

# Causeway Coast & Glens

## District Council

Transferring Functions and Group Committee Thursday 11<sup>th</sup> December 2014

### Table of recommendations

No	Item	Recommendation
5	Establishment of Shadow Planning Committee	<i>Members of Transferring Functions &amp; Group committee or his/her nominee</i>
8	Transfer of Functions – DRD Off Street Car Parks Executive Summary of Condition Report / Land Ownership Status	<i>Send correspondence to DRD</i>
10	Consultation Documents: NILGA response to the Consultation on Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation Phase 2	<i>Endorse comments</i>

## **Transferring Functions and Group Committee**

Minutes of the Meeting of Causeway Coast & Glens Shadow Council Transferring Functions and Group Committee, held in Limavady Borough Council Chamber on Thursday 11<sup>th</sup> December at 7.00pm.

In the Chair: Councillor Mullan

Members present: Councillors Beattie, Callan, Chivers, Cole, Douglas, Fielding, Finlay, King, Knight-McQuillan, Loftus, McCaul, McGuigan, McKeown, McKillop (S), Watton

In attendance: Mr D Jackson, Chief Executive Designate  
Mr Paul Carr, DSD  
Mrs Denise Dickson, Area Planning Manager  
Mrs S Duggan, Programme Administrator  
Mr Stephen McMaw, Head of Convergence  
Mr D Wright, Lead Finance Officer

Press x 1

### **1. Apologies**

Councillors Baird, Duddy, McCandless.

### **2. Declarations of Interest**

There were no Declarations of Interest recorded.

### **3. Minutes – Meeting held 4<sup>th</sup> September 2014**

Chair advised the Minutes had been ratified by Council.

### **4. Presentation: The New Development Management Process**

Chair invited D Dickson to present to Committee, (slides previously circulated). D Dickson responded to Member queries surrounding the Streamlined Planning Application process, the Scheme of Delegation, Neighbour Notification, Subordinate Legislation, application processing timescales, Planning Fees and qualification of a majority vote.

## 5. Establishment of Shadow Planning Committee

D Jackson presented the report, previously circulated, summarised as undernoted.

***To assist the Shadow Council with the preparation for the transfer of the majority of the Planning function on 1 April 2015, it is proposed to set up a Shadow Planning Committee in January 2015.***

***However this proposed committee is effectively a training vehicle to prepare councillors for their role post March 2015 so it will not be making actual recommendations or decisions during the Shadow period.***

***For the purpose of the Shadow Planning Committee to ensure as many Elected Members as possible benefit from the capacity building, it is recommended that the upper limits of that recommended by DoE should sit on the Shadow Planning Committee, in the region of 20 Members (50%). Dates for the committee will be programmed from January to March 2015.***

It was proposed by Councillor S McKillop, seconded by Councillor Douglas and AGREED to recommend that Members of the Transferring Functions and Group Committee sit on the Shadow Planning Committee, or his/her Party nominee.

## 6. Shadow Planning Committee Study Trip

D Jackson presented the information report, previously circulated, summarised as undernoted.

***As part of the Elected Member Capacity Building Programme in preparation for the transfer and new responsibilities, Elected Members have approved a study trip to Stratford on Avon District Council. The dates for the study trip are 13<sup>th</sup> -15<sup>th</sup> January 2015, (itinerary circulated).***

***Elected Members will receive a pre-briefing session and documentation to assist them in preparation for the various study sessions and interactions planned for the visit.***

## 7. Deloitte Transfer of Functions and Powers to Local Government Reconciliation to DoE report, Final Draft

S McMaw presented the information report, previously circulated, summarised as undernoted.

***As a result of concerns expressed by the Transfer of Functions Working Group, it was agreed that Local Government would again engage Deloitte to carry out further due diligence checks and provide a report in***

**relation to the latest information from Central Government Departments (previously circulated).**

**The Local Government Chief Executives Group (LGCEG), chaired by Liam Hannaway, has had an opportunity to review this latest report. As a result of this work, a letter has been sent to the Department of the Environment Minister, Mark H. Durkhan MLA, to highlight issues of concern that still remain, (previously circulated).**

**The letter to the Minister does not address the issue of title on car parks transferring. This is an important issue that needs addressed prior to 1<sup>st</sup> April 2015. There has been on-going communications with the Department for Regional Development (DRD) on this issue by the Causeway Coast and Glens Council. A formal response is expected in the very near future.**

**The LGCEG is now awaiting a response from the Minister in relation to the queries raised in the letter and a report will be brought back to the Transfer of Functions and Group Committee as soon as this has been received along with feedback from DRD in relation to Car Park Title.**

**8. Transfer of Functions – DRD Off Street Carparks Executive Summary of Condition Report / Land Ownership Status**

S McMaw presented the information report, previously circulated, summarised as undernoted.

**It was agreed that the Causeway Coast and Glens Council would undertake due diligence reviews at a local area to ensure that assets transferring were not in fact liabilities requiring expenditure over and above the financing being transferred with the function.**

**To this end, a Council officer has inspected the car parks that DRD is proposing to transfer to assess their current condition and future maintenance requirements. Work has also been undertaken to establish title status and any other potential issues of concern. A report identifying the initial findings was circulated.**

**The report identifies a number of issues.**

- (a) Four Car Parks are currently in poor condition and will require remedial action.**
- (b) There is presently clear ownership Title on only five of the Car Parks**
- (c) Further Clarification on maintenance responsibilities is needed**
- (d) Greater information is required regarding ownership such as Rights of Way, access agreements and boundary lines.**

**It is recommended that a letter is sent to the Department of Regional Development, highlighting the various issues that have emerged from the local due diligence work, seeking assurance that these matters will be addressed prior to the transfer of the car parks.**

It was proposed by Councillor Finlay, seconded by Councillor S Mc Killop and **AGREED to recommend that correspondence is sent to the Department of Regional Development, highlighting the various issues that have emerged from the local due diligence work, seeking assurance that these matters will be addressed prior to the transfer of the car parks.**

- \* **Councillor McCaul left the meeting at 8.07pm and returned at 8.14pm during consideration of the above matter.**

## **9. DSD Update**

P Carr presented the information report, attached as Appendix B.

- \* **P Carr left the meeting at 8.30pm.**

## **10. Consultation Documents**

Members noted the following consultation documents, circulated:

- The Local Government (Transferred Functions Grant) Regulations (Northern Ireland) 2015 – comments by 12<sup>th</sup> January 2015
- Consultation on Planning Reform and Transfer to Local Government - Phase 2 – comments by 31<sup>st</sup> December 2014
- Planning Appeals Commission (PAC) Costs Awards in Planning and Related Appeals, comments by 31<sup>st</sup> December 2014

**IT WAS AGREED** to endorse the draft NILGA response to the Consultation on Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation Phase 2, attached as Appendix A.

## **11. Date of Next Meeting**

To be confirmed.

This being all the business the meeting closed at 8.31pm.

**Appendix A:** Draft NILGA response the Consultation on Planning Reform & Transfer to Local Government: Proposals for Subordinate legislation Phase 2

**Appendix B:** DSD Update

# Causeway Coast & Glens

## District Council



### **Draft NILGA response to the Consultation on Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation Phase 2**

DOE Planning Service has issued a consultation document as the second phase of a two phase exercise to bring forward the subordinate legislation necessary to exercise the powers contained in the Planning Act (NI) 2011.

This response was drafted in liaison with a number of council planning officers and highlights key issues for councils arising from the consultation. The NILGA Planning Working Group discussed the consultation, prior to consideration of this response by the NILGA Executive Committee. A response is expected by the Department by 31<sup>st</sup> December 2014.

**Derek McCallan**

**1 December 2014**

#### **1.0 INTRODUCTION**

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties. Planning is a key issue for local government due to the huge impact it has on the shaping of local communities, the economy and sustainability. NILGA is pleased to be able to have an opportunity to comment on the proposed subordinate legislation to enable the Planning Act (NI) to be fully exercised and we trust that our comments will be taken into account when developing the final legislation and guidance.

The proposals in this consultation reform the current system and transfer responsibility for the majority of planning functions to the new district councils in April 2015, and this second phase focuses on three key issues:

- Simplified planning zones
- Fixed penalties
- Modification and discharge of planning agreements

**A number of pieces of subordinate legislation are linked to but not contained within the consultation document. These have been considered, and no major concerns raised further to the issues outlined below.**

## **2.0 KEY ISSUES**

### **2.1 Simplified Planning Zones (SPZs)**

#### **Background Information**

Simplified Planning Zone Schemes (SPZs) have the effect of granting planning permission within an identified geographic area for particular development or any class of development specified in the scheme. Relevant development can then proceed without the need to apply for permission provided it meets the requirements set out in the scheme.

The proposed subordinate legislation will give effect to the powers in the 2011 Act, enabling councils to take forward SPZs - to make, adopt or alter.

**The proposed process for making and altering an SPZ** is clearly outlined and is relatively simple;

Consultation and notification before finalising initial proposals– councils must consult statutory consultees when relevant.

Procedure for publicising finalised proposals– when a council has then finalised its proposals it must:-

- advertise the proposals for two weeks in at least one newspaper circulating in the council area inviting written objections or representations (including any additions to the proposed scheme) within 8 weeks of the first notice;
- publish notice on its website for a period of at least 8 weeks after the first newspaper advertisement;
- make copies available in the council's offices and in any other places it considers appropriate; and
- advise any statutory consultees with whom it had previously engaged.

Managing objections and representations – in the newspaper and website notifications a council must advise that objections or representations can be made within 8 weeks of the newspaper advertisement and how these can be made. The council can then either consider any submissions made or cause a public independent examination to be held to consider them. Any independent examination must be advertised in the local press in the same manner as required for proposals and the details of the independent examination provided to every person who has made a valid objection or representation. On the basis of the nature of objections made the council may modify its initial proposals.

Adoption of proposals- whether objections are considered by the council or are the subject of independent examination the council must prepare a statement on the decisions it has

reached in relation to each objection and the reasons for those decisions. The council must then publicise its intention to adopt proposals, with or without modifications, by local newspaper advertisement and make its statement on decisions, and any examination report, available for inspection, along with any modifications to the proposed scheme. If a council decides not to proceed with a scheme or alterations it shall newspaper advertise in the same manner and advise those who have made valid objections or representations and not withdrawn them.

Role of the Department– The 2011 Act provides for the Department to have an oversight role, and if necessary an intervention role, which is intended to ensure that the provisions of an SPZ scheme are consistent with policy and would not subvert other planning control. To that end the proposed regulations require a council to provide the Department with copies of all newspaper notices and documents made available for inspection and provide details on the mechanisms by which the Department may issue directions to a council where it feels this may be necessary.

### **NILGA Comments**

NILGA would be keen to see the introduction of the ability for councils to use what we believe will be an important tool for supporting local economic development, although it is noted that this power has never been used by the Department.

The potential benefits are welcomed, i.e.:

- a. Greater certainty of outcome for a developer whose development meets the criteria set out in the SPZ scheme;
- b. The removal of the financial and administrative burden of submitting an application; and
- c. Lightening the burden on the development management system by reducing the number of applications coming into the system

Advice would be welcomed in relation to the link between SPZs and the Development Planning Process, particularly in relation to consultation.

It would potentially be useful to consult with the statutory consultees for development plans, as well as consultees in relation to planning applications.

It might be useful to mention the process in the Statement of Community Involvement and to establish key points of contact within the community, given the short (8 week) public notification period for an SPZ.

## **2.2 Fixed Penalties**

### **Background Information**

The Department has considered the introduction of fixed penalties for certain breaches of planning control as an alternative to prosecution through the courts. **NILGA** responded to the consultation on the Planning Bill in 2009, expressing the following views:

*“There should be a proportional approach to the enforcement of planning regulations and this should be reflected in fines imposed.*”



*Local government is very sensitive to the issue of people ending up with a criminal record, and NILGA believes that that.....further consideration [is needed], potentially with the introduction of a 'penalty points' system for offences.*

*Proposals for fixed penalty notices are supported, but on a tiered basis. ....The rationale for these needs to be clear, and fines should be set to ensure a deterrent effect. The potential for the creation of other offences was also considered, e.g. to protect bio-diversity, or in the case of destruction of heritage and environment*

*There is great potential for joined-up working with Building Control on enforcement activity, and this could be delegated to Building Control."*

After consideration of the issues involved, the Department has provided councils with the discretionary option of issuing a FPN for two offences. These are where a person has committed an offence by being in breach of an Enforcement Notice or a Breach of Conditions Notice.

While the enabling powers are contained in sections 153 and 154 of the 2011 Act the **level** of fixed penalty for the two offences mentioned above are to be prescribed in subordinate legislation.

It is the Department's intention that FPNs will complement existing enforcement tools which will be available to council enforcement staff from the point of transfer including Enforcement Notices (ENs), Breach of Condition Notices (BCNs), stop notices and the ability to take direct action to remedy a breach of planning control. Such powers are considered sufficient to allow the councils to exercise their enforcement functions - however Fixed Penalty Notices (FPNs) will provide an additional and discretionary power.

Where the council considers that a breach of planning control is significant or an offence has been committed to deliberately flout planning legislation then the option of a prosecution through the courts will remain the normal course of action.

In circumstances where a Fixed Penalty Notice has been served by a council and payment has been made, but the breach of planning control which gave rise to the Enforcement Notice has not been resolved, the council **MAY NOT** prosecute in respect of that particular breach of an Enforcement Notice.

The council can carry out the necessary works in default and reclaim the costs from the owner of the land.

There is no basis for viewing FPNs as a means of offenders buying their way out of compliance with the requirements of the planning system. They provide an additional, discretionary enforcement tool for councils in the exercise of their enforcement responsibilities. They do not prevent or restrict a council's decision-making process in terms of taking a court prosecution where this is considered the appropriate course of action.

Following transfer of planning functions, councils may wish to develop their own **Enforcement Strategy** in respect of planning enforcement, to manage this in a way that is appropriate to their area.

Examples of FPN based on the Scottish experience indicate the types of breaches of planning control where FPNs were deemed an appropriate course of action, e.g.:

- unauthorised change of use;
- unauthorised alterations to the elevations of a property; and
- unauthorised development within the curtilage of a residential property.

Reflecting the Scottish model the Department proposes fixed penalties of **£2,000** for being in breach of an EN and **£300** for being in breach of a BCN. In line with the Scottish, and indeed other FPN systems, provision is made for a reduction in these levels for prompt payment.

### **NILGA Comments**

NILGA would be keen to see the Department actively working to overcoming the ‘double jeopardy’ issue. It is our understanding that a change in primary legislation is required to deal with this, and that it had been the Department’s intention to effect this change through the now defunct Planning Bill. NILGA would encourage the Department to seek an amendment to the Primary legislation to close the current legal loophole and to ensure that enforcement by use of fixed penalties also achieves a resolution to the breach of planning legislation. Carrying out works in default and seeking recompense is likely to require court proceedings and therefore issuing an FPN is unlikely to achieve a satisfactory resolution.

NILGA would encourage the Department to provide advice in relation to the drafting of the new council enforcement strategies, particularly given the differing customs and practice in relation to anonymity.

It is anticipated that FPNs will be offered for what might be described as less significant offences as an alternative to potentially lengthy and costly court prosecutions, but it would be useful to have access to advice on identified levels and thresholds. This could take the form of departmental advice giving examples of potential use.

The examples given in para 4.12 of the consultation are problematic, for example:

‘Unauthorised change of use’ could refer to a very lucrative enterprise, such as a city centre car park; ‘unauthorised development within the curtilage of a residential property’ could mean another house.

The level proposed for fixed penalties seems very low, and it is suggested that ‘sliding scale’ is put in place, to correspond with the size of the development. The fines should be set to correspond with at least the cost of a planning application – perhaps double this cost.

It would be useful for the department to provide recent examples of fines levelled in court, to ensure relevant information is available to planning committees.

## 2.3 Modification and Discharge of Planning Agreements

A planning agreement is a voluntary, legally-binding agreement which can be utilised to overcome identified barriers to the granting of planning permission, normally for large-scale major planning applications, which cannot be suitably addressed by way of conditions attached to the permission. Such agreements, in widespread use across other jurisdictions, are negotiated at the pre-application stage and the planning agreement will take the form, when signed, of a legally binding contract. The planning agreement is a material consideration in the determination of an application for planning permission.

The proposed subordinate legislation will give councils the power to enter into planning agreements where they operate as the 'relevant authority' on planning matters, and will provide the necessary detail on the modification or discharge of planning agreements within the new two-tiered system.

The proposals will reproduce the provisions currently in place for the Department, but will reduce the appeal period from 6 months to 4 months, to bring this in line with other planning appeal periods in the reformed two-tier system.

For those agreements already in the system it is proposed that in line with the new hierarchy of development the Department will retain responsibility for any planning agreement made in relation to what would be considered regionally significant development and **all others will transfer (legally referred to as "novate") to the new councils**. This means that only the planning agreement related to the George Best Belfast City Airport will remain with the Department. All other planning agreements will become the responsibility of the new councils relevant to their respective council areas.

### NILGA Comments

There is no centrally held information in relation to the number of planning agreements currently in place, and where they are (i.e. to which council areas they will transfer).

**NILGA would strongly recommend that each new council cluster works closely with their Area Planning Manager to ensure that there is local knowledge of these agreements.**

NILGA members are satisfied that a reduction in the appeal time period from 6 months to 4 reflects the time available for appeals elsewhere in the planning legislation and will assist in building consistency and understanding of the new requirements.

## 3.0 OTHER ISSUES

There are also a number of technical Statutory Rules being taken forward in this phase, which are not subject to public consultation.

## 4.0 CONCLUSION

NILGA welcomes the approach taken by the Department in developing a suite of subordinate legislation. Aside from a small number of issues which will require a change to the Primary Act, it is clear that the Department has ensured a degree of flexibility and the ability to amend the regulations and guidance once areas for improvement become evident.

We look forward to working with the 11 new councils and the department as the reformed and transferred system evolves.

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# Causeway Coast & Glens

## Shadow Council

To: Transfer of Functions and Group Committee

Date: 11<sup>th</sup> December 2014

### DSD Update

#### For Information

Linkage to Corporate Plan	
Strategic Priority	Transition and Transformation
Objective	Successful implementation of the convergence plan
Lead Officer	Richard Baker
Cost: (If applicable)	

#### 1.0 Background

- 1.1 The DSD Minister has recently written to all Council Chief Executives advising that, due to delays encountered introducing the proposed Housing and Regeneration Bill to the NI Assembly, the transfer of urban regeneration responsibilities from DSD to Councils will now take place on 1 April 2016 rather than 1 April 2015 as previously planned.
- 1.2 The practical implication of this is that the Department will continue to deliver the relevant regeneration and community development programmes until 31 March 2016. It will also retain the overall budget associated with the transferring activities during the 2015/16 financial year.

#### 2.0 Budgetary position

- 2.1 The Executive is in the process of setting its budget for 2015/16. As this is a one-year Budget period, it will not be possible for the Department to make financial commitments beyond the end of March 2016.
- 2.2 All NI Government Departments will face tight budgetary pressures in 2015/16. The draft budget proposals indicate that DSD's revenue budget allocation will be 9.9% less than its 2014/15 budget baseline. This will require the Department to make

savings of at least £75m. The scope to reduce the budgets is less in some business areas than in others due to statutory requirements and other constraints, so it cannot be assumed that the budget reductions facing any parts of the Department will be limited to 9.9%. The Minister is currently considering the options. As a result, it is too early to confirm what the budget level of regeneration and community development activities DSD will be able to support in 2015/16.

### 3.0 Town Centre Regeneration

3.1 Subject to budgets being confirmed through the NI Executive and priorities agreed by Minister the Department is continuing to work up the following projects –

- Portstewart public realm scheme
- Portrush harbour environmental assessment, transport study, economic assessment and masterplan
- Ballymoney – Development site on Linenhall Street
- Ballycastle and Ballymoney Transport Study (council led and funded).

### 4.0 Neighbourhood Renewal

4.1 In June 2014, following consultation and agreement with Causeway Coast & Glens Council, the Northern Regional Development Office wrote to organisations currently in receipt of DSD revenue funding. Projects were notified that officials were working with the Causeway Coast & Glens Council to consider what arrangements it wanted to put in place to support regeneration and community development from 1<sup>st</sup> April 2015 and that the Council had asked for more time to consider how it wanted to manage the funding handover.

4.2 DSD has now recently written to each of the project promoters advising them that it will continue to be responsible for administering urban regeneration and community development in 2015/16. Over the next couple of weeks officials from Northern Regional Development Office will continue to meet with project promoters who wish to be considered for funding in 2015/16 with a view to submitting applications by 19 December 2014. In this letter, the Department also emphasised the following two key points:

- **Any new contract for funding would end on 31 March 2016.**
- **There is absolutely no guarantee of funding after 1 April 2015 for any organisation.** Project promoters were advised of the significant financial pressures facing government departments and the limited amount of funding that would be available.

4.3 The projects currently funded by DSD employ (directly and indirectly) over 29 people in the Coleraine NRA and provide important services in disadvantaged areas. The Department is acutely aware that these projects need to know as soon as possible whether further funding will be provided. It is considered good practice to advise projects of decisions at least three months before current funding ends. The

Development Office will take this into account as far as is possible in its timetable for making decisions and notifying the affected organisations.

- 4.4 Having said that, there are constraints on what the Development Office is able to do in this regard. The Department will not be able to make any funding commitments until the 2015/16 Executive budget position has been formally agreed and voted on by the Assembly. The current timetable for the Budget process indicates that the Executive decision will be taken in January 2015.

## **5.0 In Conclusion**

- 5.1 It is likely that the Department has some very tough decisions to take around which projects should continue to receive funding. It is probable that there will be an end to projects that had been previously funded, resulting in the loss of funded posts. These are not decisions that the Department will be taking lightly.
- 5.2 It is to be expected that Council members will be lobbied in relation to decisions to cease funding and will be asked to assist with changing decisions that the Department has made. However, members should bear in mind that the Department will have a limited amount of money available and any decision to reinstate funding to one project will require funding to be removed from another.