

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**CORPORATE LEADERSHIP TEAM'S**

**REPORT TO CABINET**

**03 December 2024**

**Report Title:** Walleys Quarry – Odour Issues

**Submitted by:** Chief Executive

**Portfolios:** Sustainable Environment; One Council, People & Partnerships

**Ward(s) affected:** All

<b><u>Purpose of the Report</u></b>		<b><u>Key Decision Yes</u></b> <input type="checkbox"/> <b><u>No</u></b> <input checked="" type="checkbox"/>
To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.		
<b><u>Recommendation</u></b>		
<b>Cabinet is recommended to:</b>		
1. <b>Note the contents of this update report.</b>		
<b><u>Reasons</u></b>		
To ensure Cabinet is kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry landfill.		

**1. Background**

- 1.1** For a number of years, parts of the borough have suffered from foul odours from the Walleys Quarry Landfill Site in Silverdale operated by Walleys Quarry Ltd. The Environment Agency (EA) is the lead regulator for such sites, testing and enforcing compliance with the permit under which the site operates. The Council also has a role in influencing the operation and performance of such sites, where an operator fails to comply with actions required under an abatement notice issued by the Council in relation to any statutory nuisance caused by the site.
- 1.2** In March 2021, Council held an extraordinary meeting to receive the report of the Economy, Environment and Place Scrutiny Committee review into the Walleys Quarry issues, and to debate a motion demanding the immediate suspension of operations and acceptance of waste at the Walleys Quarry Landfill site.
- 1.3** Following extensive work, officers determined that the odours from the Walleys Quarry site amounted to a Statutory Nuisance and, on 13 August 2021, served an Abatement Notice on Walleys Quarry Ltd. (WQL). Following an appeal by Walleys Quarry Ltd, and a successful mediation process, His Honour District Judge Grego approved the settlement that the parties had reached and issued a court order upholding the Abatement Notice and dismissing WQL's appeal on 6 October 2022.

- 1.4 The Council continues to assess the prevalence of odours off site. If there are further instances of statutory nuisance identified which amount to a breach of the Abatement Notice, the Council's Enforcement Policy will guide the process to be followed [Reference: [Environmental Health enforcement policy – Newcastle-under-Lyme Borough Council \(newcastle-staffs.gov.uk\)](https://www.newcastle-staffs.gov.uk)]. This would determine what action the Council would take, and whether that would be formal or informal. Enforcement is usually considered sequentially but should the circumstances or nature of the breach be such, escalation direct to prosecution is possible. The Council needs to obtain the consent of the Secretary of State before it is able to prosecute an offence of breaching an abatement notice, as the site is permitted by the Environment Agency. Such consent has been obtained.
- 1.5 Members and Officers have attended Liaison Meetings to maintain contact with Walleys Quarry Ltd, and with other agencies involved with the issue. Cabinet has received monthly updates on the issues relating to the odours, and Council has also been regularly updated.

## 2. Complaint Data

- 2.1 Below is a schedule of complaints received by the Council and by the Environment Agency from September 2024, reported on a weekly basis. Historical complaint data is attached to this report as Appendix 1.

	Complaints to NuLBC	Complaints to Environment Agency
<b>September 2024</b>		
26/08/24- 01/09/24	7	46
02/09/24 -08/09/24	14	42
09/09/24 -15/09/24	25	95
16/09/24 -22/09/24	43	118
23/09/24 -29/09/24	16	53
<b>October 2024</b>		
30/09/24 -06/10/24	52	147
07/10/24 -13/10/24	80	187
14/10/24 - 20/10/24	37	136
21/10/24 - 27/10/24	100	311
<b>November 2024</b>		
28/10/24 -03/11/24	41	163
04/11/24 – 10/11/24	41	153
11/11/24 – 17/11/24	251	793
18/11/24 – 24/11/24	251	842
25/11/24 – 01/12/24	514*	

\*Figure may alter due to backdated complaints received

- 2.2 October 2024 update – revised to 292 complaints due to back dated complaints being entered by complainants.
- 2.3 The number of odour events has increased to 21 in the month of November compared to 12 odour events reported in October:
- Friday 01 November
  - Wednesday 06 November
  - Monday 11 November

- Tuesday 12 November
- Wednesday 13 November
- Thursday 14 November
- Friday 15 November
- Saturday 16 November
- Sunday 17 November
- Tuesday 19 November
- Wednesday 20 November
- Thursday 21 November
- Friday 22 November
- Saturday 23 November
- Sunday 24 November
- Monday 25 November
- Tuesday 26 November
- Wednesday 27 November
- Thursday 28 November
- Friday 29 November
- Saturday 30 November

**2.4** There were 12 consecutive days where the community reported 10 or more odour complaints from 19 November to 30 November.

**2.5** The highest number of odour complaints was reported on 28 November 2024 with 192 complaints and an monthly total of 1060\* complaints.

### **NULBC Odour Assessments**

**2.6** Officers have undertaken odour assessments. The monitoring has been reactive to odour complaints and proactive where low odour dispersion is predicted.

The type of monitoring includes spot assessments (instantaneous assessments) and assessments made over a 5-minute period where the odour intensity is recorded every 10 seconds.

In November, 32 assessments were undertaken over a 5-minute period:

- Each assessment detected landfill related odour.
- 2 of 32 assessments recorded a maximum intensity rating of 3 (distinct odour)
- 15 of 32 assessments recorded a maximum intensity rating of 4 (strong odour)
- 14 of 32 assessments recorded a maximum intensity rating of 5 (very strong odour).
- 1 of 32 assessments recorded a maximum intensity rating of 6 (extremely strong)

141 spot assessments were undertaken of which 85 detected landfill related odour ranging from a rating of 2 to 5.

### **NULBC Mobile Air Quality Monitoring (using Jerome monitor)**

**2.7** Officers have monitored the levels of hydrogen sulphide within the community using the mobile Jerome monitor. The highest level of hydrogen sulphide recorded in the community was 153ppb on 27 November 2024 at 21:28.

### **NULBC Actions**

**2.8** Critically, under the law, whilst odours may exist off site at levels which could be considered a breach of the notice, that breach would be unenforceable (or a defence

against creating a statutory nuisance) if the operator can show that Best Practical Means (BPM) are routinely deployed in the management of the site. Whilst the existence or not of BPM can be debated, it would be a court which would determine whether BPM was in place at the time of the breach. That said, prior to entering any formal legal action it is necessary for the Council to formulate a view with regard to this matter, this is ongoing.

- 2.9** At the core of next steps are two issues – whether the action taken by the Environment Agency as the primary enforcement agency for this site have been successful in remedying the issues; and whether a defence of BPM exists. Where either of these are assessed to be in place it would not be in the public interest for the Council to pursue this matter further.
- 2.10** On 29 July 2024 the Rt Hon Steve Reed OBE MP, Secretary of State Environment, Food and Rural Affairs responded to the Leader’s request for permission to prosecute Walleys Quarry Ltd. under statutory nuisance legislation, confirming that he would grant consent for the prosecution to proceed.
- 2.11** On 30 September 2024 the Chief Executive confirmed an intention to move to legal action, noting “We are moving as quickly as possible in a complex situation. There are very few precedents for taking legal action against an operator regulated by a Government agency, so there is a great deal of legal advice and preparation involved, however I believe we will be ready to take the next step by the end of October.”
- 2.12** On 31 October 2024 the Chief Executive Gordon Mole, Chief Executive of Newcastle-under-Lyme Borough Council, updated by noting “The process is underway now that we have appointed Jeremy Phillips KC and Horatio Waller, both of FTB Chambers, which has a strong reputation in this field. There is a complex, detailed process to be followed and whilst understandably we cannot provide a running commentary on progress we would hope to share the latest position with the public in the next few weeks.”
- 2.13** An update report was brought to full Council on 20 November 2024.
- 2.14** On 28 November the EA served a closure notice on Walleys Quarry Ltd (see section 2.22 to 2.24). The Council is currently taking account of this evolving situation.

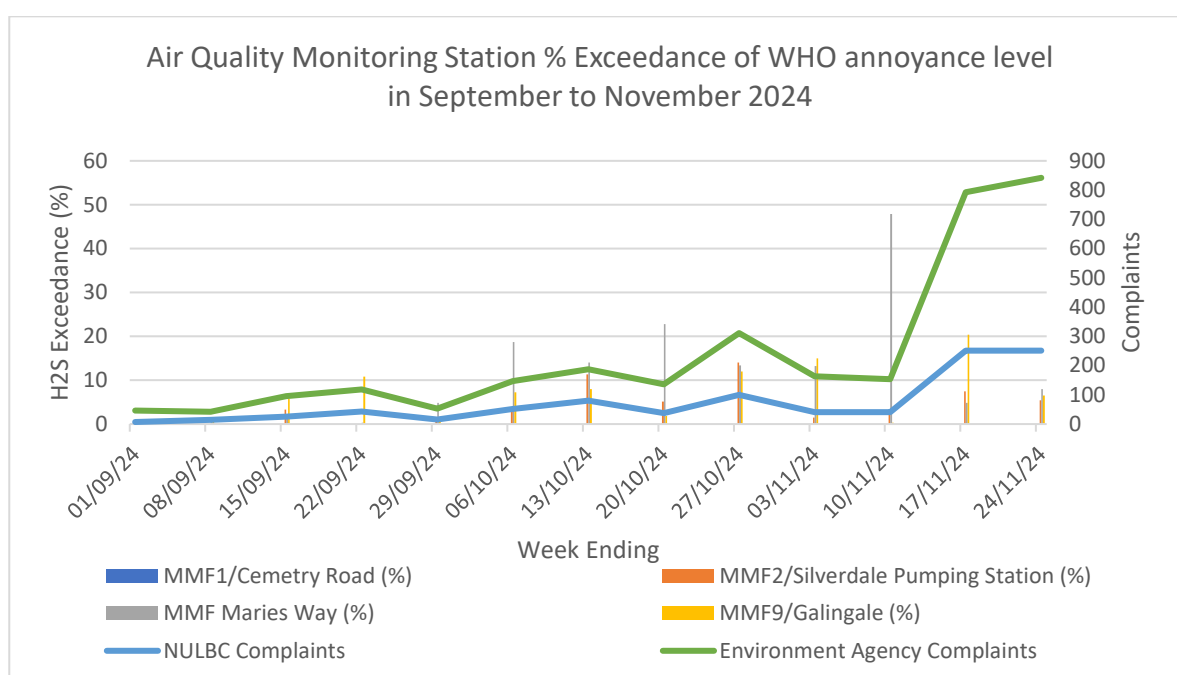
**Air Quality:**

- 2.15** The Council, Staffordshire County Council, and the Environment Agency have jointly funded a campaign of air quality monitoring utilising three static air monitoring stations. The Environment Agency manage and operate these air quality monitoring stations. Data from these stations has been routinely published weekly by the Environment Agency (EA).
- 2.16** The latest H2S data is set out in the table below, defining the proportion of the time periods where H2S levels were above the WHO Odour Annoyance guideline of 7ug/m<sup>3</sup>. Historic data is available in Appendix 2.

Time Period	MMF Maries Way (%)	MMF Silverdale Pumping Station (%)	MMF Galinagle View (%)
02 September - 08 September 2024	0.6	0.0	1.1
09 September - 15 September 2024	1.8	3.3	5.7
16 September - 22 September 2024	0.3	0.0	10.8

23 September - 29 September 2024	4.8	0.6	0.6
30 September - 06 October 2024	18.7	3.6	7.2
07 October - 13 October 2024	14.0	11.3	8.0
14 October - 20 October 2024	22.8	5.09	1.8
21 October - 27 October 2024	13.4	14.0	12.0
28 October - 03 November 2024	13.2	1.5	15.0
04 November - 10 November 2024	47.9	2.1	0.3
11 November - 17 November 2024	4.80	7.49	20.40
18 November - 24 November 2024	8.0	5.4	6.5

**2.17** The complaint data and weekly % exceedance of the WHO annoyance level have been combined and is shown on the graph below:



**2.18** On 15 November the EA updated on the latest air quality figures: 'We are aware of the significant deterioration in conditions over the last few weeks and particularly this week. We have every sympathy with the local community, which has recently experienced increased odour levels around Walleys Quarry.'

We have made it clear to Walleys Quarry Ltd (WQL) that the odour experienced by the community remains unacceptable and that WQL must provide a sustained, and sustainable, solution to the problem of fugitive landfill gas emissions.

An increase in odour report numbers between 10 – 12 November 2024 corresponded with higher levels of hydrogen sulphide (H<sub>2</sub>S) recorded by the mobile monitoring facilities (MMFs) on the evening of 11 November. This coincided with a period of still weather and poor dispersion conditions. During recent off-site odour assessments on 12 and 13 November, our officers detected intermittent odour. On a site inspection on 13 November officers also detected some landfill gas odour in the area where works are progressing to complete the installation of permanent geomembrane capping.

Through our ongoing regulation, we have required action by WQL to minimise fugitive landfill gas emissions, including steps in respect of leachate management and further permanent capping on the northern area of the site.

The data published for the period 4 – 10 November 2024 shows that the percentage of time the MMF at Marie’s Way recorded H2S above the WHO odour annoyance guideline was 47.9%. We would remind the community that this raw data is only indicative and should be used to look at trends rather than to make direct comparisons with specific numerical guidelines. We have shared, and will continue to share, this sort of information when it is available, because we know the community is interested in comparisons with health-based guidelines.

Nevertheless, these results are indicative of unacceptable impacts in the community. We continue to press WQL to take the appropriate measures specified in its Odour Management Plan to reduce fugitive landfill gas emissions’.

### **Environment Agency Regulatory and Enforcement Action**

**2.19** The Environment Agency has continued to provide updates on its regulatory activity on the Walleys Quarry Landfill and can be accessed here: <https://engageenvironmentagency.uk.engagementhq.com/hub-page/walleys-quarry-landfill>

**2.20** There have been no further published Compliance and Assessment Reports published on the EA website since the previous Cabinet report.

#### **Lorries outside the site**

**2.21** On 15 November 2024 the EA issued an update, noting that:

‘There has been an increase in reports regarding lorries queuing to enter Walleys Quarry Landfill Site. As we set out on our FAQ page in relation to working with partners, the Environment Agency is not responsible for lorries and road safety. Please share any concerns you have about lorries outside the site with Staffordshire County Council (SCC), which is the highway authority, or the local Police. You can contact SCC at [contactus@staffordshire.gov.uk](mailto:contactus@staffordshire.gov.uk) (External link) or on 0300 111 8000 or the Police on the non-emergency number 101’

#### **Closure Notice**

**2.22** On 28 November 2024 the Environment Agency issued a Closure Notice to Walleys Quarry Ltd (WQL).

“We have concluded that management of Walleys Quarry is poor and that further operation of the site may result in significant, long-term pollution. The notice is the first step towards permanently closing the Newcastle-under-Lyme site.

A Closure Notice is used as a last resort once all other enforcement options have been exhausted.

We have every sympathy with the local community and our decision to issue a Closure Notice demonstrates our commitment to doing all we can to resolve the problem of fugitive landfill gas emissions from the site.

We are satisfied that WQL has failed to demonstrate that it can exercise the appropriate level of control necessary to manage fugitive landfill emissions effectively, so that they do not have an adverse impact outside the site boundary.

The failure of WQL to manage the site effectively to prevent fugitive emissions of landfill gas has resulted in odour pollution over an extended period, and a risk to human health experienced by the community, as described by the UK Health Security Agency (UKHSA) in its Health Risk Assessments.

In regulating Walleys Quarry our aim has always been to bring the operator into compliance with its permit. The decision to issue a Closure Notice is not one we take lightly. We have given WQL sufficient time to put in place effective measures to manage emissions and it has failed to do so.

The Closure Notice will require WQL to cap operational areas of the site and install additional gas extraction infrastructure. It will also require WQL to provide appropriate plans for the closure process and aftercare. WQL will be required to cease accepting waste for disposal from Friday 29 November but will be able to accept suitable material for capping works, such as clay or plastic liner / geomembrane. We expect there to be improvements in levels of off-site odour when waste ceases to be disposed of at Walleys Quarry, and WQL makes progress with the other measures required.

WQL has a right of appeal against the Closure Notice, which must be made within 2 months of the date the Closure Notice is issued. If there is an appeal, an Inspector appointed by the Planning Inspectorate will hear it and decide whether to quash or affirm the Notice.

We appreciate that the community may have questions about the Closure Notice and what happens next. We have created a new Engagement HQ page with an explainer video and Frequently Asked Questions. We will also be holding a virtual meeting on 9 December 2024 at 7.00pm – 8.30pm, you can access the meeting using this link: <https://zoom.us/j/92996077152>(External link)

We understand that some members of the public may not be comfortable speaking in a public forum or may not be able to attend the meeting. We have therefore set up an online page where questions can be anonymously submitted prior to the event, which can be accessed using this link:

<https://app.sli.do/event/9kcYmbnowGn3kdfEayRQw3>”

**2.23** Schedule 2 to the Closure Notice contains steps to be taken to initiate closure which are listed in two stages. A copy of this is provided in Appendix 3.

**2.24** Given the Closure Notice noted above, only lorries carrying inert material and materials for the remedy of the site will be permitted entry.

### **Walleys Quarry update**

**2.25** In response to the Closure Notice WQL issued the following information update:

“We have received a closure notice from the Environment Agency. We are clear that keeping the site open delivers greatest benefit and sustainability for the site. We will challenge this decision using all available options. Walleys Quarry have made extensive factual and legal submissions to the Environment Agency which in our view they have not substantively engaged with. As a business we completely reject the accusations made by the Environment Agency relating to poor management of the landfill site.”

## **Impact Study**

- 2.26** An Impact study, commissioned jointly by a group of public bodies, including Staffordshire County Council, Newcastle-under-Lyme Borough Council, the Environment Agency and UK Health Security Agency, will be carried out by the independent Arcadis Consulting.
- 2.27** The Health and Care Overview and Scrutiny Committee at Staffordshire County Council is considering the report at its meeting on 2 December 2024. The Arcadis report is available at [Appendix 1 - Walleys Quarry Community Impact Study Arcadis November 2024.pdf](#)

## **Key Performance Data**

- 2.28** Through the settlement agreement both Walleys Quarry Ltd and the Council have developed key performance indicators in relation to relevant data from each organisation. The key performance indicator for NuLBC are shown in Appendix 4.
- 2.29** The data from the Council covers the period from September 2024 to November 2024 and provides complaint numbers and officer assessments.
- 2.30** The data from Walleys Quarry Limited provides data on waste acceptance, odour management, landfill operations, landfill gas management, leachate management and information relating to the EA regulator as the primary regulator of the site. The KPI data from September has not been submitted by the operator.

## **3. Recommendation**

### **3.1 Cabinet is recommended to:**

- Note the contents of this update report.

## **4. Reasons for Proposed Solution**

- 4.1** To ensure Cabinet is kept updated of the ongoing work to address the issues associated with the odours from Walleys Quarry landfill and to keep under review opportunities to further action.

## **5. Options Considered**

- 5.1** To provide regular updates to Cabinet.

## **6. Legal and Statutory Implications**

- 6.1** Part III of the Environmental Protection Act 1990 is the legislation concerned with statutory nuisances in law. This is the principal piece of legislation covering the Council's duties and responsibilities in respect of issues relating to odour nuisance:
- The Environmental Protection Act 1990, section 79 sets out the law in relation to statutory nuisance. This is the principal piece of legislation covering the Council's duties and responsibilities in respect of issues relating to odour nuisance.



- The relevant part of Section 79 defines a statutory nuisance as any smell or other effluvia arising on industrial, trade or business premises which is prejudicial to health or a nuisance. The Council is responsible for undertaking inspections and responding to complaints to determine whether a statutory nuisance exists.
- Where a statutory nuisance is identified or considered likely to arise or recur, section 80 of the Act requires that an abatement notice is served on those responsible for the nuisance. The abatement notice can either prohibit or restrict the nuisance and may require works to be undertaken by a specified date(s).
- It is then a criminal offence to breach the terms of the abatement notice. Because the site is regulated by the Environment Agency under an Environmental Permit, the council would need to obtain the consent of the Secretary of State before it is able to prosecute any offence of breaching the abatement notice.
- The Act provides powers in respect of a breach. If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, they shall be guilty of an offence. If this is on industrial, trade or business premises shall be liable on conviction to an unlimited fine. It is a defence that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

## **7. Equality Impact Assessment**

- 7.1 The work of the Council in this regard recognises that the problematic odours in the area may impact on some groups more than others. The work is focussed on minimising this impact as soon as possible.

## **8. Financial and Resource Implications**

- 8.1 Dedicated officer resource has been allocated to continue the Council's work regarding Walleys Quarry Landfill.
- 8.2 From April 2024 there is a £300k reserve for works associated with Walleys Quarry Landfill site. Should further funding be required, up to £300k can be made available through the transfer of useable reserves (£100k from the Borough Growth Fund and £200k from the Budget and Borrowing Support Fund). These funds can be transferred without Council approval.
- 8.3 On 20 November 2024 Council approved the sum of £400k (£250k from the General Fund Reserve, £150k from the Budget and Borrowing Support Fund) for costs associated with action to prosecute, and delegate to the Chief Executive and Section 151 Officer, in consultation with the Portfolio Holders for One Council, People and Performance and Town Centres and Finance, to draw down and remit such funds as are necessary for this action.

## **9. Major Risks**

- 9.1 A GRACE risk assessment has been completed including the following main risks:
- Failure to achieve a reduction in odour levels;

- Community dissatisfaction at odour levels;
- The ability to take enforcement action against abatement notice;
- Failure to evidence a breach of the abatement notice;

**9.2** Controls have been identified and implemented in order to control these risks; the main controls include:

- Provisions in settlement agreement ensures greater transparency for public;
- Provisions in settlement agreement ensures regular meetings with Walleys Quarry which enable issues to be discussed;
- Dedicated officer resource for Walleys Quarry work has been secured;
- Continued air quality monitoring provision;
- Robust procedure for investigating complaints with experienced officers;
- Specialist expert advice maintained;
- Multi-Agency partnership working continues.

## 10. UN Sustainable Development Goals (UNSDG)



## 11. One Council

**11.1** Please confirm that consideration has been given to the following programmes of work:

One Commercial Council

One Digital Council

The Council will use all available monitoring data and digital tools in making strategic and operational decisions in relation to Walleys Quarry.

One Green Council

The Council is not a user of Walleys Quarry. Within its restricted powers, the Council is committed to ensuring that waste does not cause a nuisance for residents and ultimately wishes to see the end of landfill, with a site that is successful closed, capped off and restored.

## 12. Key Decision Information

**12.1** As an update report, this is not a Key Decision.

## 13. Earlier Cabinet/Committee Resolutions

**13.1** This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9<sup>th</sup> June 2021, 7<sup>th</sup> July 2021, 21<sup>st</sup> July 2021, 8<sup>th</sup> September 2021, 13<sup>th</sup> October 2021, 3<sup>rd</sup> November 2021, 17<sup>th</sup> November, 1<sup>st</sup> December 2021, 12<sup>th</sup> January 2022, 2<sup>nd</sup> February 2022, 23<sup>rd</sup> February

2022, 23<sup>rd</sup> March 2022, 20<sup>th</sup> April 2022, 7<sup>th</sup> June 2022, 19<sup>th</sup> July 2022, 6<sup>th</sup> September 2022, 18<sup>th</sup> October 2022, 8<sup>th</sup> November 2022, 6<sup>th</sup> December 2022, 10<sup>th</sup> January 2023, 7<sup>th</sup> February 2023, 13<sup>th</sup> March 2023, 5<sup>th</sup> April 2023, 6<sup>th</sup> June 2023, 18<sup>th</sup> July 2023, 19<sup>th</sup> September 2023, 17<sup>th</sup> October 2023, 7<sup>th</sup> November 2023, 5<sup>th</sup> December 2023, 16<sup>th</sup> January 2024, 6<sup>th</sup> February 2024, 14<sup>th</sup> February 2024, 19<sup>th</sup> March 2024, 10<sup>th</sup> April 2024, 4<sup>th</sup> June 2024, 16<sup>th</sup> July 2024, 10<sup>th</sup> September 2024, 25<sup>th</sup> September 2024, 15<sup>th</sup> October 2024, 5<sup>th</sup> November 2024, 25<sup>th</sup> November 2024.

#### **14. List of Appendices**

- 14.1** Appendix 1. Historical Complaint data
- 14.2** Appendix 2. Percentage exceedance above WHO odour annoyance guideline
- 14.3** Appendix 3. Landfill Closure Notice dated 28 November 2024
- 14.4** Appendix 4. NULBC Key Performance Data