

# Causeway Coast and Glens Shadow Council

Shadow Council Meeting Thursday 18<sup>th</sup> December 2014

## Key Decisions

No	Item	Decision
4.	Minutes of Shadow Council Meeting held 27 <sup>th</sup> November 2014 4.1 Amendments 4.2 Adoption of minutes	<i>Noted Confirmed</i>
5.	Minutes of Governance Committee meeting held 20 <sup>th</sup> November 2014 5.1 Local Government Forum (141120.15)  5.2 Partnership Panel 5.3 Location of Civic Headquarters 5.4 Adoption of minutes	<i>Nominate 3 members by d'Hondt  Adopted including amendment at 5.1</i>
6.	Minutes of Corporate Policy & Resources Committee meeting held 4 <sup>th</sup> December 2014 6.1 Banking arrangements (141204.5) 6.2 Planning Service ICT Provision (141204.10)  6.3 Rural Development Programme (142004.14) 6.4 Adoption of minutes	<i>Delay purchase of equipment pending response from Minister of Environment  Write to DARD Adopted including amendments at 6.2 and 6.3</i>
7.	Establishment of Shadow Planning Committee	<i>Committee comprises members of Transferring Functions &amp; Group Committee or member's nominee</i>
8.	Programme of Meetings January – March 2015	<i>Approved</i>
9.	Update on Corporate Plan Progress	<i>Use Council facilities for Member Corporate Plan Workshop</i>

10.	Interim Arrangements for the Commissioning of Generalist Voluntary Advice Services at Local Government Level 2015-16	<i>Extend existing arrangements with current providers by up to 6 months</i>
11.	Draft NILGA response to the Consultation on Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2	<i>Endorsed</i>
12.	Northern Ireland Audit Office – Causeway Coast and Glens Statutory Transition Committee 12.1 Annual Audit Letter 12.2 Report to those charged with Governance 2013-14	<i>Noted</i>
13.	Partnership Panel for Northern Ireland	<i>Correspondence noted</i>
14.	Local Action Group (LAG)	<i>Information noted</i>
15.	NILGA events	<i>Information noted</i>
16.	Councillors' Basic and Special Responsibility Allowances from 1 <sup>st</sup> January 2015 – 31 <sup>st</sup> March 2015	<i>Deferred Corporate Policy &amp; Resources Committee</i>
17.	Request for voluntary severance	<i>Approved</i>

## Shadow Council

Minutes of the Meeting of Causeway Coast and Glens Shadow Council held in the Council Chamber, Coleraine Borough Council on Thursday 18<sup>th</sup> December 2014 at 7.00pm

In the Chair: Councillor J Finlay, Presiding Councillor

Present: Councillors Baird, Beattie, Clair, Callan, Chivers, Clarke, Cole, Douglas, Duddy, Fitzpatrick, Harding, Hickey, Hillis, Homes, Hunter, King, Knight-McQuillan, Loftus, McCorkell, McGlinchey, McGuigan, McKeown, McKillop MA, McKillop S, McLean, McShane C, McShane P, Mulholland, Mullan, Nicholl, Quigley, Robinson, Stevenson, Watton, Wilson

In attendance: Mr D Jackson, Clerk and Chief Executive  
Mr R Baker, Lead Leisure & Development  
Mrs E Beattie, Head of Policy  
Mrs P Donaghy, Committee Administrator  
Mr P McColgan, Head of ICT  
Ms S Kelly, Lead Organisation Development  
Mr S McMaw, Head of Convergence  
Mrs D Dickson, Area Planning Manager

Also in attendance: Mr J Dempsey, Mr R Lewis, Public x 1

### 1. Apologies

Councillors Campbell, Fielding, McCandless and McCaul.

### 2. Declarations of Interest

There were no declarations of interest recorded.

### 3. Presentation – Role of the National Association of Councillors (NAC)

Councillor Fitzpatrick gave a short presentation, previously circulated, on the role of the National Association of Councillors (NAC) followed by questions from Members.

\*Councillor C McShane joined the meeting at 7.05pm.

### 4. Minutes of Shadow Council meeting held 27<sup>th</sup> November 2014

#### Matters arising:

#### 4.1 Amendments

At item SC\_07.4.3 amend *Councillor McKillop* to *Councillor S McKillop* and at item SC\_07.8 Report on Preparation Forum for Partnership Panel, amend final sentence of paragraph to read '*Councillor S McKillop further suggested that a draft policy on this matter should also be brought to Corporate Policy & Resources Committee*'.

#### **4.2 Adoption of Minutes**

It was proposed by Councillor King, seconded by Councillor Baird and AGREED: **that the minutes of the Shadow Council meeting held on 27<sup>th</sup> November 2014 be confirmed including the amendments noted at 4.1 above.**

### **5. Minutes of Governance Committee meeting held 20<sup>th</sup> November 2014**

Councillor Cole presented the minutes of the meeting.

#### **Matters arising**

##### **5.1 Local Government Forum (GC\_141120.15)**

Referring to Committee's recommendation to nominate 5 Members, Councillor Duddy stated that Council had been invited to nominate three representatives to the Forum. He proposed an amendment, seconded by Councillor McCorkell **that Council nominate 3 Members to the Forum using d'Hondt to select those nominated.**

Councillor S McKillop proposed a further amendment, seconded by Councillor Douglas **that Council nominate as many Members as it wished and nominated Councillor Blair, adding her opposition to the use of d'Hondt to select those nominated.**

Councillor Hickey proposed, seconded by Councillor MA McKillop **that the matter be referred back to Committee.**

Councillor McGuigan and Councillor C McShane recorded their support for the use of d'Hondt for the selection.

The Presiding Councillor put Councillor Duddy's motion to the vote. 25 Members voted for and 4 against.

Councillor S McKillop withdrew her motion.

The Presiding Councillor put Councillor Hickey's motion to the vote. 10 Members voted for and 17 against.

The Presiding Councillor declared Councillor Duddy's motion carried.

##### **5.2 Partnership Panel (GC\_141120.16)**

Councillor Baird advised that she had brought the inclusion of the National Association of Councillors to the Minister's attention with the support of the Panel and his response was awaited.

### **5.3 Location of Civic Headquarters (GC\_141120.11)**

Councillor McGuigan commented that the display of flags and emblems at Council buildings be based on equality and neutrality.

### **5.4 Adoption of Minutes**

It was proposed by Councillor Cole, seconded by Councillor Hunter and AGREED: that the minutes of **the Governance Committee held on 20<sup>th</sup> November 2014 be adopted, and the recommendations contained therein approved, including the amendments noted at 5.1.**

## **6. Minutes of Corporate Policy & Resources Committee meeting held 4<sup>th</sup> December 2014**

Councillor Harding presented the minutes.

### **Matters arising**

#### **6.1 Banking arrangements (CP&R\_141204.5)**

Councillor Stevenson advised that he had queried, at the meeting, if the procurement of banking facilities had been in line with Shadow Council's procurement policy. The Lead Finance Officer advised that procedure had been followed.

#### **6.2 Planning Service ICT Provision (CP&R 141204.10)**

The Chief Executive presented correspondence to the Minister of the Environment, previously circulated, drafted following Committee's recommendation.

Councillor Stevenson advised that he had requested that the Office of the First and deputy First Minister (OFMDFM) was written to regarding the shortfall in funding. He proposed, seconded by Councillor Duddy: **that Council does not proceed with the purchase of equipment until a response to Council's correspondence to the Minister of the Environment is received, when Council can make a decision on the matter.**

The Chief Executive confirmed that the correspondence to the Minister regarding the shortfall will be copied to OFMDFM.

Councillor Hillis supported the motion adding that any delay could affect Council's readiness for the transfer in April.

A vote was taken with Members voting in favour of the motion.

### 6.3 Rural Development Programme (CP&R 141204.14)

Referring to the composition of the LAG Board Councillor S McKillop proposed, seconded by Councillor Douglas **that Council writes to the Department of Agriculture and Rural Development (DARD) expressing concern at the 51% allocation to social partners and 49% to elected representatives.**

Councillor Mulholland stated that the LAG in the Causeway Coast and Glens District Council area would possibly have up to 25 members. Councillor King advised that this number would give elected representatives more representation.

A vote was taken with 21 Members voting for the motion and 3 against. It was therefore **AGREED: that Council writes to the Department of Agriculture and Rural Development (DARD) expressing concern at the 51% allocation to social partners and 49% to elected representatives.**

### 6.4 Adoption of minutes

It was proposed by Councillor Harding, seconded by Councillor Fitzpatrick and **AGREED: that the minutes of the Corporate Policy & Resources Committee held on 4<sup>th</sup> December 2014 be adopted, and the recommendations contained therein approved, including the amendments noted at 6.2 and 6.3.**

## 7. Establishment of Shadow Planning Committee

At the Transferring Functions and Group Committee meeting held on 11<sup>th</sup> December 2014, it was proposed by Councillor S McKillop, seconded by Councillor Douglas and **AGREED** that the Shadow Planning Committee comprise of the Members of the Transferring Functions and Group Committee, or his/her nominee.

Members were advised that subject to ratification of the January-March Council/Committee schedule, the next meeting of the Shadow Council would take place on Thursday 29<sup>th</sup> January 2015, and that it would be appropriate for Council to consider the recommendation to enable the first meeting of the Shadow Planning Committee to take place on Wednesday 28<sup>th</sup> January 2015.

**It is recommended** that the Causeway Coast and Glens Council approve the recommendation from the Transferring Functions and Group Committee as detailed above.

It was **AGREED: that the Shadow Planning Committee comprise the Members of the Transferring Functions and Group Committee, or his/her nominee.**

## 8. Programme of Meetings January – March 2015

The Head of Convergence presented the draft schedule, previously circulated to Members and attached as Appendix A, and indicated that with Council's approval a change could be made to the dates presented for the Shadow Council meeting and Transferring Functions & Group/Shadow Planning Committee.

Councillor Duddy stated his preference for retaining the Council meeting on the 4<sup>th</sup> Thursday of the month instead of Thursday 29<sup>th</sup> January as it clashed with another engagement in the Council Chamber on that date.

It was proposed by Councillor Harding, seconded by Councillor Hickey: **that the schedule, as presented, be approved.**

Following discussion during which some options for accommodating both events were discussed a vote was taken and Members AGREED: **that the schedule, as presented, be approved.**

Councillor Stevenson enquired when Members could expect information on Rates Setting and he was advised by the Chief Executive that information would be available at the Rates Workshop on 8<sup>th</sup> January 2015.

## 9. Update on Corporate Plan Progress

The Head of Policy presented the report, previously circulated, as undernoted.

***A Corporate Plan is now being developed for the incoming Causeway Coast and Glens Council and this will cover the period 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2019.***

***A process for the development of the new Corporate Plan was approved by the Governance Committee on 14<sup>th</sup> August 2014 to develop a robust Corporate Plan designed to meet the demands and priorities of the Causeway Coast and Glens Council as it moves forward into the new local government era.***

### ***Update on Progress***

***Consultation sessions with the Convergence Management Team and Transition Management Team took place on Monday 10<sup>th</sup> November 2014 and Monday 1<sup>st</sup> December 2014 during which the team explored and generated initial ideas for a new Vision for the Causeway Coast and Glens Council; considered what the Council's Mission Statement could be; identified several values that could underpin the work of the new Council; considered high level strategic themes for the new corporate plan; and the outputs/outcomes it should achieve.***

**Consultation sessions on the corporate plan for staff across the new Council area will also take place and these will be held in January 2015 at various Council facilities.**

**In addition it is proposed that consultation sessions with a wide range of external stakeholders such as community/voluntary groups, the business sector, other statutory agencies, etc., will take place at locations around the Council area (based on the District Electoral Areas) from the end of January through February 2015.**

**The final draft of the Corporate Plan will be brought to the relevant Council Committee for consideration in March 2015.**

### **Councillor Engagement**

**Consultation with Councillors on the new corporate plan is core to its development; work with officers has just been a ratification of the 'as is' position and the preliminary generation of ideas to help stimulate consideration and debate. It has been suggested that a consultation session could take the form of a one night residential at Corrymeela in Ballycastle. This could take place on Friday 30<sup>th</sup> and Saturday 31<sup>th</sup> January 2015 and this event would provide Members with the opportunity to explore and develop their thinking on the Council's new Corporate Plan.**

**A suggested programme for such an event could be:**

- **Commence with some preliminary briefings, followed dinner on the evening of Friday 30<sup>th</sup> January 2015.**
- **An after dinner speaker or after dinner discussion on Friday 30<sup>th</sup> January.**
- **A morning session on Saturday 31<sup>st</sup> January to consider issues relating to the new Corporate Plan.**
- **A short afternoon session on community planning and how this will link with the Council's corporate plan and other strategies;**
- **A short session on the area plan from the Planning Service.**

**The costs associated with the use of Corrymeela for such an event are £62 per person attending (this includes single room overnight accommodation, all meals, tea, breaks, and use of meeting spaces). Any costs associated with such an event would be offset by monies in the sum of £2,000 included within the DoE Member Capacity Training budget for this purpose.**

**Another lower cost option would be to arrange a one day programme at Corrymeela which would cost £16 per person (for meals, tea breaks and use of meeting spaces). Members could choose either option but there would need to be a sizeable representation if the Friday evening option is to work.**



It is recommended that the Council decides if it wants to hold the consultation session on the new Council Corporate Plan as proposed over 2 days on 30 January 2015.

It was proposed by Councillor Wilson, seconded by Councillor Hunter that: the lower cost option of a one day programme be agreed.

An amendment was proposed by Councillor S McKillop, seconded by Councillor Duddy that: Council agree the use of Council facilities for the workshop.

A further amendment was proposed by Councillor Hickey, seconded by Councillor Loftus that: Council agree the one night residential option for the workshop.

Following discussion Councillor Wilson withdrew his proposal with the agreement of his seconder, Councillor Hunter.

The Presiding Councillor put Councillor Hickey's proposal to the vote with 7 Members voting for. The proposal was declared lost.

Councillor S McKillop's proposal was put to the vote and carried: **that Council facilities are used for the workshop.**

#### **10. Interim Arrangements for Commissioning of Generalist Voluntary Advice Services at Local Government Level 2015-16**

The Lead Leisure & Development Officer presented the report, previously circulated, as undernoted.

*The Department for Social Development (DSD) currently carries policy and primary funding responsibility for generalist voluntary advice services in Northern Ireland. While DSD directly funds regional advice organisations, such as Citizens Advice Regional Office, Advice NI and the Law Centre, DSD does not directly support local advice provision. Instead this is delegated to local councils, with DSD providing funding based on need (defined in terms of deprivation) to councils. All four legacy councils in the CC&G area currently provide discretionary supplemental funding to increase the funds available for advice. There are clear social and economic benefits achieved through advice provision, including the boost provided to local economies through maximisation of benefit payments, often accounting for additional local spend exceeding the cost of advice by a factor of four or more. The demand for services at local levels remains high and is expected to increase in both volume and complexity as Welfare Reform is implemented.*

*At present the DSD ring fences an allocation of funding for Voluntary Advice Services. This forms part of their contract for funding provided to Councils within Community Support Plan Programme. Councils are asked to match fund their allocation by at least 50%. In 2014 the budget for Advice is £211,964. £109,955 is provided by Councils matched by £97,009 from DSD.*

***In March 2011, in preparation for RPA, the Community Development staff from the four Councils originally came together to determine and address transitional priorities in relation to service provision. The cluster identified arrangements for the transition of Generalist Voluntary Advice in the new council area as a priority 1 task. The preferred option moving forward and as detailed in the Williamson Report “Commissioning of Voluntary Generalist Advice – Review for North East Councils(2012)” was discussed and agreed in each of the four participating Council Chambers as: -***

- (a) In the long term, the four Councils will work together under RPA boundaries to implement a single public tender with a lead partner.***
- (b) In the short term from April 2013 and leading up to the implementation of RPA, each Council implements public tender, open to a single or consortium provider for their area using a similar methodology and their own area specification.***

***As an interim measure, each Council has publicly procured services in their respective Council area. In 2014/15 period there are 5 tendered contracts in operation; one in Coleraine, one in Ballymoney, one in Moyle and two in Limavady.***

#### ***Planning for 2016***

***The commissioning of generalist voluntary advice services has been earmarked for transfer to the Council from DSD through the Regeneration Bill. As per the Social Development Minister’s announcement on the 11<sup>th</sup> November, this will now be delayed until April 2016. Council will therefore continue to receive an offer to fund Advice Services. There is, however, uncertainty around levels of funding /budgets to be made available by DSD towards functions such as advice provision from April 2015 onwards.***

***Current advice from DSD is to plan provision on the basis of the ‘as is’ position, but with the understanding that budgets may be subject to cuts. At the time of writing this report, no indication in terms of budgets has been confirmed by the Department. Officers have used the following planning assumptions:***

- Overall budgets for Advice will be based on 2014/15 provision with a 5% cut (from Council’s contribution), accounting for the probability that DSD may continue to ring fence this element of the Community Development budget. The overall budget for planning purposes would therefore equate to £202,277 for 15/16 period, assuming no cut is applied to DSD’s element.***
- Based on this budget, combining the funds available to move forward with option (a) above exceeds the EU threshold (>£172,514) in terms of procurement. A procured service is therefore subject to advertisement within the EU Journal, with a timeframe of approximately three months to complete the process.***

***This timeframe was taken into account in seeking approval to proceed for the commissioning of these services. The Community Services Framework and associated elements, which are inclusive of Advice Services and other community development funding, was presented to Council, following a workshop in October. The decision from the Shadow Council was to defer approval of the overall framework and component strategies, subject to confirmation of budgets from Government Departments. The process has therefore been unable to proceed to procurement stage.***

***It should also be noted that DSD has recently developed and released for consultation a new advice strategy entitled 'Advising, Supporting, Empowering' A Strategy for the Delivery of Generalist Advice Services in Northern Ireland 2015-2020'. Outcomes of this consultation may have implications for delivery approaches post 2015.***

### **Conclusion**

***The delays in the transfer of powers from DSD to Council, the deferment of the Community Services Framework and strategy, the lack of clarity in the budget from DSD and the timing of rates process, present significant challenges in relation to the original intention of a smooth transition of the delivery of advice services in April 2015.***

Considering these unique series of challenges, it is recommended that an interim arrangement is put in place to extend existing contracts with current providers by up to 6 months for a maximum total net cost of £101,138. This sum equates to 50% of the total annual budget and includes a 5% cut from existing Council contributions in 2014.

This extension period would facilitate the continuation of services, while allowing additional time to seek clarity on funding levels from DSD. A procurement process would be developed concurrently under the new legal entity.

Councillor Duddy expressed concern at the fact that in the absence of confirmation from central government regarding future Council could be placing itself at risk by approving the recommendation. The Lead Officer advised that the approval sought was for a 6 month period only following which clarity relating to the future budget should have been received.

It was proposed by Councillor Duddy, seconded by Councillor McGuigan and AGREED: **that an interim arrangement is put in place to extend existing contracts with current providers by up to 6 months for a maximum total net cost of £101,138. This sum equates to 50% of the total annual budget and includes a 5% cut from existing Council contributions in 2014.**

The Presiding Officer advised Members that agenda item 11 Request for voluntary severance would be dealt with as the last item of business.

\*Mr J Dempsey, Mr R Lewis and members of the public left the meeting.

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

The Chief Executive advised that the Transferring Functions and Group Committee had endorsed the draft response, attached as Appendix B, at its meeting on 11<sup>th</sup> December 2014.

It was proposed by Councillor King, seconded by Councillor Hickey and AGREED: **that the draft response, as attached, be endorsed.**

**12. Northern Ireland Audit Office – Causeway Coast and Glens Statutory Transition Committee**

**12.1 Annual Audit Letter 2013-14**

Under Regulation 13 of the Local Government (Accounts and Audit) Regulations 2006 the Chief Local Government Auditor is required to issue an Annual Audit Letter and to ensure that all Members receive a copy. The letter was copied and circulated previously for Members' information and published on the Council's website.

**12.2 Report to those charged with Governance 2013-14**

The audit of Statutory Transition Committee's statement of accounts for 2013-14 has been completed and was copied and circulated previously for Members' information.

Members noted both items of correspondence.

**13. Partnership Panel for Northern Ireland**

Council views were sought by Department of the Environment on which representative bodies/associations should be represented on the Partnership Panel. Having considered the views of Councils the Minister had written to confirm that he had invited NILGA's Office Bearers to the first meeting of the Panel on 2<sup>nd</sup> December 2014.

Members noted the correspondence.

**14. Local Action Group (LAG)**

**14.1 Report on LAG Formation**

The latest editions of the Local Action Groups facilitator newsletters were circulated to Members. The publication is specifically targeted at those involved in the process of LAG formation. An update on the formation process was also circulated.

**14.2 Local Action Group Update**

The latest public facing newsletters were circulated for Members' information.

**15. NILGA “Creative Service Delivery” Events**

Members were given information on forthcoming events.

14<sup>th</sup> January 2015 10.00am – 1.00pm – La Mon Hotel & Country Club, Castlereagh

15<sup>th</sup> January 2015 10.00am – 1.00pm – Lough Neagh Discovery Centre, Craigavon

Hosted by NILGA and NAC with support from the Local Government Training Group these sessions will give examples of what councils have done to innovatively reduce costs and deliver better services.

**16. Councillors’ Basic and Special Responsibility Allowances from 1<sup>st</sup> January 2015 to 31<sup>st</sup> March 2015 – Applicable for Councillors serving on Existing Council and New Councils Operating in Shadow Mode**

A copy of Circular No LG 46/2014 was copied to Members and presented by the Chief Executive.

It was proposed by Councillor McGuigan, seconded by Councillor Mulholland and **AGREED: that the item be deferred to the next meeting of the relevant Committee, namely Corporate Policy & Resources Committee.**

**17. Request for Voluntary Severance**

It was proposed by Councillor Harding, seconded by Councillor Fitzpatrick and **AGREED: to consider the item in committee.**

The Chief Executive presented the report, previously circulated for Members’ consideration and as undernoted.

***Under Section 123(3) of the Local Government Act (Northern Ireland) 2004, arrangements provide for payment of compensation to local government staff who leave their employment as a direct consequence of the RPA reform process following the 1<sup>st</sup> April 2015 (the vesting date for new Councils).***

***Section 123(4) of the 2014 Act provides a process for payment of compensation to local government staff who leave their employment as a direct consequence of the RPA reform process in advance of 1<sup>st</sup> April 2015. Circular LG 29/2014 from the Department of the Environment under cover of a letter dated 3<sup>rd</sup> June 2014, provides guidance on the contents of applications for severance under Section 123(4).***

***Mr Flanigan, the current Chief Executive of Limavady Borough Council has requested voluntary severance with effect from 31<sup>st</sup> March 2015. Hence it must be addressed in accordance with Section 123(4). The business case included with the report was previously circulated to Members, and followed the guidance and criteria therein for Departmental consideration which requires***

***as a pre-requisite, the relevant Committee and Council's agreement so that Mr Flanigan's request may be processed.***

***In addition to the Committee/Council approval, this request must also be approved by the new Council prior to the submission of the business case to the Department. This request was considered and approved by Limavady Borough Council at a Council meeting on Tuesday 2<sup>nd</sup> December 2014.***

It was proposed by Councillor Clarke, seconded by Councillor Stevenson and AGREED: **that the request for voluntary severance as outlined in the report and business case presented be approved.**

It was proposed by Councillor Harding seconded by Councillor Watton and AGREED: **that Council resolve itself out of committee.**

**The meeting closed at 8.11pm**

Appendices

Appendix A - Programme of Meetings January – March 2015

Appendix B - Draft NILGA Response to the Consultation on Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2

### COUNCIL/COMMITTEE MEETING SCHEDULE Jan to March 2015

Day, Date and Time	Council/Committee Meeting	Location
Thursday 8 <sup>th</sup> January, 7pm	Rates Workshop	Coleraine
Thursday 15 <sup>th</sup> January, 7pm	Corporate Policy & Resources	Moyle
Thursday 22 <sup>nd</sup> January, 7pm	Organisation Development Committee	Ballymoney
Wednesday 28 <sup>th</sup> January, 7pm	Transferring Functions & Group/Shadow Planning	County Hall
Thursday 29 <sup>th</sup> January, 7pm	Shadow Council: ( <i>option to</i> ) Strike Rate	Coleraine
Thursday 5 <sup>th</sup> February, 7pm	Corporate Policy & Resources	Coleraine
Wednesday 11 <sup>th</sup> February, 7pm	Transferring Functions & Group/Shadow Planning	County Hall
Thursday 12 <sup>th</sup> February, 7pm	Special Meeting: Strike Rate <i>and/or</i> Governance Committee	Coleraine
Thursday 19 <sup>th</sup> February, 7pm	Organisation Development Committee	Limavady
Thursday 26 <sup>th</sup> February, 7pm	Shadow Council	Coleraine
Thursday 5 <sup>th</sup> March, 7pm	Organisation Development Committee	Moyle
Wednesday 11 <sup>th</sup> March, 7pm	Transferring Functions & Group/Shadow Planning	County Hall
Thursday 12 <sup>th</sup> March, 7pm	Corporate Policy & Resources	Ballymoney
Wednesday 18 <sup>th</sup> March, 7pm	Governance Committee	Coleraine
Thursday 26 <sup>th</sup> March, 7pm	Shadow Council & Annual Meeting	Coleraine

## **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.**

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### **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

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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."*

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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.

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### **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.

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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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