

Transferring Functions & Group Committee Wednesday 11th March 2015

Table of recommendations

No	Item	<i>Recommendation</i>
7	Car Parking Charges	<i>Approve Option 3</i>
8.	Off Street Car Parking - Enforcement Agency Agreement (SLA)	<i>Approve</i>
9.	Planning - Enforcement Strategy	<i>Adopt</i>

Transferring Functions & Group Committee

Minutes of the Meeting of Causeway Coast & Glens District Council Transferring Functions & Group Committee, held in the Area Planning Office, Coleraine on Wednesday 11th March 2015 at 7pm.

In the Chair: Councillor Mullan

Members present: Councillors Baird, Blair, Callan, Chivers, Cole, Douglas, Duddy, Fielding, King, Knight-McQuillan, Finlay, Loftus, McCandless, McCaul, McKeown, McKillop, S, Watton

In attendance: D Jackson, Chief Executive
D Dickson, Head of Planning
S Duggan, Programme Administrator
S McMaw, Head of Convergence
A McPeake, Director, Environmental Services
S Mulhern, Principal Development Plan Officer

T Deehan, Transport NI [Item 1-4]

D Millar, Transport NI [Item 1-4]

1. Chairman's comments

The Chair reflected on the final Transferring Functions and Group committee, he thanked the committee members for their support and wished them well should they be going forward into the Planning Committee, other transferring functions would now be dealt with at specified committees.

2. Apologies

Apologies were recorded from Councillors Beattie and McGuigan.

3. Declarations of Interest

There were no Declarations of Interest.

4. Presentation: Transport NI

The Chair welcomed representatives from Transport NI to the meeting and invited T Deehan and D Millar to present. Committee received a verbal presentation surrounding the transfer scheme of car parks and off-street parking, public liability transferring, Councils asset management decision to register Title and the current position of isolating street lighting of the car parks. D Millar provided information on the asset value of the 37 transferring car parks and operational contract arrangements and staff training, explaining that the DFP amalgamation net cost of budgets transferring against the services is surplus, merely at the point of transfer.

D Millar and T Deehan responded to member queries surrounding gritting and condition of the car parks, public liability claims, legal costs associated with registering Title and the location of disabled bays.

- * **Councillor Knight-McQuillan left the meeting at 7.45pm during consideration of the above matter.**
- * **T Deehan and D Millar left the meeting at 7.50pm.**

5. Minutes of Meeting held 28th January 2015

The Chair advised the Minutes of the meeting were adopted by Council on 26 February 2015.

6. Minutes of Meeting held 11th February 2015

The Chair advised the Minutes of the meeting were adopted by Council on 26 February 2015.

7. Car Parking Charges

A McPeake presented the report, summarised as undernoted:

All Councils have been asked if they wish to continue with the £1 for 5hours scheme as Transport NI (TNI) requires advanced notice to recalibrate machines and amend signage in advance of the 1st April 2015. The TNI finance team have put together figures to show the impact of the scheme since it began for CC&G car parks as shown in Appendix 1 (of the report, circulated).

The summary sheet projections for 12month period in 2014/15 shows that 5 car parks will have a decrease in projected income and 7 car parks will have an increased income against 13/14 figures. This equates to an estimated overall loss of £28,500.

The income projections stated as part of the transfer process were based on 2013/14 charges (not the £1 for 5 hours scheme) and these were used for TF&G 150311 input into the rates process. As a result, any decision to continue with this trial will have an impact on the budget for car parking in 2015/16.

The following options are available for consideration:-

3.1 Option 1 – Discontinue the £1 for 5 hour trial in all transferring car parks. The £1 for 5 hour scheme will continue until 31st March 2015 at which point the previous charges for each of the car parks are reinstated. The financial impact matches the figures stated during the rates process.

3.2 Option 2 – Extend the £1 for 5 hour trial in all Causeway Coast and Glens car parks for a further year. The £1 for 5 hour scheme will continue until 31st March 2016 and reviewed during the rates process for 2016/17. The financial impact is such that £28,500

will have to be found to make up the difference in the 2015/16 car park budget.

3.3 Option 3 – Extend the £1 for 5 hour trial only in the 7 car parks that have shown an increased income over the last 9 months and reinstate the previous charges in the other 5 car parks.

The £1 for 5 hour scheme will continue until 31st March 2016 for the following car parks:-

167159-Church St, Ballymoney
167160-Castle St Car Pk
167169-Railway Road - C/Park
167173-Railway Place Car Park
167180-Central C/Park
167208-Ann St Ballycastle
167329-Waterside

The previous charges will be reinstated for the following car parks:-

167168-The Mall - C/Park
167170-Long Commons - C/Park
167171-Abbey Street - C/Park
167179-Connell Street C/Park
167181-Main St Limavady

The financial impact is estimated to be an additional income of £11,660 compared to the 2015/16 car park budget allocation.

IT IS RECOMMENDED that the Shadow Council approve Option 3 as the most financially beneficial.

It was proposed by Councillor Douglas, seconded by Councillor Chivers to recommend that Council approve Option 2.

A McPeake added, the business community felt the Scheme had resulted in a lower turnover of shoppers and sales staff were taking up car parking spaces of prospective customers.

Councillor Duddy queried which budget the £28,000 deficit would come from. He also added that Council may need to look further at the pricing at Waterside Car Park, Coleraine. Councillor Chivers felt the Scheme was positive, encouraging people to support smaller towns, however, it was not well advertised.

An amendment was proposed by Councillor King, seconded by Councillor Baird, to recommend that Council approve Option 3.

* **Councillor Duddy left the meeting at 8.25pm.**

The Chair put the amendment to the committee to vote, 12 voted for, 2 voted against, the Chair declared the amendment carried.

It was proposed by Councillor King, seconded by Councillor Baird and AGREED to recommend that Council approve Option 3, extend the £1 for 5 hour trial only in the 7 car parks that have shown an increased income over the last 9 months and reinstate the previous charges in the other 5 car parks as outlined within the tables above.

8. Off Street Car Parking - Enforcement Agency Agreement (SLA)

A McPeake presented the report, circulated, attached as Appendix A.

It was proposed by Councillor S McKillop, seconded by Councillor Finlay and **AGREED: to recommend that Council approve the Agency Agreement as detailed in Appendix B, subject to any potential caveats that may arise as a result of due diligence work undertaken prior to 1st April 2015.**

9. Planning - Enforcement Strategy

D Dickson presented the report, below, and responded to member queries, also drawing attention to a typing error at point 5.7 of Appendix C, which should have read "9" months.

On 1 April 2015 the majority of the Planning functions will transfer to Causeway Coast and Glens District Council; part of these functions relate to enforcement powers.

The Council's function as the local planning authority for Causeway Coast and Glens District is set out in the Planning Act (Northern Ireland) 2011. The Council's Planning Department will administer most of these planning functions including the discretionary power to take action against breaches of planning control.

Section 131(1) of the Planning Act states that a breach of planning control constitutes the carrying out development without the permission required; or, failing to comply with any condition or limitation subject to which planning permission has been granted.

The purpose of this Strategy is to

- ***Explain the Council's key objectives of Enforcement of Planning Control;***
- ***Explain how breaches of planning control will be investigated; and,***
- ***Set out the priorities for investigating breaches of planning control.***

IT WAS AGREED to recommend that Council adopt the 'Enforcement Strategy' as detailed in Appendix C, subject to the amendment: at point 5.11 replace "may" with "will".

10. Planning - Built Heritage Assets

D Dickson presented the report, circulated, summarised as undernoted for information only.

The purpose of this paper is to provide Members with the following: an overview of the built heritage assets within the new Council district; an overview of the legislation and policy context covering these assets; and how built heritage issues are interrelated into the planning function transferring to Council.

11. Renewable Energy: Wind Turbines

Councillor King queried wind turbine exclusion distances and their proximity to dwellings, stating that he felt the Department's acceptable environmental health noise impact level may actually have the potential to adversely affect residents.

D Jackson advised any specific matter should be referred to the Environmental Services section within Council in the first instance.

* **S McMaw left the meeting at 9.05pm during consideration of the above matter.**

This being all the business the meeting closed at 9.20pm.

Appendix A: Off-Street Car Parking Report

Appendix B: Off-Street Car Parking SLA

Appendix C: Planning Enforcement Strategy

Causeway Coast & Glens Shadow Council

To: Transferring Functions and Group Committee

For Decision

11/03/2015

1.0 Off Street Car Parking - Enforcement Agency Agreement (SLA)

Linkage to Corporate Plan	
Strategic Priority	Transition and Transformation
Objective	Successful implementation of the convergence plan
Lead Officer	Stephen McMaw
Cost: (If applicable)	Neutral cost at the point of transfer

1.0 Background

1.1 Under the provisions for Local Government Reform, the Causeway Coast and Glens District Council (the Council) will have responsibility for Off-Street Car Parks within the Council area from 1st April 2015. The Department for Regional Development, Transport NI (DRD) who have current responsibility for this function have two key Service Level Agreements (SLA) in place up until 31st October 2016 for enforcement and other aspects of the function. These SLA`s are with NSL Services for parking enforcement and car park management services and with Spur Information Systems for electronic processing Services. Activities within the SLA`s include Off Street Parking Enforcement, Cash Collection, Parking and Display Machine Maintenance, Car Park Cleaning, Car Park Landscaping, Processing Penalty Charge Notices and Debt Recovery.

1.2 In addition to the two key SLA`s, service delivery also relies on a number of agreements and protocols; with DVLA and their cross-border equivalent to obtain vehicle keeper details and the Enforcement of Judgements Office to allow debt recovery. Agreements are in place with electronic providers for payment

processing and with NI Direct to provide access to photographs to substantiate penalties. Agreements are also in place to cover maintenance of pay and display machines, clamp and removal services and a vehicle pound.

- 1.3 At the Causeway Coast and Glens Shadow Council meeting held on 27th November 2014, Elected Members approved a request from DRD, that the Department develop an SLA for the 1st April 2015 that will mean the services under current SLA contracts can continue up until 31st October 2016 or beyond, under Council control. Elected Members were informed that the Council is not compelled to agree the proposed SLA approach, however it is recognised that in reality there is insufficient time to develop alternative delivery mechanisms prior to 1st April 2015.

2.0 Detail

- 2.1 A draft SLA, referred to as “Agency Agreement” by DRD Transport NI has now been circulated to the 11 new Councils for their consideration. The document is attached as Appendix 1. The proposed agreement is between the Department for Regional Development and each new Council. A very detailed Car Park Operational Specification Document has also been circulated and this is currently being scrutinised by Council Officers. DRD Transport NI requires each Council to sign the Agency Agreement prior to 1st April 2015 at which time the Car Parks and their enforcement responsibilities transfer to Local Government.

- 2.2 Advice has been sought from the Legal Team at Derry City Council regarding the Agency Agreement and its relationship to the Operational Specification Document. They have scrutinised the Agency Agreement and advised that there are no issues in relation to the content. However, there is a view that the Operational Specification Document should be carefully examined by Officers to ensure there is adequate due diligence of the detail given both documents are linked. It has been agreed that the relevant Officers from both Councils will undertake this due diligence work and report back as soon as possible. If serious issues of concern transpire, the advice is that the Causeway Coast and Glens Shadow Council should still sign the Agency Agreement but caveats must be in place against those particular sections within the Operational Specification Document that require clarification or review.

3.0 Summary

- 3.1 The Legislation will result in the transfer of Off Street Car Parks to the 11 new Councils on 1st April 2015. The Councils must sign the Agency Agreement prior to this date in order for their operation and enforcement. Feedback from the Legal Team at Derry City Council is that they have no issues with the Agency Agreement document, in terms of how it is written. They will be advising the signing of the document. However, they are also advising that any concerns that emanate from the due diligence work carried out by Council Officers in relation to the Operational Specification Document, should be raised with DRD and the signing of the Agency Agreement caveated based on any such concerns, should they remain outstanding on 1st April 2015.

Recommendation

It is recommended that the Transferring Functions and Group Committee approve the Agency Agreement as detailed in Appendix 1, subject to any potential caveats that may arise as a result of due diligence work undertaken prior to 1st April 2015.

Agency Agreement

between

Causeway Coast and Glens
District Council

and

DRD

for

Parking enforcement in Council owned off-street car parks

Contents

Section 1: Introduction

Section 2: Scope

Section 3: Duration of the agreement

Section 4: Roles and responsibilities

Section 5: Information

Section 6: Review

Section 7: Charges

Section 8: Dispute resolution

Section 9: Termination

Section 10: Indemnities

Section 11: Third party rights

Section 12: Law

Section 13: Signatories

SCHEDULE

Technical Specification for the provision of Off Street Parking Enforcement

THIS AGREEMENT is made on the day of 2015

This Agreement is made between Causeway Coast and Glens District Council (the Council) of Cloonavin, 66 Portstewart Road, Coleraine BT52 1EY and the Department for Regional Development (“DRD”) of Clarence Court, 10-18 Adelaide Street, Belfast, BT2 8GB under Section 104 of the Local Government Act (Northern Ireland) 1972.

SECTION 1: INTRODUCTION

The Northern Ireland Executive has agreed, as part of the process of Local Government Reform (“LGR”), to transfer certain functions in relation to off-street car parking to the 11 district councils being created as part of the LGR process. Historically, DRD was the single public road authority for Northern Ireland and carried out a range of statutory functions in respect of off street car parking under the Road Traffic Regulation (Northern Ireland) Order 1997 (“the 1997 Order”) and the Traffic Management (Northern Ireland) Order 2005 (“the 2005 Order”). Certain functions carried out by DRD under the 1997 Order and the 2005 Order in relation to off-street car parking are intended to transfer to Causeway Coast and Glens District Council under the Off-Street Parking (Functions of District Councils) Act 20[] (hereinafter referred to as “the Act”).

DRD has agreed that for the period specified in Section 3 hereto DRD shall provide certain services on behalf of the Council in relation to the civil enforcement and management of off-street car parking (hereinafter referred to as “the Service” and more particularly described in the Schedule hereto) for the purpose of assisting the Council in carrying out its functions under the Act and shall use its best endeavours to ensure compliance with same.

DRD has entered into sub-contracts with NSL and SPUR for the provision of certain car-parking services on behalf of DRD. For the avoidance of doubt, the Council is not a party to these sub-contracts and the Council’s contractual relationship with DRD shall be as set out in this Agreement.

SECTION 2: SCOPE

2.1 Scope

This Agreement (“the Agreement” which shall include the Technical Specification in the Schedule) shall apply to the car parks, equipment and associated car park signage (“the Assets”) described in the Technical Specification for the provision of Off Street Parking Enforcement.

2.2 Free car parks

This Agreement applies to the charged car parks listed in the Technical Specification. If the Council wish to begin enforcement in free car parks, they may be added to the Schedule by agreement with DRD in accordance with Section 3 of this Agreement.

If the Council wish to carry out enforcement in free car parks the terms of such enforcement and charging will be agreed in accordance with Section 3 with DRD prior to the commencement of any such enforcement.

SECTION 3: DURATION OF THE AGREEMENT

This Agreement takes effect from the 1st April 2015 and remains in force until 31st October 2016 (“the Term”).

This Agreement may be amended at any time with the consent of both parties, with such amendments to be evidenced in writing. Agreed amendments shall be incorporated into this Agreement.

SECTION 4: ROLES AND RESPONSIBILITIES

4.1 (a) DRD and the Council shall carry out their obligations as set out in this Agreement.

(b) DRD shall carry out the Service with all reasonable skill, care and diligence and in accordance with all applicable law and legislation.

(c) DRD shall perform the Service and its obligations under this Agreement at all times in a professional manner and shall not undertake any activity, or act in such a way as to bring the image of the Council into disrepute and it shall ensure that its employees, agents and contractors act at all times in a professional manner when delivering the Service and shall not undertake any activity, or act in such a way as to bring the image of the Council into disrepute.

SECTION 5: INFORMATION

5.1 Record management and data protection

5.1(a) Access to Personal Data

In relation to this Agreement, the processing of any personal data by DRD and the Council during this interim arrangement will rest with each other respectively.

DRD and the Council will therefore assume the role of joint Data Controllers for the personal and sensitive personal data they process. Each has full responsibility to meet their data protection obligations regarding the personal data they gather, use and retain during the interim arrangement and ensure the eight principles are applied.

DRD and the Council will exercise control over the purposes and the manner in which the personal data is processed. DRD and the Council shall:-

- apply a level of interpretation to the personal data they process;
- take responsibility to exercise professional judgement on that data;
- undertake significant decision-making tasks in relation to personal data processed; and
- apply its own technical expertise and professional judgement on how best to store the personal data in a safe and accessible way

DRD and the Council shall deal with requests submitted to them for access to Personal Data, received under the Data Protection Act, 1998.

Requests for data shall be processed within the Freedom of Information Act/Environmental Information Regulations timescale of 20 working days and are subject to FOI/EIR regulations. Any other requests will have a 15 working day target for response. Data Subject Access request timeline is 40 working days.

5.1(b) Access to General and Environmental Information

If any request is submitted to either organisation for access to General Information received under the Freedom of Information Act 2000 ("FOIA") or Environmental Information received under the

Environmental Information Regulations 2004 (“EIR”), relating to this overall function, the following procedure should apply:

The Council shall process all requests for access to information relevant to it. The requests may be submitted directly to the Council or to DRD. If the request is submitted to DRD it must immediately forward the request to the Council for processing. The Council has the responsibility to review and respond under the FOIA, EIR or treat as business as usual. DRD must provide assistance in locating and making available any information (if held) relevant to the request within 10 working days.

Information relating to procedures or service standards in relation to this interim arrangement will be held by the Council.

5.2 Correspondence

The PCN and processing correspondence shall include reference to TransportNI corporate identity and the following words “Working in partnership Local Councils”.

5.3 Exchange of Information

The Council shall be facilitated with access to any statistical and other information gathered and retained by DRD in relation to this Agreement and the Service being provided during the Term of this Agreement. Both parties shall comply with their respective obligations under the Data Protection Act 1998.

5.4 Information provided in confidence

The parties acknowledge that the cancellation guidelines and the costings set out in the Technical Specification shall be treated as commercial in confidence and should not form any part of information to be made available in the public domain. Nothing in this section shall relieve the parties of their obligations in relation to the FOIA and the EIR.

5.5 Exit Management

DRD shall develop exit management plans with the NSL and IT provider, Spur Information Solutions Ltd. to transfer all data which is relevant to the Agreement and the Service to the Council upon termination of this Agreement.

DRD and the Council shall agree an exit management plan within 6 months of the commencement of the Agreement. The exit management plan will be reviewed thereafter by the parties as necessary

by agreement. DRD shall use best endeavours to assist the Council with the provision of necessary information in relation to exit management and the delivery of the Service. Where not already in the public domain, DRD will provide the Council with relevant procedures in relation to the delivery of the Service.

As part of the exit management plan DRD will provide the Council with detailed knowledge of the operation and management of the Service in order to allow the Council to continue to comply with its obligations under the Act.

5.6 Procurement planning

Within 6 months of the commencement of this Agreement, the Council shall notify DRD of its decision as to whether or not it intends to enter into a joint procurement exercise with DRD for provision of the Service following the Term of the Agreement.

5.7 Dealing with complaints

Complaints relating to NSL staff and the service provided by them will be directed to NSL who will be responsible for investigating and responding to the complaint. NSL will forward a copy of the response to DRD who will forward a copy to Council

DRD shall be responsible for investigating and responding to any complaints relating to DRD and shall forward a copy of any response to such complaints to the Council.

All other complaints which fall outside the scope of this Agreement will be directed to the Council who will be responsible for investigating and responding to the complaint. Such complaints may include complaints regarding the condition of a car park, tariffs etc

Statistics on the number and nature of complaints reported to NSL and DRD as well as the outcome of complaints, will be reported to the Council by DRD on a monthly basis and discussed at the 6 monthly review meetings

SECTION 6: REVIEW

DRD shall monitor the performance of the Service and provide monthly performance reports to the Council as per the template set out in the Schedule. DRD agree to maintain effective records demonstrating compliance.

DRD shall meet with a body representing all Councils within the first 4 weeks of the commencement of the Agreement and every 3 months thereafter to monitor and review the implementation, performance and quality of the Service. This will allow discussion of any issues that have arisen and action to be agreed where necessary.

The agenda for the review meetings between Council and DRD may include:

- Enforcement management of this Agreement
- PCNs issued
- Debt recovered
- Outstanding debt
- Complaints
- Correspondence
- Representations/appeals/challenges
- Innovation

Both parties shall also deal with issues arising outside of these meetings as soon as possible.

DRD on request shall attend meetings with council officers and elected member forums, as appropriate. Additional information may be provided by DRD as requested, where possible, and on a cost recovery basis.

SECTION 7: CHARGES

7.1 Income to be paid by DRD

DRD shall pay the following to the Council during the Term:

- A. All income in respect of off-street Penalty Charge Notices; and
- B. All income from off street parking.

Payment shall be made in accordance with the provisions of the Technical Specification.

7.2 Charges to be paid by the Council

The Council shall pay the charges calculated in accordance with the Technical Specification to DRD within 28 working days of receiving an invoice supported by the monthly financial reports in accordance with the Technical Specification, subject to the approval of the invoice by the Council.

SECTION 8: DISPUTE RESOLUTION

Should a dispute arise between the Council and DRD concerning any aspect of the Services rendered by DRD under this Agreement, the Council representative and DRD representative shall use reasonable endeavours to resolve the dispute within 30 working days. If the dispute remains unresolved, the Council Head of Service shall then attempt to resolve the dispute with his counterpart in DRD within 30 working days. If the dispute remains unresolved then the resolution will lie with the Chief Executive of the Council and their counterpart in DRD who shall use reasonable endeavours to resolve the dispute within 30 working days. These timescales may be extended by agreement by both parties. If the dispute remains unresolved the matter should be brought to an independent arbitrator for resolution. An independent arbitrator shall be agreed by both parties within 3 months of the commencement of this Agreement.

SECTION 9 TERMINATION

9.1 If either Party has committed a breach of this Agreement which materially or adversely affects the performance of the Service and which is capable of remedy, the other Party may serve a written notice on the Party specifying:

9.1(a) the type of breach that has occurred giving reasonable details; and

9.1(b) that this Agreement will terminate on the day falling forty five (45) calendar days after receipt of the notice, unless the Party in breach puts forward an acceptable rectification programme (to be agreed between the parties) or rectifies the breach to the satisfaction of the other party acting reasonably within twenty five (25) calendar days of receipt of the notice.

and, if the Party in breach fails to rectify the breach within the time period specified in the rectification programme or to provide an

acceptable rectification programme, the Agreement will terminate with immediate effect and without notice.

SECTION 10: INDEMNITIES

Each of the parties agree to indemnify and keep indemnified the other party from and against all losses, actions, proceedings, claims, demands, expenses or liabilities whatsoever suffered by the other party as a result directly or indirectly of any unlawful act or any act, omission or negligence of the other or any breach by the other of its obligations under this Agreement (and this shall include any act, omission, negligence, or breach of this Agreement by their sub-contractors, agents, appointees and such others engaged by them).

DRD shall ensure that its sub-contractor shall hold and maintain public liability insurance for an amount not less than £10million for the Term of the Agreement.

SECTION 11: THIRD PARTY RIGHTS

None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement.

SECTION 12: LAW

This Agreement shall be governed by and interpreted in accordance with the law in Northern Ireland and subject to the jurisdiction of the Courts in Northern Ireland.

SECTION 13: SIGNATORIES

This Agreement is made on the [] day of [] 2015 between Causeway Coast and Glens District Council and the Department for Regional Development.

IN WITNESS WHEREOF the Council has hereunto affixed its corporate seal the day and year herein written

PRESENT when the Corporate Seal)
of **Causeway Coast and Glens District Council**)

was affixed hereto:-

)
)
)
_____)

Chairman)

)
)
)
_____)

Chief Executive

PRESENT when the Official Seal of
the **Department for Regional Development**)

was affixed hereto:-

)
)

Senior Officer.

Date:

SCHEDULE

Technical Specification for the provision of Off Street Parking Enforcement

Planning Enforcement Strategy

1.0 Introduction

- 1.1 Causeway Coast and Glens District Council places great importance on protecting and enhancing the environment and recognises that the integrity of the development management process depends upon the Council's commitment to take effective action against unauthorised development.
- 1.2 The Council's function as the local planning authority for Causeway Coast and Glens District is set out in the Planning Act (Northern Ireland) 2011. The Council's Planning Department will administer most of these planning functions including the discretionary power to take action against breaches of planning control.
- 1.3 Although planning enforcement is a discretionary function, it is recognised that the integrity of the development management process depends upon the Council's commitment to take effective action against unauthorised development. This Enforcement Strategy sets out how the Council deals with complaints relating to breaches of planning control.

2.0 General Approach to Enforcement

- 2.1 Under the provisions of The Planning Act (Northern Ireland) 2011 the Council has discretionary powers to take enforcement action when it considers it expedient to do so, having regard to the provisions of the local development plan and any other material considerations.
- 2.2 Causeway Coast and Glens District Council is committed to resolving all cases involving unauthorised development, including any consequent enforcement action.
- 2.3 In exercising discretion, the Council will be mindful of its duty to enforce planning legislation and to ensure that development is managed in a proactive and proportionate manner. In determining the most appropriate course of action in response to alleged breaches of planning control, Causeway Coast and Glens District Council will take into account the extent of the breach and its potential impact on the environment. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.

3.0 What is a Breach of Planning Control?

- 3.1 Most types of building works, changes of use, works to listed buildings, works to trees within a Conservation Area or Protected by a Tree Preservation Order, demolition of buildings within Conservation Areas and advertisement signs require planning

permission or consent. If these have not been obtained and works have been carried out or uses implemented, a breach of planning control is said to have occurred. A breach also occurs when conditions attached to a planning permission are not complied with, where a formal Notice or Order is not complied with, or the contravention of a Hazardous Substance Control.

- 3.2** A breach is not a criminal offence, except for unauthorised works to listed buildings, illegal advertisements and demolition without consent. A criminal offence in all other cases only arises when an Enforcement Notice has been served and has not been complied with.

4.0 Guiding Principles

- 4.1** All alleged breaches of planning control will be investigated, with the exception of anonymous complaints unless the breach relates to unauthorised works to a listed building or works to trees which are in a Conservation Area or protected by a Tree Preservation Order. However, because of the legal test of 'expediency' formal enforcement action will only be taken where it is fair and reasonable to do so. In reaching this decision the main issue is whether the breach would unacceptably affect public amenity or use of the land that should be protected in the public interest. Any enforcement action should be proportionate to the breach of planning control. The Council would not be acting lawfully if it enforced against every breach of planning control. There will be cases where the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.
- 4.2** Personal information will not be released without the permission of the complainant in accordance with the principles of the Data Protection Act 1998; The Freedom of Information Act 2000; and, the Environmental Information Regulations 2004.
- 4.3** All complaints will be prioritised on receipt in accordance with the priorities set out in this Strategy. Priority will be given to those breaches where, in the Council's opinion, the greatest harm is being, or is likely to be caused.
- 4.4** As enforcement is a discretionary power, the Council will not pursue those minor breaches of planning control where there is no significant harm being caused, or where it is not considered expedient to do so.
- 4.5** A decision to proceed with formal enforcement action must be agreed by one of the appointed officers listed in the Scheme of Delegation. All actions taken in response to a breach of planning control will be proportionate to the harm being caused and in accordance with the Council's priorities.
- 4.6** Enforcement action may be held in abeyance while a planning application or appeal to remedy the breach is being determined, depending on the degree of harm and nature and scale of the breach. However, if a case is approaching the date for immunity or the breach of planning control is considered to be unacceptable, enforcement action may proceed.

- 4.7 The decision to proceed to prosecution will only be taken following legal advice.
- 4.8 Information which may prejudice consideration of a case or judicial proceedings will normally be withheld until the case is concluded or the Court orders disclosure of information.
- 4.9 Complainants will be advised when a case has been concluded.
- 4.10 Planning Enforcement Officers will liaise closely with colleagues within the Council, and also within central government departments such as Northern Ireland Environment Agency in relation to Listed Buildings and waste management; and, DRD Transport NI in relation to road safety issues.

5.0 Procedure for Investigating Enforcement Complaints

- 5.1 When an enforcement complaint is received it will be registered on the Council's planning database system and the complaint acknowledged. Anonymous complaints will only be investigated if the alleged breach relates to unauthorised works to a Listed Building, or works to tree(s) in a Conservation Area or protected by a Tree Preservation Order.
- 5.2 The name and address of all complainants will be kept confidential. However, it may be necessary that the complainant's details are required to be disclosed for legal reasons. In such instances, prior approval will be obtained from the complainant.
- 5.3 The enforcement case will be assigned to a Planning Enforcement Officer (PEO) who will investigate the planning history of the site and assess whether or not the complaint constitutes a breach of planning control. In some cases a site visit may be necessary before the PEO can determine whether there has been a breach of planning control. If following the site visit it is evident that there has not been a breach of planning control, the case will be closed and the complainant advised.
- 5.4 Where it is clear that development has taken place without the relevant permission or consent, the PEO will establish the identity of the person(s) responsible for carrying out the breach, if not the landowner. This may require the PEO to issue a Planning Contravention Notice (a formal request for information). The PEO will then inform the person responsible that they are in breach of planning control/consent and may invite an application to regularise the development on a without prejudice basis (Submission Notice). Normally a period of 28 days will be given for the submission of the retrospective application.
- 5.5 Where a retrospective application is submitted for determination, the application will be determined on its own merits having regard to the provisions of the local development plan and other material planning considerations. Unless the breach is causing serious harm, unlikely to be granted permission/consent, or reaching the

stage of immunity, it is normal practice to await the determination of the application before deciding whether to take formal enforcement action. The enforcement case will remain open until the application is determined. If the retrospective application is approved the case will be closed. If the application is refused the case will remain open until the breach is resolved. This may require the serving of an Enforcement Notice and subsequent court action. Under the Scheme of Delegation the authority to serve an Enforcement Notice is delegated to appointed officers.

- 5.6** If an application is not submitted, a decision will be taken as to whether it is expedient to take formal enforcement action. In making this decision, an assessment will be made of whether the breach of planning control unacceptably affects public amenity or the use of land or buildings meriting protection in the public interest. A planning assessment will be made of the significance of the breach before a decision is made on the best course of action.
- 5.7** As enforcement action is a discretionary power, where the breach of planning control is of a minor nature or a technical breach which causes no harm to the amenity in the locality of the site, the PEO may attempt to resolve the breach through negotiation. This negotiation period will normally be no longer than 6 months. This may mean agreeing a compromise or partial change that secures compliance with a planning condition or permission/consent, or to negotiate changes to make it more acceptable in planning terms. These negotiations may negate the need to take formal enforcement action.
- 5.8** For cases where the unauthorised development is causing significant harm which cannot be satisfactorily overcome or mitigated by conditions or changes to the development, it may be appropriate to take formal enforcement action. The type of enforcement action will be dependent on the circumstances of the case and will be proportionate to the breach.
- 5.9** Once the decision has been made to take formal enforcement action, the relevant Notice will be issued by the Planning Enforcement Team. The Enforcement Notice includes requirements for remedying the breach and a period for compliance. Failure to comply with the requirements of the Notice within the specified compliance period is a criminal offence, liable to prosecution in the Magistrates Court (subject to a maximum fine of £100,000).
- 5.10** It is important to note that in relation to Enforcement Notices, there are two separate offences – one as owner of the land, and the second as the person in control of or who has an estate in the land to which the Notice relates (other than the owner).
- 5.11** Depending on the type of Notice the recipient may have the right to lodge an appeal to the Planning Appeals Commission before the Notice takes effect. This may suspend the effect of the Notice until the outcome of the appeal.
- 5.12** If no appeal is lodged the Notice takes effect on the date specified in the Notice. The PEO will check whether the Notice has been complied with. If the Notice is complied with no further action will be taken and the case will be closed. The complainant will be advised of the decision. If, however, the Notice has not been complied with, legal advice will be sought to inform the decision of whether or not to prosecute.

- 5.13** The Council has the power to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as Discontinuance Orders). The Council will seek to recover the costs of undertaking the works from the landowner and those expenses shall be a civil debt recoverable summarily. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it does involve a cost implication to the Council and therefore the preferred method to secure compliance will be to prosecute the landowner and/or the person in control of or who has an estate in the land to which the Notice relates.
- 5.14** In cases of severe harm, the Council can apply for an Injunction in the County or High Court.
- 5.15** If a breach of planning control is considered to be causing immediate harm, a Stop Notice or Temporary Stop Notice may be issued which would bring about the immediate cessation of certain types of unauthorised works. Before taking such action, the Council is required to carry out a cost/benefit analysis so that the costs incurred by the developer by having to stop the works are fully taken into account and weighed against the harm being caused.

6.0 Enforcement Priorities

- 6.1** The Council will investigate all alleged breaches of planning control, with the exception of anonymous complaints unless the breach relates to unauthorised works to a listed building or works to trees which are in a Conservation Area or protected by a Tree Preservation Order. However, when determining what (if any) action is to be taken, priority will be given to those breaches where, in the Council's opinion, the greatest harm is likely to be caused.
- 6.2** The priority given is determined by the guiding principle that any action in response to a breach should be proportionate to the harm it causes. The priorities which reflect this principle are as follows:
- Priority 1 – works resulting in public danger or development which may result in permanent damage to the environment. For example, demolition of, or works to a listed building; unauthorised works to trees protected by a Tree Preservation Order; demolition of a building in a Conservation Area; Contravention of Hazardous Substance Control
 - Priority 2 – commencement of building operations without planning permission, unauthorised works or uses which cause loss of amenity or any other significant public or private impact; non-compliance with conditions of a planning approval.
 - Priority 3 – Minor breaches that can be regularised, for example, domestic sheds, fences and extensions.
- 6.3** The above list is for guidance only. It is ultimately the responsibility of the Council's Planning Enforcement Team to prioritise cases taking account of the nature of the breach and the harm being caused or likely to be caused.

- 6.4** The priority given is reflected in the timescales against which performance is measured.
- 6.5** It is important to note that the vast majority of breaches of planning control are resolved informally through negotiation with the land owner/occupier or through the submission and consideration of a retrospective planning application.
- 6.6** The speed at which a breach can be resolved will vary depending on the complexity of the individual case. However, officers aim to confirm whether there is a breach of planning control/consent and set out the Council's position in writing to the land owner/occupier and the complainant within eight weeks of a complaint being received.

7.0 Performance Targets

- 7.1** For the purpose of measuring performance, the Council's Planning Enforcement Team will aim to:
- Acknowledge receipt of 95% of complainants within 5 working days
 - Site inspect 100% of Priority 1 cases within 5 working days of receipt of the initial complaint
 - Site inspect 95% of all other cases within 30 working days of receipt of the initial complaint
 - Discuss and agree a course of action for 95% of Priority 1 cases within 2 weeks of receipt of the initial complaint
 - Discuss and agree a course of action for 95% of all other cases within 12 weeks of receipt of the initial complaint
 - Bring 70% of cases to a target conclusion within 40 weeks of receipt of initial complaint. For the purpose of this Strategy, target conclusion means case closure, submission of a retrospective planning application, formal enforcement action, or summons to court
 - Notify complainants of case closure in 95% of cases within 4 weeks of the date of closure.
- 7.2** The above method of performance measurement reflects the Council's approach to enforcement in that it focuses resources on those breaches of planning control where the greatest harm is being or is likely to be caused.

8.0 Appeals

- 8.1** Under the provisions of The Planning Act (Northern Ireland) 2011, an appeal may be lodged with the Planning Appeals Commission (PAC) against an Enforcement Notice, Listed Building Enforcement Notice, Hazardous Substances Contravention Notice and Section 64 Notice (replacement of trees). The timeframe for hearing an appeal and issuing a determination is a matter for the PAC. Additional information on the planning appeals process can be obtained from the PAC website www.pacni.gov.uk

9.0 Legislative Timescales

- 9.1** When considering enforcement action, the Council will bear in mind the statutory time limits for taking enforcement action as set out in Section 132 of the Planning Act.
- 9.2** Where there has been a breach of planning control consisting of the carrying out without planning permission of building, engineering, mining or other operation in, on, over or under land, no enforcement action may be taken after the period of 5 years beginning with the date on which the operations were substantially completed.
- 9.3** Where there has been a breach of planning control consisting of the change of use of any building to use as a dwelling house, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.
- 9.4** In relation to unauthorised works to listed buildings, including demolition and non-compliance with a condition attached to a consent, no enforcement action can be taken in relation to works which occurred before 9th December 1978.
- 9.5** In the case of any other breach of planning control, no enforcement action may be taken after the end of 5 years beginning with the date of the breach.

10.0 Communication

- 10.1** Members of the Planning Committee will be sent lists of enforcement cases that have been closed and current live cases on a bi-monthly basis. Updates will be provided on specific cases if requested by a Planning Committee Member.
- 10.2** Any queries on specific cases should be directed to the Planning Enforcement Team.