<table>
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<tr>
<th><strong>BLAENAU GWENT COUNTY BOROUGH COUNCIL</strong></th>
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<tr>
<td><strong>Report to</strong></td>
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<td><strong>Report Subject</strong></td>
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<td><strong>Report Author</strong></td>
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<td><strong>Report date</strong></td>
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<td><strong>Directorate</strong></td>
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<td><strong>Executive Portfolio</strong></td>
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<td><strong>Date of meeting</strong></td>
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<td><strong>Date signed off by Monitoring Officer</strong></td>
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<td><strong>Date signed off by Section 151 Officer</strong></td>
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<td><strong>Date signed off by Chair</strong></td>
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<td><strong>Key words</strong></td>
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## Report Information Summary

<table>
<thead>
<tr>
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<th>Purpose of Report</th>
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<tr>
<td>1.1</td>
<td>To seek the views of Executive Committee on the introduction of new fixed penalty notices to deal with fly tipping under the Unauthorised Deposit of Waste (Fixed Penalty) (Wales) Regulations 2017.</td>
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### Scope of the Report

2.1 The report will outline:

i. The legislative background and the current position with fly-tipping prosecutions in Blaenau Gwent.

ii. The new powers in relation to fixed penalty notices and the levels of fines that can be adopted.

iii. Information relating to the circumstances where issuing fixed penalty notices is appropriate.

iv. Options and recommendations for Executive Committee to consider.

### Contribution to the National Well-Being Goals – Detail attached as Appendix 1

### Recommendation(s) / Endorsement by other groups, e.g. CLT/Committees/Other groups

4.1 The report has been considered and supported by Environment & Regeneration Leadership Team and the Corporate Leadership Team. The Head of Legal & Corporate Compliance has been consulted. Environment, Regeneration & Economic Development Scrutiny Committee considered this report and supported the recommendation on 15th February 2018.

### Recommendation/s for Consideration

5.1 That Executive Committee approves the following proposals (Option 1):

i. That the Authority should adopt the new powers to issue fixed penalty notices for fly tipping in certain cases (as outlined in the main report)

ii. The fixed penalty notice fine should be set at the maximum of £400 (or £350 if paid within 10 days of issue).

iii. Commencement Date. The new measures would take effect in relation to new fly-tipping investigations commenced from 1st April 2018 onwards.
### Why this topic is a priority for the Council?

<table>
<thead>
<tr>
<th>Single Integrated Plan (SIP)</th>
<th>Council’s Well-being Objectives</th>
<th>Performance Management Improvement Framework (PMIF)</th>
<th>Operating Model</th>
<th>Transforming Blaenau Gwent (TBG Programme)</th>
<th>Relevant legislation</th>
<th>Other (please state)</th>
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### Reporting Pathway

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<tr>
<th>Directorate Management Team (DMT)</th>
<th>Corporate Leadership Team (CLT)</th>
<th>Audit</th>
<th>Democratic Services Committee</th>
<th>Scrutiny</th>
<th>Executive</th>
<th>Council</th>
<th>Other (please state)</th>
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<tr>
<td>30/1/18</td>
<td>20/2/18</td>
<td></td>
<td>15/2/18</td>
<td>23/3/18</td>
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## Main Report

### 1. Background and Context

#### 1.1 Fly tipping is an offence under Section 33(1) of the Environmental Protection Act 1990. The Act prohibits, subject to certain exemptions the deposit of controlled waste or extractive waste in or on any land other than in accordance with an environmental permit or exemption. A person who commits an offence under section 33(1) is liable on conviction:

- In Magistrates court to imprisonment for 12 months and a fine to maximum of £50,000 or both.
- In Crown court to imprisonment for 5 years and an unlimited fine or both.

#### 1.2 Investigations can be complex and time consuming and require significant input of staff resources and cannot be guaranteed to result in a successful conviction. The fines from any successful prosecutions are paid to the court and not to the local authority; although in the majority of successive cases the local authority is awarded costs (although it can take several months for the court to collect and forward costs to the local authority). Most fly tipping investigations in Blaenau Gwent relate to low-level offences and fines for these offences are considerably lower than the maxima, ranging from £300-£500, and court costs are typically £150 to £500.

#### 1.3 In 2016/17, local authorities in Wales had 38,614 reports of fly tipping, costing the Welsh Tax payer over £2.18 million to clear. Blaenau Gwent CBC received 845 reports of fly tipping in 2016/17, an increase of 17% on the year previously of 723. Welsh Government data on fly tipping and enforcement activity across Wales can be accessed on the following website link - [here](#).

#### 1.4 The Executive will recall a report on fly-tipping enforcement activities in the September 2017 Executive Committee Information Pack, which stated that 77 successful convictions were achieved in Blaenau Gwent between 2007 and 2016/17 and historically the Authority has one of the best detection rates in Wales. The September 2017 report made it clear that detection rates in all local authority areas are low compared to the total number of instances of fly-tipping. This is because of the
difficulties in meeting the necessary evidential test – including linking the tipped waste to individuals or whether there are witnesses that are prepared to give evidence in court. Investigations into fly-tipping have continued in 2017/18 with 4 successful prosecutions completed to date and 1 more proceeding.

1.4 New Powers. As part of its strategy to combat these offences, Welsh Government has brought forward new legislation to empower local authorities to issue fixed penalty notices for fly tipping in certain low-level fly-tipping cases. Similar powers have been available in Scotland for some time.

### 2. Performance Evidence and Information

#### 2.1

The [Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations](#) 2017 introduce a new power enabling an authorised officer of a Welsh waste collection authority to serve a fixed penalty notice on a person found to be responsible for fly tipping offences. The Regulations provide local authorities with a more efficient and proportionate response to small scale fly tipping instead of enforcement by prosecution. Amongst other things, this will also help ease the burden on local authorities and the court system against the backdrop of ongoing resource challenges and increasing other work pressures. Fixed penalty notices also provide an opportunity for first time, non-habitual low-level offenders to avoid court and a possible criminal record.

#### 2.2

The Regulations give local authorities the power to set the level of the fixed penalty within the range of £150 to £400 with the default level of £200 if no other amount is specified. Local authorities can choose to make arrangements to accept a reduced amount for early payment of no less than £120. Fixed penalty receipts are retained by the council. Fixed penalty notices can be used on both publicly and privately owned land. If the fixed penalty notice is not paid within 14 days then the council’s recourse will be prosecution for the original offence via the normal court process.

#### 2.3

As stated earlier, experience has shown over the last two years that when fines are issued by the Courts for small scale fly-tipping they are in the range of £300 to £500. In addition the costs associated with an investigation and clean-up are applied
for and often awarded by the Courts and these range from £150 to £500.

2.4 Given this historic range of fines and costs imposed by the Courts for illegal waste disposal, Officers are recommending that, should the Authority adopt these new powers and set fines at the upper level allowed by the regulations at £400, with an early repayment reduction of £350 if the fine is paid within 10 days of issue. The early repayment reduction will help to encourage payment of the fixed penalty notice within an expedient time period and thus fewer offenders would have to be taken to Court for lower level offences.

2.5 Fixed penalty notices will not be issued in relation to repeat offenders. Where an offender is taken to court, the fact they have been issued with a previous fixed penalty notice may influence the court’s assessment of the offender’s suitability for a particular sentence. A Fly-tipping Enforcement Working Group has produced guidance on what constitutes small scale fly-tipping (see Appendix 2). There will be individual circumstances that will need to be considered on each occasion, but the guidance will assist in ensuring a consistent approach to the issuing of fly-tipping fixed penalty notices in Wales and indicates that the following criteria should apply when determining if the issuing of a fixed penalty notice is appropriate:

- First time non-habitual offenders only
- Non-hazardous waste only
- Up to a car boot load
- Up to 8 black bags
- One or two bulky items (e.g. furniture, white goods)

3. **Risk Implications**

3.1 Risks are low. Reputationally, members should be aware that moving to a fixed penalty notice regime for these offences will reduce the number of successful prosecutions that fall into the public domain. By paying the fixed penalty fine, offenders will avoid prosecution in the public courts and, thus, reduce the number of opportunities to publicise some low-level fly-tipping cases in the press and/or social media. However, setting the fine at the statutory maximum (Option 1) would serve to underpin the
Authority’s zero-tolerance policy to environmental crime and provide the strongest possible deterrent effect under the new regime.

3.2 Legal risks are low as long as fine levels are set in accordance with the new regulations and all other necessary evidential and public interest tests continue to be met on a case by case basis.

### 4. Financial Implications

4.1 Should the Authority choose to adopt these new powers then it is also necessary to set the fines at a level that would provide the strongest possible deterrent effect whilst also providing an incentive for early/prompt payment. Otherwise a default fine level of £200 would apply, which would also result in reduced income from fines. It is estimated that 3-4 fixed penalty notices could be issued per year in lieu of prosecution, resulting in a potential loss of £800 in income if the notices were paid at the default level. In most cases, when paid, fixed penalty fines would be received significantly far sooner than costs awarded by the court following prosecutions.

### 5. Staffing/Workforce Development Implications

5.1 Fly-tipping instances will still need to be investigated in the same manner as undertaken currently. There will not be a significant increase in successful enforcement activity as a result of adopting these new powers. It will still be necessary to identify the person or persons responsible for the offences and collect other relevant evidence. A decision to serve a fixed penalty notice in lieu of prosecution will only apply to a small number of cases, in accordance with the principles outlined in paragraph 2.3, above. Nevertheless, where fixed penalty notices are served (and paid), then this may help to slightly reduce the ongoing heavy workload pressures for both Environmental Health and Legal services.

### 6. Options for Consideration

6.1 Option 1 -

i. That the Authority should adopt the new powers to issue fixed penalty notices for fly tipping in certain cases (as outlined in paragraph 2.5, above)

ii. The fixed penalty notice fine should be set at the maximum
of £400 (or £350 if paid within 10 days of issue).

iii. Commencement Date. The new measures would take effect in relation to new fly-tipping investigations commenced from 1st April 2018 onwards

6.2 Option 2 –

i. That the Authority should adopt the new powers to issue fixed penalty notices for fly tipping in certain cases (as outlined in paragraph 2.5, above).

ii. The Executive Committee recommends alternative fine levels within the parameters outlined in the regulations for consideration by Executive Committee.

iii. Commencement Date. As Option 1.

6.3 Option 3 –

That the Authority should not adopt the new powers to issue fixed penalty notices and should continue to prosecute each case where possible.

7. Impact Assessment Against Proposals / Options*

7.1 • Thinking for the long term
The proposals look to reduce both short term and long term risks to the public from fly tipping and will seek to improve the living environment.

• Taking an integrated and collaborative approach
Outside stakeholders including Natural Resources Wales, Fly Tipping Action Wales and local stakeholders have been involved and their views have been included in the considerations.

• Taking a preventative approach
The proposals are intended to minimise the public to the exposure to risk that illegally deposited materials can generate.

• Involvement
The proposals have been generated as a result of a review by the Welsh Government. The proposals are intended to improve the area and make it safer for individuals to go about their daily routines without added risk. The involvement of the public as a whole from the outset will create ownership and participation to allow the orders to have a meaningful outcome. This would include actively encouraging individuals to report issues and incidents.
### 7.2 Equality Impact Assessment (EQIA)

Fixed penalty notices will not be issued to juveniles 17 years or younger. Individual disabilities in relation to detected offences will be assessed in line with sections enforcement policy to ensure no discrimination. No impact on other protected characteristics.

### 8. Conclusion

8.1 Fly-tipping blights our communities and it damages our environment. These powers will provide local authorities with an additional enforcement tool for small-scale fly-tipping offences where a prosecution is considered disproportionate. The ability to issue fixed penalty notices will not solve the problem of fly tipping, nor lead to a significant increase in successful enforcement activity, but it is a positive step in tackling an issue that has an impact across the County Borough.

8.2 By setting the fixed penalty rate of £400 for low level unauthorised deposit of controlled waste, with a £350 rate for early repayment, the Authority will be setting a level of penalty consistent with the level of fines and costs awarded through the Courts for similar types of offences and maintain its zero-tolerance policy to environmental crime with the strongest possible deterrent effect for low-level offences. Adopting the powers will also help ease the burden on local authorities and the court system. Fixed penalty notices also provide an opportunity for first time, non-habitual low-level offenders to avoid court and a possible criminal record. Environment, Regeneration & Economic Development Scrutiny Committee considered this report and supported the recommendation on 15th February 2018.
Assess how well your project / activity will result in multiple benefits for our communities and contribute to the national well-being goals.

<table>
<thead>
<tr>
<th>Description of the Well-being goals</th>
<th>How will your project / activity deliver benefits to our communities under the national well-being goals?</th>
<th>Is there anyway to maximise the benefits or minimise any negative impacts to our communities (and the contribution to the national well-being goals)?</th>
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<tr>
<td><strong>A prosperous Wales</strong>&lt;br&gt;<strong>An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.</strong>&lt;br&gt;By ensuring environmental crimes such as the unauthorised deposit of controlled waste are appropriately policed, the deterrent effect for this type of offence is maximised resulting in a cleaner more pleasant local environment therefore making the area more attractive to potential investors.</td>
<td>Not applicable</td>
<td></td>
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<td><strong>A resilient Wales</strong>&lt;br&gt;A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).&lt;br&gt;Environmental crime can have a significant Impact on the natural environment. By issuing fixed penalty notices for environmental crime a deterrent exists to try to reduce the impact this has on our communities.</td>
<td>Not applicable</td>
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<td><strong>A healthier Wales</strong>&lt;br&gt;A society in which people’s physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.&lt;br&gt;Poor environmental and street cleanliness can have a detrimental impact on the mental well-being of members of our community as well as presenting a significant health risk. By reducing the level of fly tipping within the County Borough these health impacts are minimised.</td>
<td>Not applicable</td>
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<tr>
<td>Description of the Well-being goals</td>
<td>How will your project / activity deliver benefits to our communities under the national well-being goals?</td>
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<td><strong>A more equal Wales</strong>&lt;br&gt;A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).</td>
<td>Not applicable</td>
<td>Enforcement against environmental crimes are considered within the context of the Public Protection Sections enforcement policy, ensuring that members of our community who have a physical or mental impairment that may have had caused them to commit an offence are considered when determining enforcement outcomes.</td>
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<td><strong>A Wales of cohesive communities</strong>&lt;br&gt;Attractive, viable, safe and well-connected communities.</td>
<td>By ensuring environmental crimes are policed appropriately a cleaner more pleasant local environment is created making the area more attractive and safe.</td>
<td>Not applicable</td>
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<td><strong>A Wales of vibrant culture and thriving Welsh language</strong>&lt;br&gt;A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>A globally responsible Wales</strong>&lt;br&gt;A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.</td>
<td>Not applicable</td>
<td>Not applicable</td>
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## Appendix 2 Fixed Penalty Notice Guidance

### Fly-tipping Fixed Penalty Notices (FPNs)

FPN’s provide an opportunity for first time non-habitual offenders to avoid court and a possible criminal record. They offer a more efficient and proportionate response to tackling small-scale fly-tipping incidents which will also help ease the burden on the court system.

Local Authorities (LA’s) can set the amount of the fly-tipping FPN between £150-£400 with a default of £200 if no amount is specified. An option for early payment of an amount no less than £120 can be made available and Local Authorities can retain the receipts to help contribute to the costs of dealing with fly-tipping. The FPNs can be used on both publicly and privately owned land.

**The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017**


### Small Scale

The list below provides guidance on what constitutes small scale and will help LA’s achieve a consistent approach to issuing fly-tipping FPN’s in Wales. There will be individual circumstances that will need to be considered on occasion but this list should be followed where possible.

- First time non-habitual offenders only
- Non-hazardous waste only
- Up to a car boot load
- Up to 8 black bags
- One or two bulky items (e.g. furniture, white goods)

### Fly-tipping and Litter

It should be counted as a fly-tip if the fly-tip waste is too large to be removed by a normal hand-sweeping barrow. In simple terms, a single full bin bag upwards would constitute a fly-tip. Similarly, several carrier bags full of rubbish dumped together would also constitute a single fly-tip.

### Recording FPN’s

FPN’s should not be issued to repeat offenders. Where an offender is taken to court, the fact they have been issued with previous FPN’s may influence the court’s assessment of the offender’s suitability for a particular sentence.

It is, therefore, important information on FPN’s issued, are kept centrally so it is accessible to Local Authorities (LA’s) and Natural Resources Wales (NRW). As LA’s use different enforcement systems, it is recommended the Memex Intelligence system used by NRW, stores this information. When officers are at the stage in their investigation where they are considering what enforcement action to take, they should first search the Memex system to check any potential offending history. Once FPN’s have been issued, this information should be uploaded on to Memex through an agreed process.