

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE OFFICE OF THE FIRST MINISTER
AND DEPUTY FIRST MINISTER
(OFMDFM)**

AND

**THE PLANNING APPEALS COMMISSION (PAC)
AND THE WATER APPEALS COMMISSION (WAC)**

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1. INTRODUCTION

Purpose of the Memorandum of Understanding

- 1.1 This Memorandum of Understanding sets out the relationship between the Office of the First Minister and Deputy First Minister ("the Department") and the Planning Appeals Commission and the Water Appeals Commission ("the Commissions"), and defines the financial and administrative framework within which the Commissions operate. The development of such a memorandum was one of a number of recommendations arising from the quinquennial review of the Commissions that was completed in 2002 and which confirmed a clear continuing need for the Commissions and retention of their status as tribunal Non-Departmental Public Bodies (NDPBs) under the sponsorship of the Department.
- 1.2 The Commissions are independent appellate bodies established under statute to deal with a wide range of land use, planning, water and related issues. They are not part of any government department.
- 1.3 The Department is responsible for the provision of such resources and services as are needed for the Commissions to carry out their functions and to provide for efficient and effective secretariat support. The Department has no role in any of the hear and report or decision-making functions of the Commissions. Sponsorship of the Commissions is exercised entirely within the Department's Corporate Services Division which is fully separated within the Department from its Regeneration and External Division in light of the responsibilities of the latter which arise from the Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003.
- 1.4 A Financial Memorandum is included at Appendix A and the whole document has been agreed by the Department's Permanent Secretary and the Chief Commissioner of the Commissions.

Status of Commissions

- 1.5 The Planning Appeals Commission (PAC) is a tribunal Non-Departmental Public Body (NDPB) established by The Planning (Northern Ireland) Order 1972 and continues

under Article 110 of The Planning (Northern Ireland) Order 1991 as amended by The Planning (Amendment) (Northern Ireland) Order 2003.

- 1.6 The Water Appeals Commission (WAC) is a separate tribunal NDPB set up under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973.
- 1.7 Commissioners are appointed by the First Minister and Deputy First Minister and are not civil servants but statutory office holders.
- 1.8 Although the Commissions are two separate statutory independent appellate bodies they are administered and resourced as one entity. Funding is primarily provided by the Department and its Permanent Secretary is accountable for the Commissions' expenditure. All full-time Commissioners, including the Chief Commissioner, are appointed to both the PAC and WAC (see 7.1).

2. ROLES/FUNCTIONS OF THE COMMISSIONS

Role

2.1 The Commissions' role is to:

- make independent decisions on all appeals against departmental decisions on a wide range of planning, environmental and water matters; and
- hear and report to departments, following either a public inquiry or hearing, on a wide range of matters referred to the Commissions. Decisions on these matters are taken by the departments.

Functions

Planning Appeals Commission

2.2 The PAC's functions are mainly to be found in The Planning (Northern Ireland) Order 1991. Referrals to the Commission arise from decisions/proposals of five departments, namely the Department of the Environment (DOE), the Department for

Regional Development (DRD), the Department for Social Development (DSD), the Department of Enterprise, Trade and Investment (DETI) and the Office of the First Minister and Deputy First Minister (OFMDFM) as well as district councils (in relation to matters regarding waste). The PAC also conducts a number of inquiries and hearings each year which are initiated by departments. The majority of these inquiries relate to development plans and major planning applications.

Water Appeals Commission

2.3 The WAC is a separate appellate body. WAC functions are mainly found in the Water and Sewerage Services (Northern Ireland) Order 1973. Referrals to the WAC arise from decisions of four departments, namely the Department of the Environment (DOE), the Department of Regional Development (DRD), the Department of Agriculture and Rural Development (DARD) and the Department of Culture, Arts and Leisure (DCAL).

3. AIM AND OBJECTIVES OF THE COMMISSIONS

3.1 In seeking to make a positive contribution to the environment and quality of life in the region, the Commissions' aim is to maintain their independence, free from any improper influence or external control.

3.2 In pursuance of this aim the Commissions have set the following objectives:

- to make the best possible appeal decisions and offer the best possible advice to departments, consistent with the evidential context within which appellate functions are exercised.
- to provide an efficient and effective service compatible with the maintenance of quality, high professional standards and available resources.
- to provide clear, readily available and up-to-date information and guidance to all who come into contact with the Commissions.

- to achieve all performance measures and targets set by the Commissions.
- to train, develop and maintain an efficient, well-motivated and united workforce.

4. KEY PERFORMANCE MEASURES

4.1 The objectives of the Commissions determine their strategic direction and the following areas will provide a basis on which to measure their performance. Each year, the Chief Commissioner with advice from the Commissions' Management Board and in consultation with the Department on resource issues, will set key performance targets which will then be published in the Commissions' Annual Business Plan. The Chief Commissioner will gather information to measure performance and will report on this in his Annual Report.

The Commissions, in accordance with their aim, will seek to deliver a high quality, customer-focused service to those involved in the planning process within Northern Ireland, by setting targets and performance measures for key areas of their work, including the following:

Deciding appeals

Conducting public inquiries/hearings in response to requests from Departments

Investigating and responding to complaints

Publishing information including the Chief Commissioner's annual report

Training and developing all of their staff

Improving efficiency and effectiveness

5. ANNUAL REPORT

- 5.1 After the end of each financial year, the Chief Commissioner shall publish an annual report of the Commissions' activities. The report will outline the Commissions' main activities and performance during the previous financial year, and will help inform the business planning process for the forward year. The Annual Report will be published by September of each year.

6. RESPONSIBILITIES AND ACCOUNTABILITIES

OFMDFM/Ministers

- 6.1 The PAC consists of whatever number of Commissioners is deemed appropriate by the Department in consultation with the Chief Commissioner. Full-time Commissioners to the PAC also hold joint appointments to the WAC. The First Minister and Deputy First Minister and the Department are responsible for all appointments to the Commissions.
- 6.2 The Commissions exercise their decision-making role in an independent manner, free from influence by the Department or any other body. The Department is responsible for providing resources and services to the Commissions and the First Minister and Deputy First Minister are accountable for the use of these resources and for any public expenditure.

Departmental Accounting Officer

- 6.3 The Departmental Accounting Officer is the Permanent Secretary of the Department who is responsible for ensuring that the financial and other management controls applied by the Department to the Commissions are appropriate and sufficient to safeguard public funds, and for monitoring the Commissions' compliance with those controls. The Departmental Accounting Officer must be satisfied that the internal controls applied by the Commissions conform to the requirements of regularity, propriety and good financial management and is accountable to the Northern Ireland Assembly for the overall effective and efficient use of public funds by the Commissions

in carrying out their functions. To this end, the Departmental Accounting Officer has access to papers and records of the Commissions that relate to the use and control of its resources, but has no special access to other papers.

Chief Commissioner

6.4 The Chief Commissioner is responsible for the financial, operational and administrative management of the Commissions.

Administrative Support

6.5 Administrative support to the Commissions is provided as necessary by the Department. The staff are Northern Ireland civil servants and are subject to the same terms, conditions and requirements as apply to all other Northern Ireland civil servants, but are dedicated to the Commissions and are responsible to the Chief Commissioner.

The Departmental Sponsoring Division

6.6 Resources and support services for the Commissions are provided through Corporate Services Division in the Department. The Division represents the interests of Ministers and the Departmental Accounting Officer in relation to the Commissions. In this regard, the principal roles and duties of the Division are:

- to provide resources as appropriate to enable the Commissions to carry out their functions effectively and efficiently;
- to ensure appropriate financial controls are in place to safeguard public funds;
and
- to advise the Departmental Accounting Officer and Ministers as appropriate.

Relationships

6.7 Relationships between the Commissions and Ministers and the Department will be governed by the "arm's length" principle, wherein the role of Ministers is to set the Commissions' legal and financial framework including appointments to the Commissions and arrangements for their funding. Within this framework, the Commissions determine their policy and activities in accordance with their statutory responsibilities and the requirement of Government policy.

7. APPOINTMENT OF COMMISSIONERS

7.1 Appointments to the Commissions are made by the First Minister and Deputy First Minister and the Department. The appointments process is managed by Corporate Services Division in the Department, in accordance with the Code of Practice of the Commissioner for Public Appointments for Northern Ireland. The Division will consult the Chief Commissioner in advance of any appointments process.

8. STAFFING AND PERSONNEL MANAGEMENT WITHIN THE COMMISSIONS

Responsibilities

8.1 The Chief Administrative Officer is responsible to the Chief Commissioner for the day-to-day management of staff and for ensuring that the quality of the service delivered by the staff as a whole, and individually, is both effective and efficient. The Chief Administrative Officer is the main point of contact between the Commissions and the sponsor Division on administrative matters.

Organisational Reviews

8.2 The Department has the right to carry out organisational reviews on all or part of the Commissions' administrative activities as it considers appropriate, and review gradings and numbers of administrative staff in post from time to time. The Department will

agree the Terms of Reference with the Chief Commissioner before carrying out such reviews.

9. PERIODIC REVIEW

9.1 The Department will conduct reviews of the Commissions at least every five years, or at such shorter intervals as the Department may determine to ensure the need and organisational arrangements for the Commissions remain valid and effective.

10. REVIEW, PUBLICATION AND INTERPRETATION OF THE MEMORANDUM OF UNDERSTANDING

Review

10.1 The Memorandum of Understanding has been agreed by the Department and the Commissions . It will be reviewed by the Department and the Commissions one year after it has been adopted and thereafter as part of the periodic review of the Commissions.

Amendment

10.2 Changes to this document will be made only with the approval of the Departmental Accounting Officer and the Chief Commissioner.

Publication

10.3 Copies of this Memorandum of Understanding will be placed in the library of the Northern Ireland Assembly. Copies will also be made available to members of the public on request and it will be produced on the websites of the Department and the Commissions.

Interpretation

10.4 Questions arising on the interpretation of any part of this Memorandum of Understanding/ Financial Memorandum will be resolved by the Department and the Commissions through consultation.

Effective Date

10.5 These arrangements have effect from 9 July 2004.

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Deputy First Minister
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Water Appeals Commission
Park House
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PLANNING APPEALS COMMISSION AND WATER APPEALS COMMISSION

FINANCIAL MEMORANDUM

1. INTRODUCTION

1.1 This Financial Memorandum sets out the financial relationship between the Department, through the sponsor Division, and the Commissions with regard to issues such as financial accountability, financial monitoring, the provision of estimates and submission of in-year bids.

1.2 The Commissions are funded by the Department and the Departmental Accounting Office is accountable for the Commissions' expenditure.

Department's Role and Accountability

1.3 It is the responsibility of the Departmental Accounting Officer to:

- I. ensure that the Department applies appropriate financial and other management controls to safeguard the public funds it makes available to the Commissions in support of their operations;
- II. ensure that the controls being applied by the Commissions conform to the requirements of propriety and of good financial management; ensure compliance with the principles set out in Government Accounting Northern Ireland (GANI) and the Northern Ireland Resource Accounting Manual (NIRAM) and any other relevant guidance issued by the Department of Finance and Personnel;
- III. monitor overall levels of expenditure.

The Departmental Accounting Officer may carry out such examinations of the Commissions' internal financial control systems as are required to enable him to discharge his

responsibilities.

The Chief Commissioner's Responsibilities

The Chief Commissioner is responsible for the financial, operational and administrative management of the Commissions. The Chief Commissioner shall ensure that:

- all resources are used economically, efficiently, and effectively;
- financial and other management controls are appropriate and sufficient to safeguard public funds and conform with the requirements of propriety and good financial management;
- expenditure is maintained within approved budgets and that general guidance issued by the Department is observed;
- policies are developed for the day-to-day management of staff

The Chief Commissioner has a duty to ensure that all expenditure is reasonable and proper and managed within the requirements of GANI and NIRAM and any other relevant guidance issued by the Department of Finance and Personnel.

2 THE PLANNING FRAMEWORK

2.1 The Commissions shall produce an annual business plan outlining:

- aims and objectives;
- forecasts of need and income; and
- targets and performance measures.

2.2 The Chief Commissioner shall present an annual business plan to the Department and, thereafter, will provide in-year and end-of-year reports to the Department on performance against plans.

Budgets

- 2.3 Corporate Services Division in the Department is responsible for maintaining the budgets of the Commissions. This includes the preparation of inputs to the estimates, quarterly monitoring and in-year bidding processes.

Salaries

- 2.4 Remuneration and allowances for Commissioners are determined by the Department, with the approval of the Department of Finance and Personnel.
- 2.5 The salaries of the full-time Commissioners are processed by the Department under the normal Departmental salary system. Panel Commissioners are paid by the Planning Appeals Commission on a fee-per-case basis.

Audit Arrangements

- 2.6 The Department's Internal Auditors, or other nominated representatives of the Departmental Accounting Officer, shall have access to the Commissions' administrative files, systems, data etc, to enable them to provide the necessary level of assurance for the Departmental Accounting Officer to fulfil his responsibilities as set out in this document.
- 2.7 Northern Ireland Audit Office officials also have access to all records as may be required for them to carry out examinations into the regularity and propriety of expenditure and the economy, efficiency and effectiveness with which resources have been used.
- 2.8 The Commissions shall comply with any relevant recommendations of the Public Accounts Committee or other Assembly authority which are accepted by the Government whether specific to the Commissions or of a more general application.

2.9 Any queries relating to the interpretation of this Memorandum should be referred to the Department.

Corporate Plan

2.10 The 3-year Corporate Plan will set out the longer term strategic direction of the Commissions and will be rolled forward and updated each year. It will reflect the agreed budget in the overall Public Expenditure plans for the Assembly departments and will include:

- a forecast of future demands, based on an analysis of the operating environment;
- an assessment of the external factors which influence the Commissions' activities, the options, risks and key planning assumptions;
- the Chief Commissioner's strategies for achieving the Commissions' aims and objectives;
- a forecast of financial and manpower resource needs; and
- the personnel training and development strategy.

The Plan will be submitted to the sponsor Division by the end of May each year for discussion. The resource implication of the plan will be agreed in writing by the Department within 2 weeks of its submission. The Commissions will publish their corporate plan by the end of June.

2.11 A Business Plan for the immediate year ahead will be included in the Corporate Plan and will include annual targets in respect of each of the key areas of work set out in the Memorandum of Understanding for the Commissions.

Meetings

2.12 There will be regular meetings between the sponsor Division and the Commissions' Management Board.