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<b>REPORT TO:</b>	<b>ENVIRONMENT &amp; DEVELOPMENT SERVICES</b>	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	<b>27<sup>th</sup> MAY 2021</b>	<b>CATEGORY: RECOMMENDED</b>
<b>REPORT FROM:</b>	<b>ALLISON THOMAS, STRATEGIC DIRECTOR – SERVICE DELIVERY</b>	<b>Open</b>
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<b>SUBJECT:</b>	<b>ANNUAL ENFORCEMENT AND COMPLIANCE REPORT 2020-21</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>All</b>	<b>TERMS OF REFERENCE: EDS14, HCS10</b>

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## **1. Recommendations**

- 1.1 That the Committee notes the contents of the report and approves that the Council is using its regulatory powers in a way proportionate to the demands for all regulatory services it provides.

## **2. Purpose of Report**

- 2.1 To provide the Committee with details of the Council's use of its tools and powers to take appropriate enforcement action during the 2020/21 reporting period.

## **3. Background**

- 3.1 Under the priority of 'Our Environment' in the 2020-2024 Corporate Plan, one of the key aims is "*Reduce fly tipping and litter through education, engagement and zero tolerance enforcement action where appropriate*".
- 3.2 Under the priority of 'Our People', one of the key aims is "*Help tackle anti-social behaviour and crime through strong and proportionate action*".
- 3.3 The Council is authorised to use in excess of 100 different statutes to regulate and ensure compliance in areas of work as diverse as planning, food hygiene, licensing, pollution control, anti-social behaviour, building control, public health, waste and dog control.
- 3.4 The way in which the Council utilises these powers is governed by law, statutory guidance and previous legal precedent. Some services (notably many of the functions of Licensing and Environmental Health) also have a duty to have regard to the five governing principles of the Legislative and Regulatory Reform Act 2006, namely that all regulatory interventions are *transparent, accountable, proportionate* and *consistent* and should be *targeted* only at cases in which action is needed.

3.5 This report provides a high level summary of the regulatory action over the past year and provides a comparison against historical levels of regulatory action.

### **Demands for services**

3.6 The demand for Council services in 2020/21 compared to previous years is illustrated in Figure 1 in the report appendix.

3.7 Covid-19 had a profound effect on the demand and delivery of services throughout 2020/21.

3.8 Complaints about air pollution nearly doubled over the course of the year compared to previous years. The majority of these complaints related to smoke from domestic bonfires which increased by 300% compared to the previous year. The underlying cause appears to have been a significant upsurge in residents choosing to burn garden and domestic waste during the various periods of lockdown.

3.9 Complaints about dog offences and in particular dog fouling, increased in comparison to the previous three years. Anecdotal evidence through the year suggests that the lockdowns generated significantly increased demand nationally for pet dogs as people have sought the companionship of a pet during lockdown. As a result, there has been a big increase in the number of dog walkers. In addition, many people were only able to exercise during lockdown by going for a local walk, and therefore there are more people observing and reporting incidents of fouling.

3.10 There was a significant increase in the number of public health related complaints in 2020/21 which were 23% higher than the average of the last four years. This category was dominated by complaints leading to fly tipping investigations, investigations about littering and waste accumulations on private land.

3.11 Complaints about food establishments increased by 67% compared to the average of the last four years. However, approximately half of these specifically related to compliance with Covid-19 Regulations.

3.12 Complaints about noise nuisance have remained stubbornly high for the last three years. Complaints about noise in South Derbyshire in 2020/21 were 6.1 per 1000 population compared to an East Midlands average of 4.5 per 1000 population and an England average of 6.8 per 1000 population.

3.13 Thankfully, complaints about incidents of abandoned vehicles have continued to fall since a peak in 2016/17 and were at their lowest level in the last five years.

3.14 In addition to the historical nature of requests for service dealt with by Council officers, the Council also received over 400 requests for support and information in relation to compliance with the Covid Regulations from the public and business owners over the course of the year.

3.15 Overall (and excluding the Covid enquiries described in paragraph 3.14), demands for regulatory service in 2020/21 were 26% higher in 2020/21 than the average of the previous four years.

3.16 Specifically in relation to flytipping offences, officers report over the course of the last year an increased willingness from members of the public to come forward with information and evidence in relation to offences and offenders. Much of this is in the form of very valuable photographic or video footage or social media content. Similarly,

officers have also had successes in tracing offenders responsible for littering fast food waste through receipts left in packaging and then then marrying the information with CCTV footage at the respective drive through facility of the retailer.

- 3.17 In **Planning Enforcement**, Covid has prompted an increase in neighbour complaints relating to home working/running businesses from home, along with the erection of outbuildings for such purposes. Many more sheds/summerhouses have been erected for hobby purposes, with some investigations resulting in the submission of retrospective planning applications.
- 3.18 Workload has increased as the method of investigation has changed significantly, with more emphasis on making appointments to visit sites as opposed to previously cold calling in the first instance. On occasion, officers have seen more willingness from those allegedly in breach to provide information and remedy matters without the need to visit site. However, in others it has been increasingly difficult to establish facts, which has resulted in some reliance on social media streams to gather evidence. Visiting sites in a Covid secure manner has also presented challenges over and above the normal safety requirements.
- 3.19 Formal action through the courts or at appeal has been delayed due to postponed hearings and taking longer for the Planning Inspectorate to issue decisions following enforcement appeals.
- 3.20 The **Licensing Team** has continued to provide a high level of service despite the impact of Covid 19, which has seriously impacted on its ability to undertake inspections and site visits. Despite restrictions, however, the Team has seen an increase in the number of inspection visits this year, many of which have been Covid related. The advice and guidance provided during these visits has enabled South Derbyshire businesses to open and continue to operate in a Covid secure manner and this has been greatly appreciated by those businesses; particularly those in the licensed trade.
- 3.21 New policy documents on the Licensing Act 2003, Street Trading, Private Hire, Private Hire Fees, Animal Welfare and Safeguarding have been developed, consulted on and approved by Members.
- 3.22 Dog Breeding has seen an exponential growth during lockdown and officers have received an increasing number of complaints in this area in relation to unlicensed breeding. As a result of this a publicity campaign was developed around dog breeding and using licensed breeders only. This was extremely successful and was picked up by the press and Radio Derby.
- 3.23 The work of the Team has been vital in ensuring that Private Hire Operators have been able to continue providing vehicles and services to the most vulnerable in society throughout the pandemic. The Team has continued to ensure licensed vehicles have the appropriate paperwork and are fit for service, ensuring that vital public services are maintained.

### **Direct Effects of Covid 19**

- 3.24 The 26% increase in overall demands for service is largely attributable to Covid-19. The pandemic also led to a significant shift in the way investigating officers have been required to operate. By necessity due to Covid restrictions, there has been less ability for officers to make cold calls or even to be able to visit the locations of complaints. There has been a far greater emphasis on the individuals who are making the complaint to supply appropriate evidence, such as video recordings or photographs.

- 3.25 In many cases this has been beneficial in that it has given the person making the complaint a greater understanding of the nature and quality of evidence required to progress a complaint.
- 3.26 In many other cases it has created significant challenges, where the person making the complaint is less willing to co-operate with the investigating officer and may perceive that the investigating officer is being obstructive or unhelpful.
- 3.27 In summer 2020, the Council employed a dedicated Business Compliance Officer to support the outbreak control investigations. The innovative outbreak mapping process developed by the Business Compliance Team was recognised by the Local Government Association (LGA) as an example of national excellence.
- 3.28 In December 2020, the Council also commissioned Red Snapper Ltd to provide Covid Marshal services. The Marshals have subsequently played a huge role in advising and assisting local businesses to follow government guidance as the economy reopens.
- 3.29 This has included over 400 visits to business premises to provide Covid compliance audits. These involve the Marshals providing structured reviews of each businesses Covid control measures and comparing them to the relevant guidance issued by government for that business sector. The audits have shown that compliance levels with all measures contained in the guidance to have consistently been above 90%.

### **Demands for Inspections of Businesses**

- 3.30 Food hygiene law requires that businesses are risk assessed and then inspected with a frequency based on national legal guidance. Figure 2 in the appendix to this report illustrates the number of food hygiene inspections carried out.
- 3.31 Many food hygiene officers in Council's across the UK, including South Derbyshire District Council, are also tasked with fulfilling their Council's duties to prevent the spread of infectious disease under the Public Health (Control of Diseases) Act. From the early stages of the pandemic these officers were directed to deal with outbreaks and incidents of Covid-19.
- 3.32 This, along with the extensive shut-down of the hospitality industry, led the Food Standards Agency to announce in April 2020 that routine food hygiene inspections of food businesses should cease other than for existing high-risk businesses, new businesses and in response to complaints.
- 3.33 Therefore, during 2020/21, there has been a substantial reduction in the number of food hygiene inspections carried out. Typically, the Council would have expected to carry out approximately 400 food inspections each year. During 2020/21 only 146 inspections were carried out. Statutory guidance to direct Council's about how to plan the progressive catch-up with the backlog of inspections is expected during the summer.
- 3.34 As of April 2020, 86.8% of food businesses in South Derbyshire had been awarded the top score for their food hygiene. This was one of the highest figures in the UK. At April 2021 this figure had risen even further to 89.2%.
- 3.35 In April 2020 there were 856 registered food businesses in the District. In March 2021 this had increased by a record amount to 963 registered food businesses, mainly driven by a big surge in people starting new business from home during the pandemic.

3.36 Hygiene standards in 99.5% of food businesses were assessed as being 'broadly compliant' which means that the Council's food inspectors are satisfied that they can be left to manage their own hygiene practices until their next programmed inspection without any further intervention.

### **Proactive Measures**

3.37 In January 2020, seven pre-existing Public Spaces Protection Orders (PSPO) were approved to take effect for a further three years. In addition, a further two PSPOs were approved to control anti-social behaviour around Maurice Lea Park and to prevent fly tipping at Lowes Lane, Swarkestone.

3.38 Consultations on other potential PSPOs were programmed to be carried out during 2020, however, this activity was cancelled in order to enable officers to focus on dealing the direct and indirect consequences of the pandemic.

### **Legal Interventions**

3.39 The Council has published an [Enforcement Policy](#) which explains how it will use the various tools and powers to help the business community and residents to meet the various laws the Council is tasked with regulating. When the Council is unable to ensure compliance through persuasion it may be necessary to resort to use of more formal means. The Council has powers in the form of various compliance notices which can be issued requiring some form of action to be taken (or to be stopped) by the recipient in order to more formally require compliance than through advice and guidance.

3.40 Figure 3 in the appendix to this report illustrates the numbers of formal notices issued and in broad terms the nature of the problem which led to the notice being served.

3.41 During 2020/21 there was a significant escalation in the numbers of legal notices served by the Council in relation to three areas of work:

- 171 legal notices were served on landlords of private sector properties. This includes 166 Compliance Notices served on landlords requiring them to improve the thermal efficiency of their properties to bring them up to the legal minimum standard of an Energy Performance rating (EPC) of E. This was in response to new law which came into effect on 1 April 2020.
- 42 notices were served on people requiring them to provide the Council with information or records relating to fly tipping offences. These notices were the only way of formally obtaining information from suspected offenders during the period when officers were unable to interview suspects under caution due to Covid.
- 26 Community Protection Notices were served relating to a range of anti-social behaviour matters.

### **Punitive Outcomes from Offences**

3.42 In a small number of cases, the Council is required to resort to the courts or other forms of judicial punishment for confirmed offences. This can be in one of three forms:

- For a limited number of offences and where the offender admits to the offence, a fixed penalty notice can be issued;

- Where the offender admits the offence and there is no fixed penalty notice option available, but prosecution is not deemed to be proportionate then the offender may be given the option to sign a formal caution;
- The most severe form of intervention is a prosecution.

3.43 Table 1 below summarises the recent numbers of each of these punitive outcomes compared to historical levels.

**Table 1 – Summary of Punitive Outcomes following Offences**

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Total Fixed Penalty Notices	34	91	79	72	27	59
Dog offences	23	9	6	14	4	5
Fly tipping & waste offences	0	7	7	8	5	23
Litter	8	65	54	43	13	24
Community Protection Notice / PSPO breach	3	10	12	4	4	5
Abandoned vehicles	0	0	0	3	1	0
Covid Regs (business breaches)						2
Formal Cautions	3	1	3	4	6	13
Prosecutions	3	1	5	7	5	0

3.44 The main change in 2020/21 has been a greater use of fixed penalties and formal cautions for fly tipping offences and householder duty of care offences.

3.45 The pandemic led to a cessation of the criminal courts processing low level criminal offences. Therefore, cases which investigating officers would normally have referred for prosecution had to be dealt with by other means. Fixed penalties and formal cautions were the only viable way of processing these cases and ensuring that the offender faced some level of sanction.

3.46 This impact of the pandemic is also reflected in the lack of prosecution cases taken over the last year.

#### **Cases of Particular Note**

- The Council was unable to process any prosecutions during 2020/21 due to the impacts of Covid on the processing of criminal cases.
- Three prosecutions which were originally submitted to the court during 2019/20 remain live and will be heard when court time permits.
- In April 2021, a man from Hilton was imprisoned for seven months after he breached a High Court injunction obtained by the Council and then breached a written commitment he had given to the High Court not to burn waste on his land. This is the second occasion that the man has been imprisoned for breaching the Injunction.
- The surge in demand for pets referenced at paragraph 3.9 has also created a surge in illegal dog establishments, in many cases suspected to be run through organised crime gangs. One such establishment outside Etwall was closed down in a joint

operation by Environmental Health, Licensing and Planning officers. All sixteen of the animals, with a net estimated value of £50,000, were seized. The operation of the gang was significantly disrupted, and all the animals were safely rehomed through the Council's appointed dog warden contractor at Crowfoot Kennels.

#### **4. Financial Implications**

- 4.1 The Council's regulatory services cover Environmental Health, Licensing, Community Safety and Planning. Overall, the net cost of these services is approximately £1,000,000 and the Council has progressively reduced these net costs in recent years while at the same time increasing the volumes of work activity.
- 4.2 Benchmarking the costs of the Council's regulatory services to other councils in the UK suggests that overall the services provided are at a relatively low cost. Based on benchmarking data published in 2019 by the LGA (published on LG Inform) South Derbyshire's total expenditure per head of population on environmental and regulatory services was;
- the 2<sup>nd</sup> lowest of the 40 single tier and district councils in the East Midlands (£43.90 per head compared to a regional mean of £63.70);
  - the lowest of the Council's 15 CIPFA near neighbours (£43.90 per head compared to a near neighbour mean of £64.50);
  - the 8<sup>th</sup> lowest out of all of the 192 English District Councils (£43.90 per head compared to a national mean of £67.65).

#### **5. Corporate Implications**

##### **Employment Implications**

- 5.1 The contract for the Covid Marshals has provided employment for two Marshals and one supervisor, all employed via an agency.

##### **Legal Implications**

- 5.2 None.

##### **Corporate Plan Implications**

- 5.3 The report has been produced to provide the Committee with details of how officers are delivering the "Our Environment" aim to *Reduce fly tipping and litter through education, engagement and zero tolerance enforcement action where appropriate* and the "Our People" aim to *Help tackle anti-social behaviour and crime through strong and proportionate action priority through People* in the 2020-24 Corporate Plan.

##### **Risk Impact**

- 5.4 The proposals will have a beneficial mitigating action against the corporate risk of "Managing the environmental impact of incidents across the District".

#### **6. Community Implications**

##### **Consultation**

- 6.1 None

## **Equality and Diversity Impact**

- 6.2 Fair and proportionate application of the law should ensure that improvements in equality and diversity are indirectly delivered by tackling crime and anti-social behaviour.

## **Social Value Impact**

- 6.3 Beneficial.

## **Environmental Sustainability**

- 6.4 Beneficial. Proportionate regulation is an important feature of ensuring community cohesion. It also ensures positive economic growth by preventing businesses which operate outside the law from gaining a competitive advantage in their respective market.

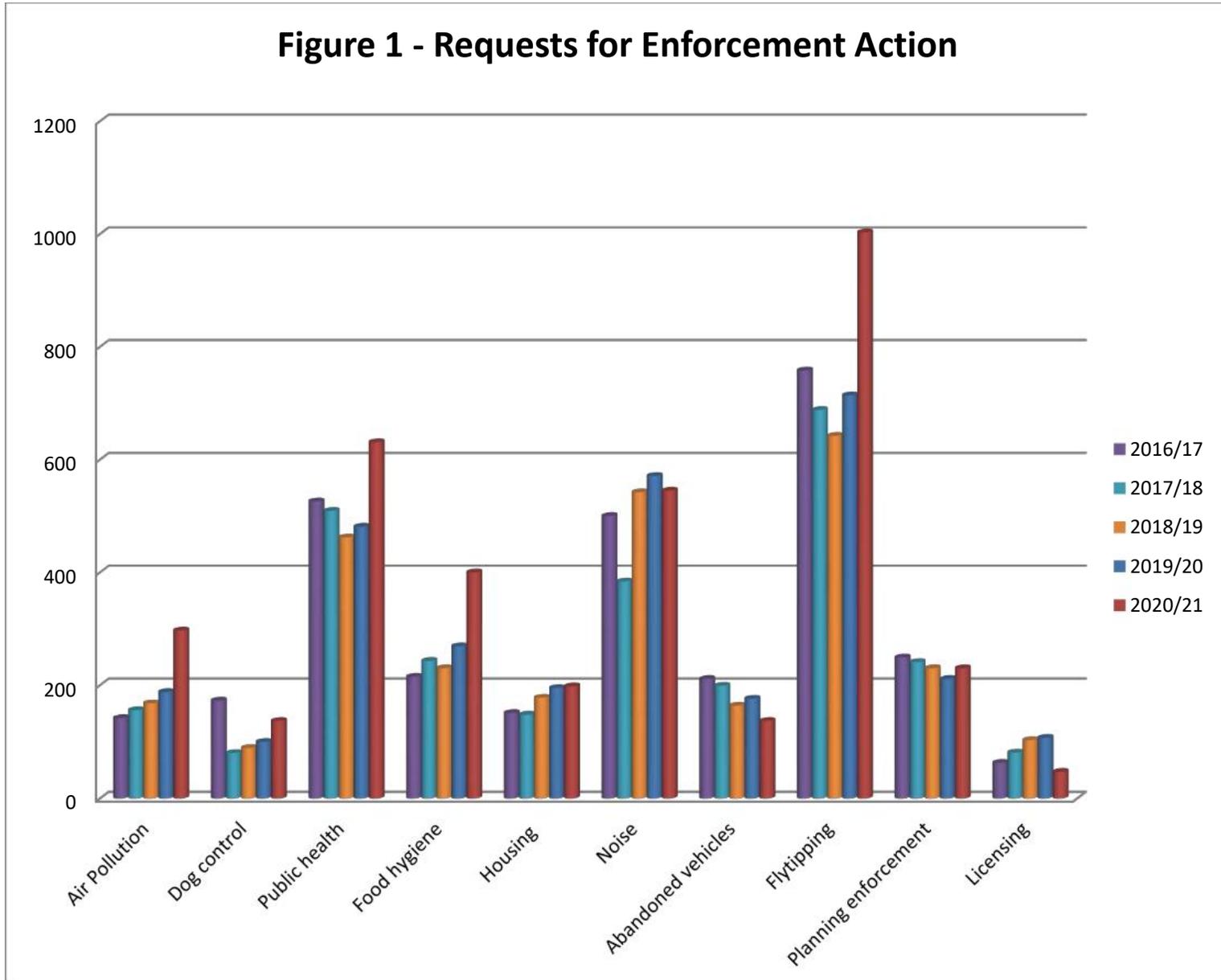
## **7. Conclusion**

- 7.1 That the Committee notes and endorses the work that officers are undertaking, using the tools and powers available, to take appropriate enforcement action where necessary.

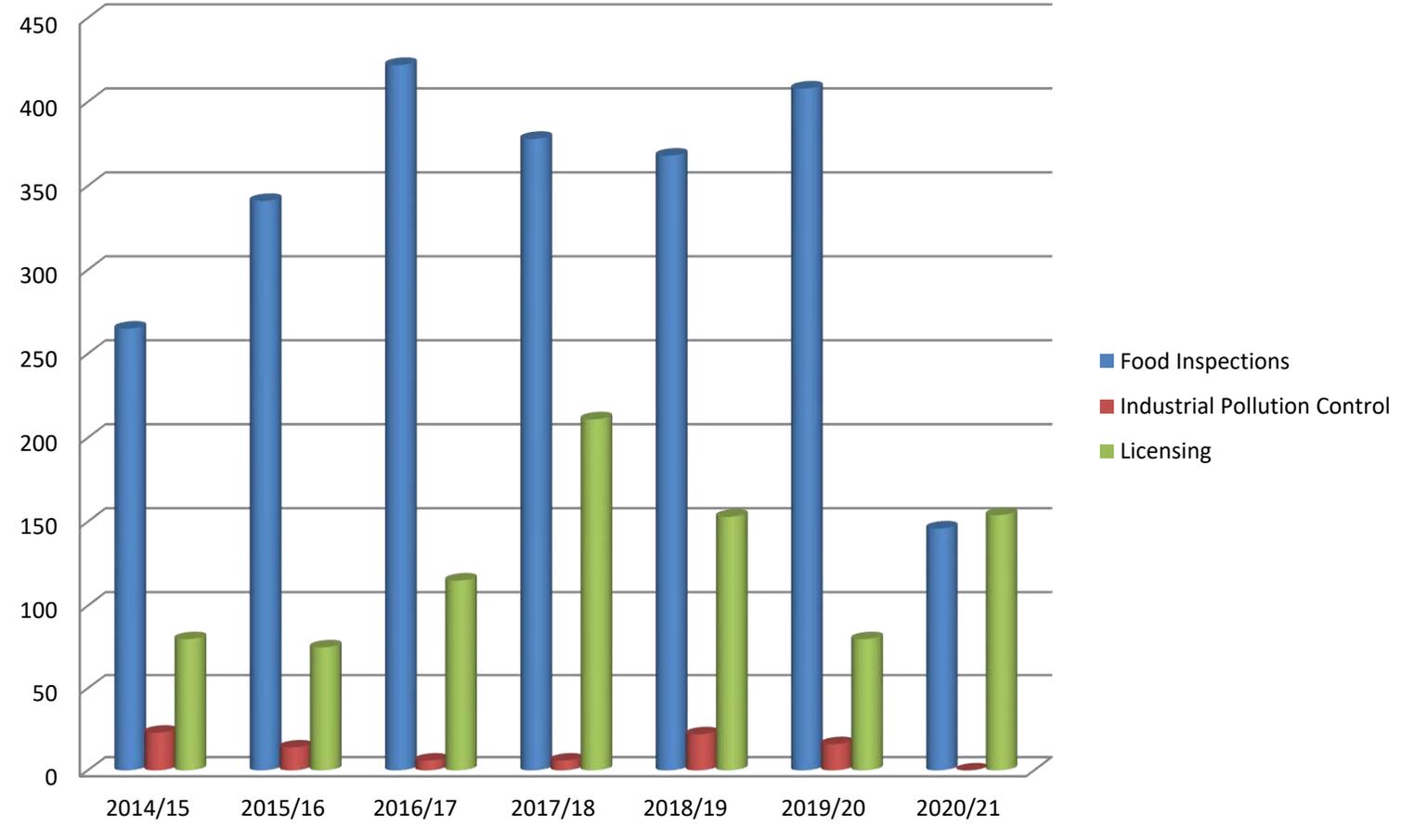
## **8. Background Papers**

- 8.1 None

Figure 1 - Requests for Enforcement Action



**Figure 2 - Proactive Inspections of Businesses**



### Figure 3 - Enforcement Notices Served

