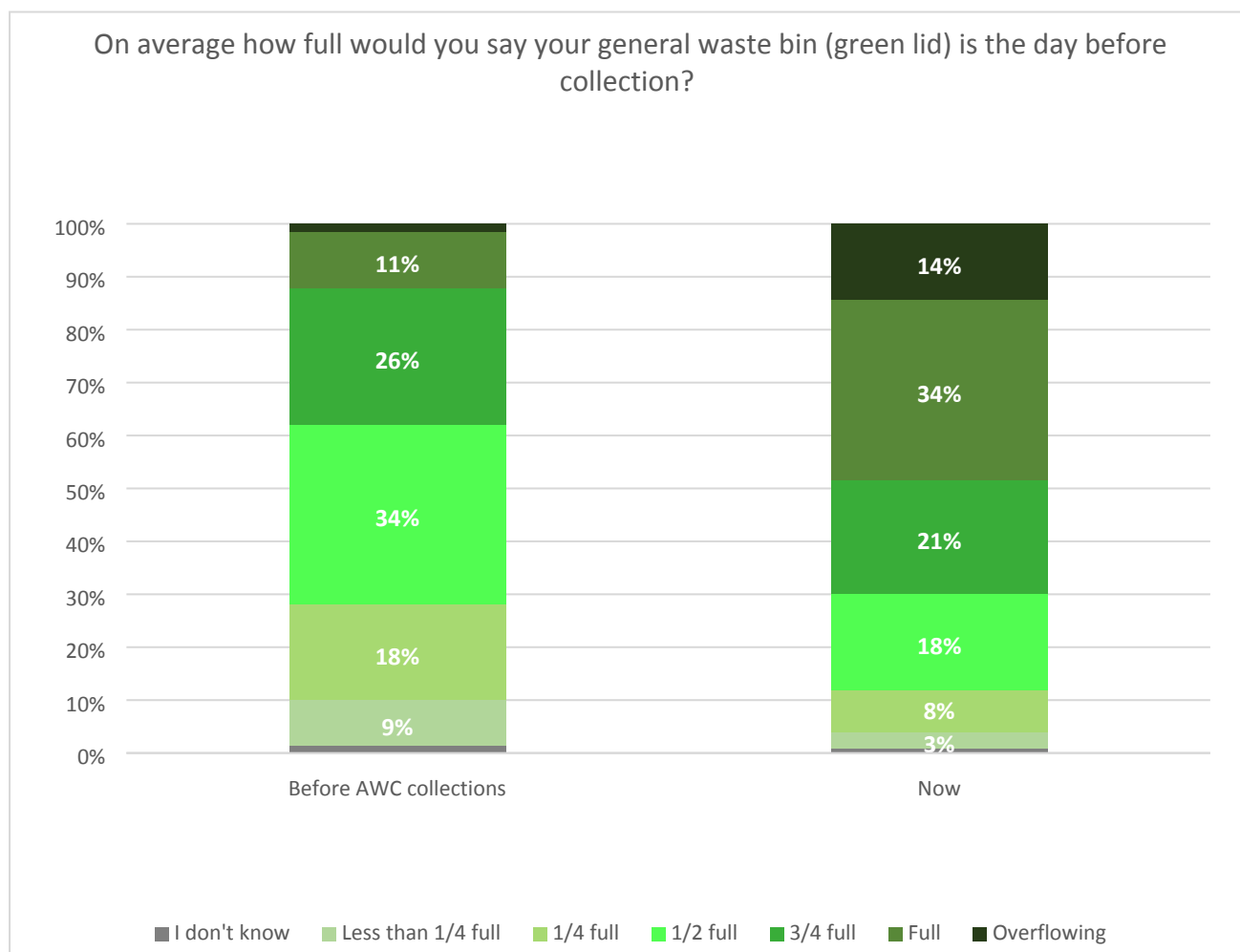
Recycling and Compliance officers deal with all recycling contamination (red events) through face to face or written advice.

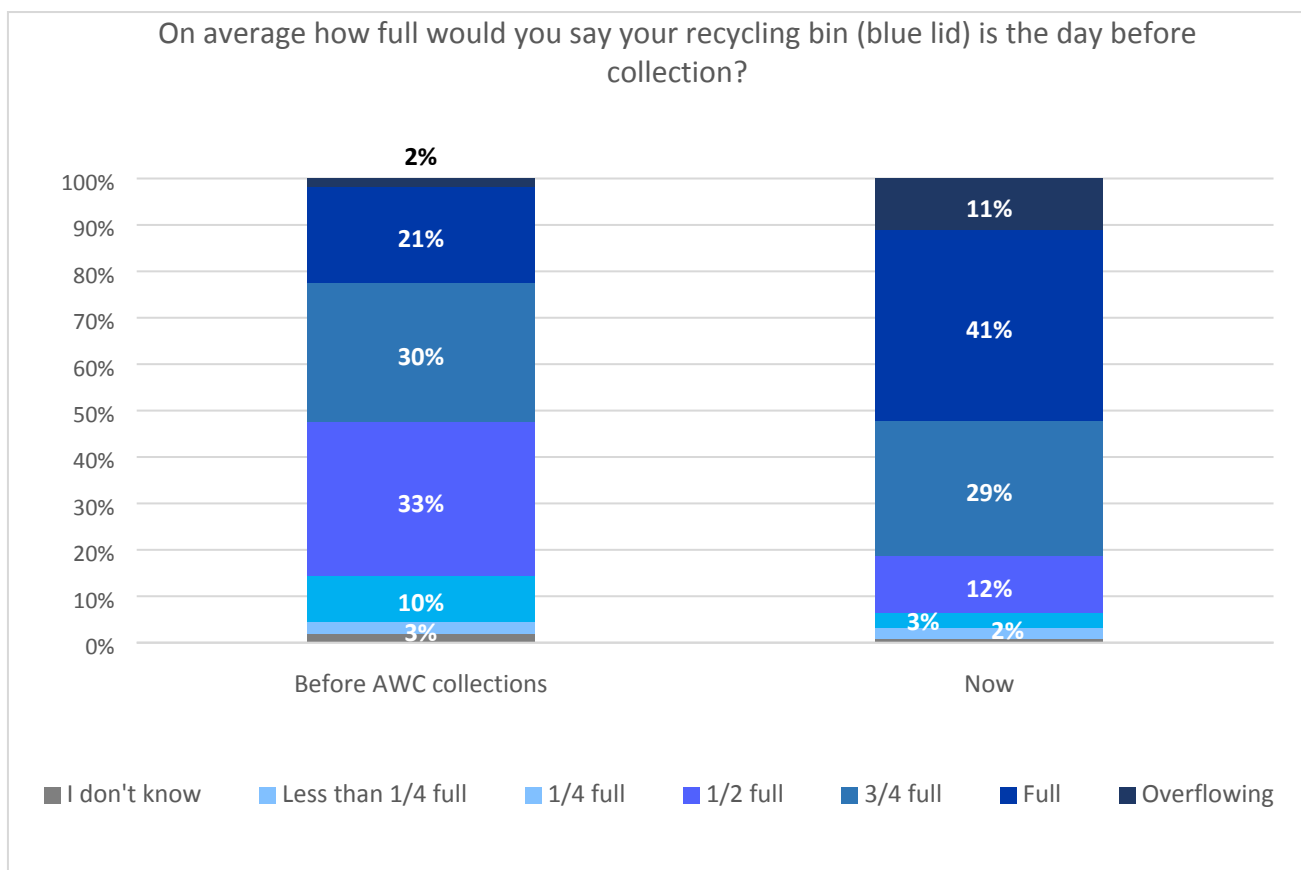
7. Consultation

Public consultation about budget proposals was undertaken and took place from 16 November 2016 – 8 February 2017. The table below identifies the main issues of concern before implementation.



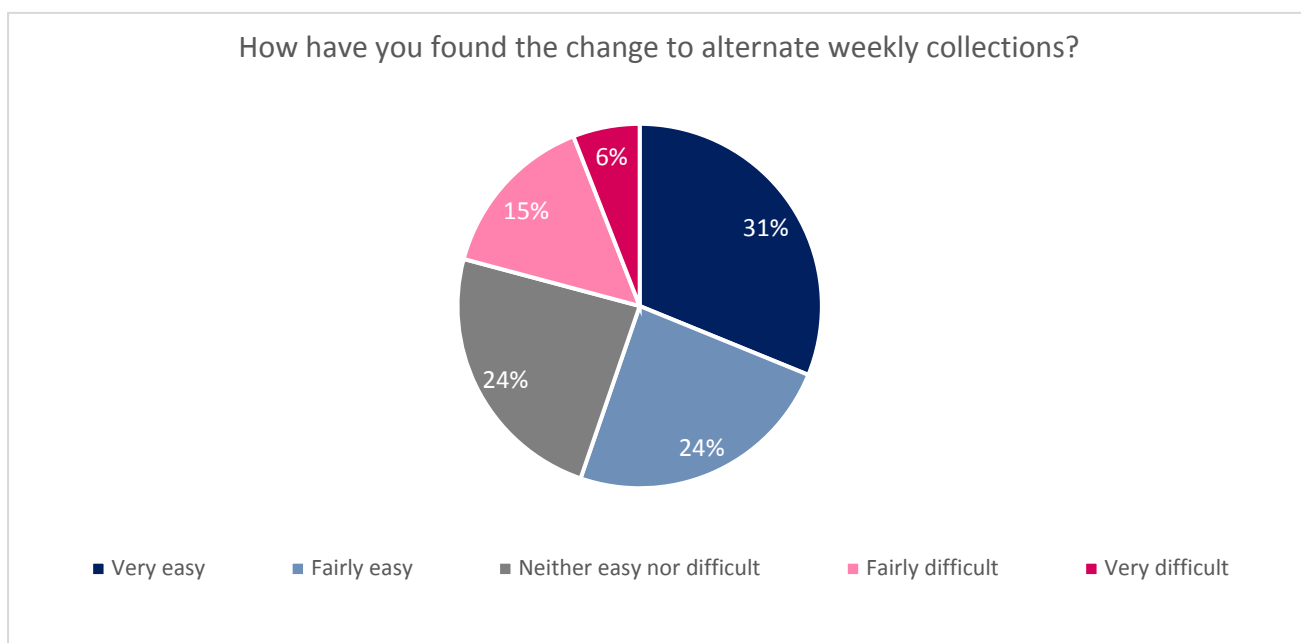
Further consultation was undertaken in November 2017 by the Council's Customer Insight Team and 688 responses have been received so far. In response to questions about how full bins were before AWC and after implementation the following results were found:





Approximately half of all respondents say that after AWC implementation they still have capacity in their bins, 52% for general waste and 48% for recycling, the day before collection.

Coping with change



55% of respondents found the transition to AWC “very/fairly easy” and 24% finding it neither easy nor difficult and only 6% finding the change “very difficult”. Focused communications to residents and wider community engagement contributed to this positive outcome.

Selected additional comments

I welcomed the change to alternate week collections. It has not impacted the amount I recycle because I already recycled/reused as much as possible.
I would like to be able to actually recycle other recycle labelled plastic items, i.e. yogurt pots, margarine containers.
Just want to praise the waste team - we've forgotten to put or bin out a couple of times (which would be pretty bad now it's moved to fortnightly) but they've collected our bin anyway! Thank you!
I have found the bin service excellent since the change of frequency of collection. A couple of years ago I was having to report broken glass on the roadside or pavement when I cycled to work (mostly along Portswood Road and up Kitchener Road) after collections by the kerbside glass recycling team but have found far fewer hazards from broken glass as a consequence of kerbside collection of glass in recent months.
Once again a very good poll I hope the council stay with the present collection, it's the people who complain that need to try and understand the reasons why we have fortnightly collections
I have real problem with the amount of plastic that I seem unable to avoid whilst shopping that although it has a recycling logo on it I am not able to put in my recycle bin. Please, please can a way be found to increase this type of plastic recycling either through collection or local centres

A strong theme emerging from the comments is residents' ability to recycle more types of plastic. This is currently being addressed in the short term by the introduction of 10 mixed plastic banks at 7 locations across the city and in the longer term by the development of the Materials Recovery Facility to be able to accept more types of plastic material. There is also more work to be undertaken in getting bins off the pavement and right items in the right bin.

8. Recycling income

Currently recycling income is remaining buoyant which is positive, however, it is a fluctuating and volatile global market. Whilst newspaper and magazine market price has remained high, there are issues with China's input specification, which is likely to result in a reduction in market price. Card market price has started to decrease in price following achieving a recent premium price for export when compared to the domestic rates.

Aluminium cans market price continued to increase in quarter 2 in line with market trends and ferrous market price increased within the quarter, although this has recently reduced. There continues to be uncertainty in the market place for ferrous and scrap metal.

Plastic mixed bottle price marginally increased within the quarter with the price received being competitive for UK markets. However, there remains some uncertainty and caution within the markets, which is due to potential import issues in China.

The table below sets out price per tonne received for dry mixed recyclables by quarter which is compared to 2016/17 and Letsrecycle:

Quarter	2016-17	2017-18 *	Letsrecycle comparison
1	£45.62	£49.36	£45.29
2	£56.05	£63.76	£58.97
3	£46.71		
4	£57.10		
Total	£51.37		

9. Communications

The communications materials for AWC post implementation have been created in the style of the Waste and Resources Action Programme (WRAP) image library as the simplified images are easily recognisable, adaptable and used nationally.

The cards support staff to communicate information about recycling, waste disposal and promote clean and tidy streets. The simplified graphics are useful for residents when English is not their first language.

Bin tags have been effective in alerting residents to why their bin has not been collected and what they need to do next.

Communicating with students is particularly difficult, this year we attached the collection calendar to the front doors using Blu Tak and this appears to be quite effective. The bin tags are used in combination with visits from the Enforcement and Compliance team to keep the footpaths clear. Please see Appendix 1 for wording and examples.

10. Ongoing work and Next Steps

With any major change, it is important to continue the service improvement process and the following points are priorities:

- To continue to embed AWC in HMOs, low rise blocks and problem roads
- Provide clear messaging around Christmas, catch up Saturdays, Xmas trees and that side waste will be collected during the festive period
- Funding for the Council's reward scheme, Bin it To Win It will cease at Christmas and it will end with 12 rewards of Xmas. Please note this is external funding
- We are waiting for the outcome of the trialling of new communications materials, which has been commissioned by Hampshire County Council. The focus is about 'jolting' residents into new recycling behaviours and the intention is to use these materials as they become available
- It is apparent that a number of residents have multiple bins (more than two), which are likely not to have been issued to them by the service. There will be an ongoing piece of work to review the containers residents have and make sure capacity provided is appropriate for need

- Reducing contamination of recycling bins remains a key focus, along with the need to get glass/textiles out of the general waste and recycling bins
- Ongoing work with flats in order to improve recycling and waste management behaviours
- Sustaining communications – using council tax bill for positive messaging?
- Implementing east to west of city collections for garden waste and bring this in line with the collection pattern for general waste, recycling and glass collections
- Launch mixed plastic banks at a number of bring sites across the city at the end January 2018 in order to enable residents to recycle pots, cartons, tetrapaks and plastic tubs

RESOURCE/POLICY/FINANCIAL/LEGAL IMPLICATIONS

11. Resource

Additional resources that were put in place for the implementation of AWC have now been stepped down.

12. Policy

The new Managing your Local Environment Policy came into effect 5 June 2017.

13. Financial

There are no further financial implications that need to be considered.

14. Legal

There are no legal implications that need to be considered.

OPTIONS AND TIMESCALES

15. Options

Since AWC is implemented following a budget decision, this is not relevant.

16. Timescale

As discussed in the paper there is work to be undertaken to further improve how residents manage their waste in parts of the city. However, the timescale in which to implement AWC is now completed. **Appendices/Supporting Information:**

Appendix 1 – Updated communications materials

Further Information Available From:

Name: Gale Williams

Tel: 023 8083 2536

E-mail: Gale.williams@southampton.gov.uk

Appendix 1

A5 calling card and recycling information



Recycling information A5 card, with graphic messages



Bin tags



Your bin contains items we cannot recycle

Polystyrene 	Textiles
Plastic bags and black sacks 	Pots, tubs, trays and cartons

Your waste is your responsibility, please get it right or you could be issued with a fixed penalty fine.

ONLY RECYCLE

Card and paper 	Aerosols, cans and tins 	Plastic bottles
---------------------------	------------------------------------	----------------------------

Please DON'T bag your recycling

Recycle glass bottles and jars in your grey container

Find out more at southampton.gov.uk/recycle

We were not able to empty your bin because it is too heavy and unsafe

recycle for Southampton **SOUTHAMPTON CITY COUNCIL**

What happens now?

Keep your bin out for collection and lighten the weight. Please do not put overly heavy items in your bin.

If you need help with what to put in your bin please visit southampton.gov.uk/recycle

recycle for Southampton **SOUTHAMPTON CITY COUNCIL**

Collection day calendar and bins on pavements bin tags for student areas – Polygon/Portswood and Swaythling

When do I put the bins out?

KEY: General Waste = Recycling Bin & Glass box =

SEPTEMBER						
MON	TUE	WED	THU	FRI	SAT	SUN
29	30	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	1	2	3

OCTOBER

MON	TUE	WED	THU	FRI	SAT	SUN
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4

NOVEMBER

MON	TUE	WED	THU	FRI	SAT	SUN
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	1	2	3	4	5

Notes:

- Wrap food waste and keep the bin lid closed to prevent smells and pests
- Glass bottles and jars only go in the grey box
- Be a good neighbour and put your bins in off the pavement after collection
- If you don't look after your bins and manage your waste you could face legal action or a fixed penalty notice
- What goes in the bins? Please see overleaf

recycle for Southampton **SOUTHAMPTON CITY COUNCIL**
southampton.gov.uk/bins-recycling

Your bin must not be left on the footpath unless it is your scheduled collection day

Put it out and bring it back in

Find out more at southampton.gov.uk/binchanges

recycle for Southampton **SOUTHAMPTON CITY COUNCIL**

If your bin remains on the footpath when it's not your collection day you could be issued with a fixed penalty notice or face legal action

To get help with your waste go to southampton.gov.uk/recycle

recycle for Southampton **SOUTHAMPTON CITY COUNCIL**

This page is intentionally left blank

DECISION-MAKER:		OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE	
SUBJECT:		PLANNING ENFORCEMENT	
DATE OF DECISION:		14 DECEMBER 2017	
REPORT OF:		SERVICE LEAD: INFRASTRUCTURE, PLANNING & DEVELOPMENT	
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Sam Fox	Tel: 023 802044
	E-mail:	Samuel.Fox@southampton.gov.uk	
Director	Name:	Mike Harris	Tel: 023 802882
	E-mail:	Mike.Harris@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY		
None		
BRIEF SUMMARY		
This report sets out the approach to planning enforcement, including national guidance, how it is undertaken locally within Southampton, and some of the issues that are currently topical. It includes details of caseload and the Southampton City Council Enforcement Policy.		
RECOMMENDATIONS:		
	(i)	To consider and note the contents of the report.
	(ii)	To note and support the external review of Southampton City Council planning enforcement procedures.
REASONS FOR REPORT RECOMMENDATIONS		
1.	To respond to a request from the Chair of Overview and Scrutiny	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
2.	No alternatives have been considered.	
DETAIL (Including consultation carried out)		
	Legislative Background	
3.	The National Planning Policy Framework (NPPF) sets out the Government’s planning policies for England and how these are expected to be applied.	
4.	The NPPF sets out a presumption in favour of sustainable development. Para 187 states that “Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work pro-actively with applicants to secure developments that improve the economic, social and environmental conditions of the area”.	

5.	Paragraph 207 states that: <i>Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.</i>	
6.	Not all building work requires a planning permission and not all unauthorised development is a criminal offence and therefore cannot be treated as one (unless the property is a listed building). Permitted development does allow some specified building works and changes of use to proceed without the need to submit an application for planning permission. We can take enforcement action to get them to put things back to how they were if need be or more often than not, we can request that the owner of an unauthorised development submits a retrospective application to obtain approval.	
7.	Where breaches of planning control are identified it is normal practice to invite the person responsible for the breach to remedy it by either removing it or regularising it with a planning application. It is important in doing this to balance the needs of the applicant, working pro-actively with them as required by the NPPF, at the same time as ensuring that the development is not harmful to neighbours and the wider population. This is often a difficult balance to achieve, and requires planning enforcement to mediate between different parties with different opinions of whether the development is acceptable and/or harmful.	
8.	Where there are breaches of planning control, which are deemed to be harmful and in need of remedy, those responsible are given an opportunity to remedy the breach voluntarily. If this does not lead to resolution of the issue then there are a series of formal actions that can be taken, using the powers in the Town and Country Planning Act.	
9.	These powers include the following:	
	Planning Contravention Notice	Used to formally establish the exact nature of the breach.
	Enforcement Notice	Served on those parties with an interest in the land, requiring the unauthorised development to either be removed or the unauthorised use to cease.
	Stop Notice	Used alongside an Enforcement Notice to require immediately the unauthorised use or development. Only used in exceptional circumstances to stop an immediate threat of harm.
	Breach of Condition Notice	Used to enforce the requirements of a condition attached to an existing planning permission.

	Section 215 Notice	Used to require the tidying up of land/buildings				
	Injunction	Secured through the Courts, requiring an unauthorised use to cease. Only used in exceptional circumstances.				
	Enforcement Policy					
10.	In accordance with the NPPF, the City Council has published an enforcement policy (see Appendix 1). This provides the framework for a robust planning enforcement service within Southampton city, and sets out the following: <ul style="list-style-type: none">• The purpose of planning enforcement• What is, and is not, a breach of planning control• How the council decides whether to take enforcement action and possible outcomes.• How the planning enforcement team will deliver the service• Clarification on how the Council prioritises complaints and timescales.• What happens if someone complains about you• Customer care					
11.	The Council uses this policy as a basis for dealing with enforcement cases.					
	Enforcement Cases					
12.	The enforcement team have received and investigated the following number of cases over the last 5 years.					
		Total cases	Enforcement Notices	Stop Notices	Breach of Condition Notices	Section 215 Notices
	2013	376	13	0	6	1
	2014	363	17	0	8	4
	2015	345	10	0	7	2
	2016	357	13	0	4	1
	2017 (to end November)	289	14	0	6	3
13.	The number of opened cases do not reflect the number of enforcement enquiries/complaints received, the numbers are higher for each year. There are several complaints/enquiries received where the matter is dealt with without the need to open a case, this is mainly due to there not being a breach or records held to demonstrate that no action is necessary etc.					
	Enforcement Team					
14.	The Enforcement Team is within the Infrastructure, Planning and Development service and has three members of staff. Karl Collymore is the Enforcement Supervisor and Gavin Grayer and Helen Sharp are Enforcement Officers.					

15.	The team work closely with the legal team, planning officers and other specialist advisors such as the arboriculture team, licensing, building control and environmental health. They also work closely with external agencies on multi-agency enforcement initiatives.
16.	The Service Lead has ensured that the team has maintained its full complement of staff during recent restructures, despite the need for the service to make financial savings.
	Current Issues
17.	<u>Difficulty in taking action:</u> Sometimes the Council is asked to take enforcement action against issues that are not breaches of planning control but may be able to be enforced against using different legislation (such as building regulation or statutory noise nuisance). Similarly they may be civic matters which the Council has no jurisdiction over. These can include land ownership and covenants.
18.	<u>Expediency:</u> Often there are cases, especially involving neighbour disputes, where there may be a technical breach of planning control (such as the height of a boundary wall or fence) but the harm being caused by it means that it is not expedient to take formal action to have it remedied. If formal action is taken in such cases then the Council can be at risk of maladministration. However, by not taking action this can lead to reputational risk. Expediency is not a matter that is well understood by the public. It is covered in the Council's Enforcement Policy.
19.	<u>Delays in taking action:</u> The planning system does not allow the Council to take immediate enforcement action to rectify breaches of planning control. There is a requirement to give those responsible for a breach to have the opportunity to rectify the breach voluntarily, either by undertaking works to make the development or use acceptable, or to bring it within permitted development rights. This can take considerable time. Keeping concerned neighbours and residents associated up to date with what can seem to them like a lack of action is a known source of frustration.
20.	It is also not normally reasonable to take formal enforcement action while a planning application or Lawful Development Certificate is being determined. Furthermore, it can also take significant time to gather evidence to prove whether or not there is a breach. This is particularly the case when investigating houses in multiple occupation.
21.	When formal enforcement action is taken there is also a requirement for a period (normally no less than 28 days) of time from when the notice is served before it comes into effect. There is also a need for formal notices to specify a reasonable time period for the breach to be remedied. It is also not uncommon for those responsible to exercise their right of appeal against an enforcement notice simply to get themselves extra time. Whilst this is frustrating, and demonstrates that the tools in the enforcement toolkit are not timely, it is legitimate. These are all matters that can frustrate both the Council and other interested parties and claims that enforcement is being ineffective.
22.	<u>Lawful Development Certificates:</u> Where a landowner believes that there is sufficient evidence to demonstrate that the development is lawful, either due to it being within permitted development, or due to the passage of time, then an application for a Lawful Development Certificate can be made. These are

	not, and cannot be, subject to the same assessment of material planning considerations and the policies within the Development Plan. They are simply an analysis of whether or not the development or the use is lawful. Again these are the subject of dissatisfaction for affected parties.
23.	<u>Powers to decline to determine planning applications:</u> The council has the power to decline to determine planning applications in certain circumstances as set out in Section 70A, 70B and 70C of the Town and Country Planning Act 1990 as amended by Section 123 of the Localism Act 2011.
24.	This is a discretionary power and not a duty which must be complied with, and a power which must be employed sensibly, rationally and proportionally. There is no right of appeal, which means the Council's decision can only be challenged by way of judicial review. Taking such a decision doesn't prevent subsequent applications from being made.
25.	The powers cover three categories of events, which could almost be described as "before, during or after", a precis of which is set out below.
26.	<u>Power to decline to determine subsequent application</u> The Council may decline to determine a planning application if the council think that there has been no significant change in the relevant development plan policies or other material considerations AND
27.	<ul style="list-style-type: none"> I. The SoS has refused a similar called-in application in the last two years; or II. The SoS has dismissed an appeal against the refusal of a similar application in the last two years; or III. The council has refused more than one similar applications in the last two years and there has been no appeal; or IV. The SoS has refused a similar application deemed to have been made as part of an appeal against an enforcement notice in the last two years.
28.	An application is similar to another application if the council thinks the development and the land to which the application relate are the same or substantially the same.
29.	<u>Power to decline to determine overlapping application</u> The Council may decline to determine a planning application, which
30.	<ul style="list-style-type: none"> I. Is made on the same day as a similar application, or II. Is made during the determination period of a similar application; or III. Is made at a time when a similar application is yet to be decided on appeal by the SoS; or IV. Is made during the appeal period for a similar application that has been granted, refused or not determined by the council; or V. Is made at a time when the SoS is yet to decide a similar application or one deemed to have been made as part of an appeal against an enforcement notice.
31.	<u>Power to decline to determine retrospective application</u> The Council may decline to determine a planning application for development which is the subject of a pre-existing enforcement notice.
32.	There has been criticism that the Council has had opportunities to decline to determine a limited number of planning applications using these powers. The

	Council's planning solicitor has provided a briefing note for planning officers so they are aware of these powers. The Service Manager will now pro-actively monitor such applications during the registration process with a view to thoroughly assessing new applications against these power in the future.
33.	<p><u>Enforcing on High Profile Sites:</u></p> <p>Sometimes there are high profile development sites, where there is an exceptionally high level of public interest and scrutiny. Despite the enforcement team, and other officers from the Council, building effective working relations with site owners, operators and contractors, these sites can lead to huge peaks in demand for the enforcement team to monitor and enforce these sites. These can lead to officers attending site visits and meetings multiple times a day (and night), and responding to high levels of correspondence. Sometimes on these sites, despite the high level of public interest, and intense involvement of the Enforcement team, there is not established evidence of breaches of planning control.</p>
	Review of Planning Enforcement Policy & Procedures
34.	Because of the ongoing level of interest in enforcement, and the difficulties of enforcing effectively with the legislation, the Service lead for Infrastructure, Planning and Development has commissioned an independent external enforcement expert to undertake a review of the Enforcement Policy and of the procedures used by the team.
35.	If this review identifies a need to update the Policy, or amend procedures, these recommendations will be considered and implemented where necessary.
	Other Matters
36.	There has been recent concern raised regarding planning decisions made under delegated powers despite the requisite number of objections and Councillor's objection which would trigger the application being determined by the Planning and Rights of Way Panel. Officers were made aware of one decision that residents and members felt had been made under delegated powers, when they felt the case should have been referred to Panel. The case did not receive the required number of resident objections to trigger referral to panel, but a Ward Councillor had submitted an email requesting referral to panel. Unfortunately the email address used was not the correct email address set out in the approval process, and subsequently the case officer did not receive the objection. The application was subsequently approved under delegated powers. The Service Director considered the situation, and having taken legal advice concluded that the decision should stand. Officers are not aware of any other decisions that members or residents feel have been taken at an inappropriate level. The referral process for members is carefully laid out in order to avoid such confusion.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
37.	There are no implications arising from this report
<u>Property/Other</u>	
38.	No implications as a result of this report.

LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
39.	Town and Country Planning Act 1990 alongside other primary and secondary legislations.
<u>Other Legal Implications:</u>	
40.	None
RISK MANAGEMENT IMPLICATIONS	
41.	Effective management of the Development Control process is important to protect the Council's reputation, to guard against challenges on decisions made and to support implementation of development projects.
POLICY FRAMEWORK IMPLICATIONS	
42.	The Council's strategic priorities include 'Strong and Sustainable Economic Growth' and 'Being an Attractive Modern City', both of which the Development Control process can make a significant contribution to.

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	All
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Southampton City Council Planning Enforcement Policy

Documents In Members' Rooms

1.	none
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
Privacy Impact Assessment	
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.	No

This page is intentionally left blank

Planning Enforcement Policy for Southampton City Council

Version 2 (May 2014)

1.0 Introduction

1.1 This policy statement on Southampton City Council's ("the Council") Planning Enforcement Service describes what the service does and how we deliver the service to the community. It is not a legal document and does not seek to provide legal advice or to comment on individual cases, which will be judged on their individual circumstances.

1.2 The policy sets out:-

- The purpose of planning enforcement (section 2)
- What is, and is not, a breach of planning control (section 3)
- How the Council decides whether to take enforcement action and possible outcomes (section 4)
- How the planning enforcement team will deliver the service (section 5)
- Clarification on how the Council prioritises complaints and timescales (section 6)
- What happens if someone complains about you (section 7)
- Customer care (section 8)

1.3 It is important to remember that planning consent may not be the only consent required from the City Council. For example, Building Regulations approval, alcohol licence etc. may be required in addition to planning consent. This policy only covers matters relating to planning control. Property owners should satisfy themselves that all other necessary consents needed are in place to carry out the work or activity they are contemplating. Securing such consents can be a time consuming process and persons are encouraged to engage with the relevant regulatory bodies at the earliest opportunity to avoid frustrating delays at a later date.

1.4 Enforcement decisions and actions are taken in accordance with Government guidelines and Council Policy. The Department for Business Innovation & Skills published the Regulators Code in April 2014 and it sets out some principles for regulators when preparing enforcement policies:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

This policy endorses all of these principles.

1.5 The ability to take enforcement action is currently delegated to the Planning & Development Manager under section 3.6.2 of the Officer Scheme of Delegation under the Council Constitution.

1.6 The Council has powers of enforcement in relation to other services, such as highways, environmental health, listed buildings, conservation and trees. These services are co-ordinated so that investigations are carried out under the appropriate legislation, but the Council seeks to ensure that any action taken is co-ordinated so that only one point of contact is required, wherever possible.

1.7 Co-operation with other external bodies (for example the Fire, Police Services and the Environment Agency) are an integral part of enforcement and these working relationships will continue to be developed in the future in order to make the most effective use of available resources and to ensure one point of contact, if possible.

2.0 The purpose of planning enforcement

2.1 The integrity of the planning service depends on the Council taking timely and effective enforcement action when appropriate. The Council is committed to providing an effective planning enforcement service and it is understood that public perception of the planning system can be undermined when unacceptable development is allowed to proceed, or to remain, without any apparent attempt by the Council to intervene. Even when development is considered to be acceptable, the Council has a role in explaining to the public why the development is considered to be appropriate and to encourage a planning application to be submitted so it can be fully assessed, public comments considered, and appropriate conditions attached, if necessary.

2.2 The Council realises that whether something requires planning permission is not always clear, particularly to members of the public, and so a free duty planning officer service is available for advice, via the Gateway service. If a definitive answer is required, then an applicant can submit a certificate of proposed lawful development to gain a legal decision from the Council. The Council also offers a paid-for pre-application advice service to improve the quality of an application for planning permission.

3.0 What is, and is not, a breach of planning control?

3.1 Whether something requires planning permission is not straightforward and while there are some fairly obvious breaches, such as building a new house without planning permission, many others are more difficult to define or less well known. For example:

- Works to a listed building
- Works to trees protected by a tree preservation order
- Stationing of a caravan or mobile home for use as a primary place of residence
- Breach of conditions attached to planning consents
- If someone does not build in accordance with the approved plans of their planning permission
- Failure to properly maintain land so that it affects the amenity of the area
- Unauthorised engineering works – even raising ground levels in the garden can require planning permission

- Failure to comply with terms within a Town and Country Planning Act 1990 Section 106 agreement
- The unauthorised display of advertisements

What is not a breach of planning control:

3.2 Many issues can require consent to be given by a landowner or a third party but do not require planning permission. Unfortunately, the Council is not able to get involved in issues that are between two private parties, as these are considered to be civil matters. Other matters may be of genuine concern, and may be covered by other legislation, but are not issues that the Council as Local Planning Authority can get involved with. Some of these are:

- Internal works to a non-listed building (Building Regulations may be required)
- Competition from another business
- Obstruction of a highway or public right of way (the police or highways authority may be able to get involved)
- Parking a caravan within the residential boundary of a property provided that its use is ancillary to the dwelling
- Clearing of land of overgrowth, bushes and trees (provided they are not subject to a Tree Preservation Order or owned by the Council)
- Operating a business from home where the residential use remains the primary use
- Boundary disputes – disputes about ownership are a private matter and cannot be controlled under planning legislation
- Deeds and covenants are a private matter between the signatories to the documents
- Insertion of windows in houses or bungalows - once a building has been occupied windows can normally be inserted into existing walls provided that there is not a planning condition to prevent the insertion of additional windows (check the original planning consent via a Gateway file request)
- Where development is 'permitted development' under the Town and Country Planning (General Permitted Development) Order 1995 (as amended)

4.0 How the Council decides whether to take enforcement action and possible outcomes

4.1 Where significant harm to amenity can clearly be demonstrated, then the Council will usually contact the person causing the breach to talk about the problem they have created. This will often result in a planning application being submitted or, where something is considered to be unacceptable, there will be a discussion about removing it. Only if the person causing the breach refuses to talk to the Council, or to resolve an unacceptable matter, will the Council take enforcement action.

4.2 Enforcement action is, however, discretionary. The Council has discretion as to whether to take enforcement action or not, and it is not a mandatory duty so to do. **Because something is a breach of planning control this is not, in itself, reason to take enforcement action.** Even when it is technically possible to take action, the Council is required to decide if such formal action would be “**expedient**” in the public interest. There needs to be harm actually being caused that is of sufficient detriment to warrant action being taken.

4.3 A breach of planning control is not normally a criminal offence in the first instance. Even if the Council is aware that someone is going to carry out works that require planning permission, it does not follow that it will be stopped. There would have to be considerable harm for the Council to seek an injunction to stop an

unauthorised development taking place. It is recognised that this can be very frustrating for complainants, but the Council must operate within the legislative framework as laid down. The Council reserves the right to take into account what benefits someone has created through carrying out unauthorised development. Any breach of the requirements of a formal Notice will constitute a criminal offence. Should this happen, the Council has the ability to seek to recover profits made either under the Town & Country Planning Act 1990 and/or under the Proceeds of Crime Act 2002 and will consider such an application to the courts for deliberate breaches.

4.4 The Council starts from a position of trying to resolve all breaches of the planning system through dialogue and normally formal action is a last resort. The Council is usually expected to give those responsible the chance to put matters right before serving a formal notice. However, when the breach of planning control is causing unacceptable serious harm or nuisance to public amenity, formal action will not be delayed by protracted negotiation or attempts to delay the process. Enforcement action will therefore always be commensurate with the seriousness of the breach of planning control.

4.5 It follows that any enquiry can result in many different outcomes, from the Council concluding that there is no breach of planning control, through to serving an injunction to stop a breach with immediate effect. Some possible options are summarised below, but if you make an enquiry, whatever the outcome, you will be fully advised about what the Council is doing and why.

- No breach established - after a site visit there is found to be no breach of planning control: for example the development is permitted development or is not within the control of planning legislation. No further action will be taken and all parties will be advised.
- There is a breach but it is not considered to be expedient to pursue the matter. If a 'technical' breach has taken place, for example a new garden fence has been erected that is only marginally over permitted development limits, then it is not normally worthwhile taking lengthy and expensive enforcement action over something that causes minimal public harm. The owner would normally be advised to submit a planning application to regularise the development but if they do not do so the case would be closed and the complainant advised. It is usually in the best interests of the property owner to regularise the problem, or they may run into problems when the property is sold.
- There is a breach and part of it is considered to be harmful. The Council may "under enforce" by serving a notice to secure a remedy to the most harmful part of the development, whilst leaving the lesser parts of the development untouched. For example, most garden fences can be 2m in height and it may be erected to 2.1m for the length and then one panel perhaps goes to 3m next to a neighbour's window. The Council may seek the removal of the 3m panel, but not to reduce the rest of the fence by 0.1m.
- There is a breach but it is 'immune' from action. It is possible that there has been a breach of planning control for some time but the Council has not been aware of it. If the building was substantially completed more than 4 years before, or a use commenced 10 years before, then the development can be considered to be immune from enforcement action. There are many caveats to these rules (for example, the period for residential use of a building is 4 years) and so more information will be required. The landowner would normally be advised to apply for a Certificate of Lawful Development to prove its immunity.

- If negotiation does not secure compliance with what the Council considers to be an acceptable solution, then it has the power to take formal action against any breach. The nature of the breach will dictate which route the Council chooses to pursue. Depending upon what action is taken, the person responsible may get a criminal record. The Council will make it clear in correspondence (to the property owner or the person in control of the land) what options are open to them to remedy the breach of planning control, and the timescales within which to carry those out.

4.6 The Council is very keen to promote businesses in the city to ensure a healthy economy, which is seen as a central part of delivering sustainable communities. With this in mind, the Government has considerable concern that small businesses in particular should not be unduly jeopardised by hasty enforcement action. Therefore, the Council will always seek to ensure there is a good dialogue with a business that has carried out development without planning permission and, if a solution cannot be found, then consideration will be given to ensure any action that is taken is carried out to minimise the impact on the business if reasonable and possible. This may result in longer compliance periods being given to regularise development. However, this desire to work with businesses will not be at the expense of tolerating any unacceptable impact on neighbours. The Council will have to weigh up and balance the impact on the business and the harm caused to others.

Types of formal action

4.7 The Council has a range of formal powers under the Town and Country Planning Act, 1990 (as amended) that it can use to remedy breaches of planning control.

- Planning Contravention Notice – this requires persons to provide information in respect of the development and/or activities taking place on the land. These notices are often served as a first step, to gain information from the person carrying out the development and/or activity, before determining whether it is expedient to serve other formal enforcement notices
- Breach of Condition Notice – planning permission is usually granted with conditions and this Notice is served to require compliance with conditions. There is no right of appeal against this type of notice so it can be very quick at resolving problems.
- Enforcement Notice – this is the most frequently used formal notice and sets out steps required to remedy the breach. This notice can also be served in conjunction with a Stop Notice (see below). There is a right of appeal to the Planning Inspectorate against an Enforcement Notice, which can lengthen the process, and the notice will not take effect until the appeal has been determined. The period set for compliance with the Notice commences from the date of the appeal decision letter.
- Stop Notice / Temporary Stop Notice – these notices require unauthorised activities to cease either at three days notice or immediately.
- Section 215 Notice – provides the power to secure the proper maintenance of land and buildings where there is an adverse effect on the amenity of the area.
- Injunction - this may be obtained either from the High Court or the County Court and is usually served to take effect at short notice and can be served in anticipation of a breach that will occur, but the harm must be considerable to

warrant such a step. Failure to comply with a Court Order may lead to imprisonment

- Prosecution – should any of the above notices not be complied with by the required date for compliance, then usually the first step in seeking compliance is to formally write reminding them of their responsibility to comply with the Notice. Failure to act on such correspondence will normally lead to prosecution. Fines are within the bracket of ‘up to £20,000’, but this limit can be lifted and sometimes urgent action will be taken.
- Direct Action – in extreme circumstances the Council can enter the land and carry out the required works itself and then place a charge on the land for the re-payment of costs incurred. The council may then seek re-payment of those cost and, if not paid, convert the Charge on the property to a Charging Order and potentially an Order for Sale

5.0 How the planning enforcement team will deliver the service:

5.1 The Planning Enforcement Service will:

- Investigate all alleged breaches of planning control which are reported in writing, by e-mail or by telephone, and where sufficient information is given to identify the site, i.e. an exact address and details of what harm (if any) is being caused as a result of the breach. Complainants should leave their details so we can keep them informed and check information with them.
- The Council reserves the right not to investigate anonymous complaints, especially if they are considered to be vexatious or when workloads are high, as such complaints are more difficult to follow up.
- Complainants details are treated confidentially and the Council will always seek to protect the identity of those making complaints but, in rare circumstances, the Council may be required to divulge details (usually through legal action). We will advise anyone of this before it happens and it is extremely rare. If you are concerned about your details being used, then try contacting a local residents group or Ward Councillor, as they may be prepared to make the complaint on your behalf.
- We will promptly register every case and acknowledge receipt within 5 working days. You will be given the name of the Enforcement Officer dealing with your complaint so you know whom to contact. We will then carry out some initial checks (usually including a site visit) and ensure the complainant is updated by phone, email, visit, or formally in correspondence within a further 5 working days of our initial findings, and be given the opportunity to comment on our initial findings.
- When cases take a long time i.e. on-going monitoring is required, we will ensure complainants are updated at least every 3 weeks, unless other timescales are agreed on an individual case.
- It is important to remember that often the success of a case relies on the complainant working with the Council to provide details of the breach, to give evidence where possible, and potentially to act as a witness. The Council will discuss this with you if it is required, and any refusal to be more involved than you are comfortable with will not stop the investigation of a case (unless evidence cannot be gathered as a result).

6.0 Clarification on how the Council prioritises complaints and timescales

6.1 It would be inappropriate to investigate and pursue all allegations with equal priority and intensity. Therefore each case is prioritised according to the seriousness of the alleged breach. This priority is decided by officers, and subsequently reviewed after an initial site visit. The scale of priorities (and this is not an exhaustive list of examples) is shown below:

1. Serious threat to health and/or safety. Permanent serious damage to the environment or amenity

Serious traffic hazard; contamination / pollution being created;
Loss of protected tree; works affecting the preservation or character of a Listed Building; certain types of demolition in a Conservation Area.
These are usually visited within 24 hours of the case being reported.

2. Less immediate but harmful with potential to escalate

Building works just commenced without permission; severe nuisance being created (noise, smells, congestion etc where there is also a breach of planning control). Non compliance with certain planning conditions (particularly pre commencement conditions).
These are usually visited within 48 hours.

3. Other breaches likely to remain stable

Development that has not been completed in full accordance with the approved plans, particulars or undertakings; an untidy site; non-compliance with other planning conditions.

These are usually visited within 5 working days, unless workloads are high and then they can take longer.

4 Other issues

Satellite dishes; unauthorised display of adverts; new fences (adverts and fences may go up in priority if there are highway safety issue).

These are usually visited within 10 working days, unless workloads are high and then they can take longer.

7 What happens if someone complains about you?

7.1 If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, and so we do not just believe an enquiry but will always seek to work with you to understand the facts of the case.

7.2 Initially a member within the Enforcement Team will visit the site. Due to time constraints, this is usually without any prior warning to the owner or any tenants / employees at the site. Officers are authorised to visit a site to investigate and will show identification when they arrive. Enforcement officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the Enforcement Officer. However, we are required to give 24 hours notice to insist on entry to a residential property but if you are happy to allow us access then we will usually take up that offer.

7.3 If the allegation refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved, the Planning Enforcement Service will advise you of the details of the breach and how it can be rectified. You may be served with a Planning Contravention Notice, which requires information concerning the alleged development. This notice is used to establish the facts of what has occurred and the details of those with an interest in the land, so that the Council can determine whether a breach has taken place and who is responsible. It is a criminal offence not to complete and return such a notice within the specified timescale.

7.4 In the event of a breach being established, your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development, or by ceasing the unauthorised use or activity prohibited by a planning condition. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this.

7.5 In some circumstances you may be invited to submit a retrospective planning application or, other appropriate application if it is considered that consent may be granted, or an application for a Certificate of Lawfulness of Use or Development, where it can be shown that the breach is immune from enforcement action and therefore lawful.

7.6 If compliance is not secured through negotiations or the relevant retrospective application / Certificate of Lawfulness is refused, formal action may be instigated (see types of formal action above).

8 Customer care

8.1 The City Council is committed to offering a fair and transparent enforcement service to the community of Southampton.

8.2 Planning enforcement is a complicated area of law and care must be taken to arrive at a correct and appropriate course of action related to alleged breaches of planning control.

8.3 In exercising this policy, the City Council will offer all of its customers, whether they are complainants or those who may be in breach of relevant controls, adequate opportunities to fully state their case, to ensure that the correct decisions are taken to safeguard the built and natural environment of Southampton.

8.4 If persons are aggrieved with the Planning Enforcement Service offered to them, there is a complaints procedure, where complaints can be investigated. Stage One complaints will usually be investigated by the relevant Manager, and Stage Two complaints are handled by the Corporate complaints team. More details are available on the Council website.

8.5 If both stages of the procedure have been exhausted and a customer is still not satisfied, the matter can be investigated by the Local Government Ombudsman. They will make an independent investigation of whether maladministration has occurred by the City Council and if it has, recommend what remedy ought to take place. This may include the payment of compensation.