

Landfill Performance Deed	17/10/2017
Corporate, Policy and Resources Committee – For decision	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Innovation and Transformation
Outcome	The Council will continuously examine and introduce ways to provide services in more accessible and efficient ways
Lead Officer	Chief Finance Officer
Cost: (If applicable)	£3,782,292

1.1 Background

Northern Ireland Environment Agency (NIEA) requires Council under the Pollution Prevention & Control (Industrial Emissions) Regulations (Northern Ireland) 2013 SR 160 (as amended) (“the PPC Regulations”) to make and maintain adequate financial provision in relation to and/or arising from its duties and obligations under the Permit which was issued to Council in accordance with the PPC Regulations.

1.2 Detail

In order to fulfil Councils obligations under the PPC Regulations Council are required to provide a deed of performance in relation to its operational landfill site at Craigahuliar. This deed sets out a financial obligation which council is bound to as a result of the operation of the landfill site. There is a calculation model agreed with both NIEA and Northern Ireland Audit Office (NIAO) which determines the level of the financial obligation, this calculation being based upon factors such as remaining capacity and quantity of material being landfilled. As is normal with such a document this requires sealing at a Council meeting prior to submission to NIEA.

1.3 Annual updating

In this case the sealed document requires an annual update to take into account additional usage and consumption of the landfill site thereby affecting the level of financial obligation required. With that in mind this document is before committee in the first instance since this is the first update of the document. The performance deed attached at appendix 1 dated 24th October 2017 will supersede the document dated 25th April 2017 and sealed at Council on that date. Subsequent updates will occur annually thereafter following conclusion of the audit of annual accounts, the figure to be included in the performance deed being agreed as part of the audit process.

1.4 Recommendation

It is recommended that council approve the attached performance deed be updated as detailed and proceed to full council for sealing replacing the document dated 25th April 2017.

DATED 24th October 2017

CAUSEWAY COAST AND GLENS BOROUGH COUNCIL

-and-

NORTHERN IRELAND ENVIRONMENT AGENCY

PERFORMANCE DEED

(LOCAL AUTHORITIES)

in relation to:-

CRAIGAHULLIAR LANDFILL SITE

THIS DEED is made the 24th October 2017

BETWEEN

1. **CAUSEWAY COAST AND GLENS BOROUGH COUNCIL** whose principal office is at Cloonavin, 66 Portstewart Road, Coleraine, BT52 1EY (“Permit Holder”)

-and-

2. **THE DEPARTMENT OF AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS acting through the NORTHERN IRELAND ENVIRONMENT AGENCY** whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. (The Department of Agriculture, Environment and Rural Affairs hereafter called the “Agency”).

RECITALS

- (A) The Permit Holder operates the installation at CRAIGAHULLIAR Landfill Site, Ballymacrea Road, Portrush, BT56 8NS which includes a specified waste management activity (“the Installation”) and any reference to Permit Holder shall include its successors in title.
- (B) The Agency is the regulator of the Installation for the purposes of the Pollution Prevention & Control (Industrial Emissions) Regulations (Northern Ireland) 2013 SR 160 (as amended) (“the PPC Regulations”) and references to the Agency shall include its successors in title as the regulator.
- (C) In accordance with the PPC Regulations a Permit (Reference P0148/06A/V3) (“the Permit”) was issued to the Permit Holder by the Agency on 1st April 2015 for the use of the Installation for a specified waste management activity (under the PPC Regulations) subject to conditions contained in the Permit as amended from time to time.
- (D) In order to satisfy the Agency that the Permit Holder is a fit and proper person for the purposes of the PPC Regulations the Permit Holder desires to make and maintain adequate financial provision in relation to and/or arising from its duties and obligations under the Permit.
- (E) The provision made by this Deed is without limitation to the Agency’s other rights and powers under the PPC Regulations and/or the Permit.

NOW IT IS AGREED as follows

DEFINITIONS AND INTERPRETATION

1. In this Deed unless the context otherwise requires or definitions are elsewhere set out in this Deed.
 - 1.1 “Agreed Interest” means interest at the rate of 2% above the base rate of Danske Bank published from time to time compounded quarterly or at the rate of 10% per annum compounded quarterly whichever is the greater.
 - 1.2 “Business Day” means any day from Monday to Friday inclusive other than Christmas Day, Good Friday or a statutory Bank Holiday in Northern Ireland.
 - 1.3 “Expenses” includes all costs and other expenses of whatsoever nature (on a full indemnity basis) incurred by the Agency in connection with the exercise of the Agency’s powers under regulations 29(1) and/or 29(2) of the PPC Regulations under the Permit or the enforcement of this Deed in whole or in part or the exercise of any power under this Deed and all legal costs and disbursements together with Agreed Interest from the date on which the Expenses are incurred.
 - 1.4 “The CPI” means the Consumer Price Index published by the Office for National Statistics or such other Index as the Agency may from time to time notify the Permit Holder
 - 1.5 “Permit Holder’s Obligations” means all the Permit Holder’s duties and/or obligations arising from the Permit and/or the Waste and Contaminated Land (Northern Ireland) Order 1997.
 - 1.6 “the Review Date” means the anniversary of the date of this Deed.
 - 1.7 References in this Deed to Clause numbers are references to the Clauses in this Deed bearing those numbers.
 - 1.8 The singular includes the plural and vice versa.
 - 1.9 Any reference to an Act of Parliament or Order in Council shall include any modification extension or re-enactment of it for the time being in force and shall also include all instruments, orders, plans, regulations, permissions, licenses and directions for the time being made issued or given under such Act or Order or deriving validity from

it or so made issued or given and treated as though so made issued or given under a re-enactment with or without any modification or extension.

1.10 Headings are inserted for reference purposes only and do not form part of this Deed.

1.11 This Deed shall be subject to and construed in accordance with Northern Ireland Law.

ENFORCEMENT OF THIS DEED

2. 2.1 This Deed shall be enforceable by the Agency upon the Agency for the purpose of securing the performance and observance of the provisions of the Permit and further as security for the Agency for the purpose of satisfying Expenses incurred by the Agency in respect of any work undertaken by the Agency (whether by itself or any other authorised person) pursuant to regulations 29(1) and/or (2) of the PPC Regulations.

Provided that the Agency has in relation to the exercise of power under regulation 29(2) complied with the requirements of regulation 29(3) and in either case the Agency has served a notice on the Permit Holder requesting reimbursement of the Expenses within 10 Business Days of the date of service of the notice and the Permit Holder has failed to pay and thereupon the Permit Holder shall be unconditionally bound to satisfy the Expenses incurred by the Agency on demand on service of a Certificate of Default by the Agency upon the Permit Holder without deduction set-off or counterclaim and for the avoidance of doubt the Permit Holder's liability hereunder may arise on successive occasions PROVIDED THAT the amount recoverable from the Permit Holder under this Deed shall not exceed the total of £3,782,292 and FURTHER PROVIDED THAT the amount secured pursuant to this Deed shall be revised.

(i) annually on the Review Date or on the date upon which the Agency serves written notice of such revision on the Permit Holder certifying the revision as having been calculated in accordance with this Clause whichever is the later in line with the annual movement in the CPI in the month prior to such

Review Date in respect of the then preceding 12 months and calculated by compounding annually.

- 2.2 This Deed is and shall remain a continuing security for the Permit Holder's Obligations to the Agency at all times and shall not be satisfied or otherwise affected by any repayment or recovery from time to time of the whole or any part of any amount which may then be due owing from the Permit Holder to the Agency.

CERTIFICATE OF DEFAULT

3. 3.1 The obligation of the Permit Holder to satisfy and discharge the Expenses sustained by the Agency shall be deemed conclusively to have arisen both as to liability to pay and the quantum of the damages upon the service upon the Permit Holder by the Agency of a Certificate of Default in the form of the draft annexed hereto giving particulars of the default or occurrence giving rise to the liability and the quantum of the Expenses sustained.
- 3.2 Upon receipt of the Certificate described in Clause 3.1 the Permit Holder undertakes forthwith to make payment without any deduction direct to the Agency for the sum demanded.
- 3.3 The Agency may make a demand under or enforce this Deed either with or without first resorting to other means of payment or to other securities without taking proceedings against the Permit Holder.

RELEASE FROM THIS DEED

4. Upon any one of the following events occurring the Permit Holder shall be released from performance of this Deed
 - 4.1 The Permit being surrendered or partially surrendered in either case in respect of all of the specified waste management activity of the Permit pursuant to regulation 22(5) of the PPC Regulations.
 - 4.2 The Permit being transferred or partially transferred in respect of all of the specified waste management activity pursuant to regulation 20 of the PPC Regulations except where any transfer is made to a local government body pursuant to the Reform of Local Government and any legislative provision arising therefrom.

- 4.3 Permit either being revoked entirely or partially pursuant to regulation 24 of the PPC Regulations in respect of all of the specified waste management activity where the regulator either:
 - 4.3.1 does not require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations; or
 - 4.3.2 does require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations and where case the Agency subsequently issues a certificate of satisfaction under regulation 24(7).
- 4.4 The Permit Holder providing to the Agency an alternative mechanism for making financial provision which is acceptable to the Agency in accordance with Clause 5.
- 4.5 The decision of a Court or Tribunal of competent jurisdiction.

ALTERNATIVE MECHANISM

- 5. Nothing contained in this Deed shall prevent the Permit Holder making an application to the Agency to consider any alternative mechanism for making financial provision in accordance with regulation 4(3)(b) of the PPC Regulations.

SERVICE OF NOTICES

- 6. Save as otherwise specifically provided any notice or document to be given or served for the purposes of this Deed shall be in writing and shall be delivered personally or sent by first class post or sent by telex or facsimile (confirmed in either of these cases by post) to the party to be given notice or served at the address specified herein or at such other address as the parties hereto may from time to time so serve upon each other and such notice shall be deemed to have been given and such document served
 - 6.1 If delivered personally or sent by telex or facsimile as aforesaid on the date of delivery or transmission unless such date is not a Business Day or is after 4.30 pm on a Business Day in which event on the next Business Day; or
 - 6.2 If sent by first class post on the second Business Day after the date of posting.

FORBEARANCE BY THE AGENCY

7. No alteration in the terms of the Permit made under the PPC Regulations or in the extent or nature of the works to be provided constructed and maintained thereunder and no allowance of time by the Agency nor any forbearance forgiveness or compromise in or in respect of any matter or thing concerning the Permit on the part of the Agency shall discharge the Permit Holder from its liability hereunder

COSTS

8. The Permit Holder shall pay the Agency's reasonable legal and administrative costs and expenses incurred in the preparation and execution of this Performance Deed in the sum of £100 plus Value Added Tax

ARBITRATION OF DISPUTES

9.
 - 9.1 If any dispute arises between the parties as to the interpretation implementation or operation of this Deed and the parties are unable to resolve the dispute amicably it shall be referred to arbitration by either party.
 - 9.2 A reference to a dispute shall not prevent the Agency recovering monies under this Deed in accordance with Clause 2.1.
 - 9.3 In the event of a reference to arbitration the parties shall agree an arbitrator or if not agreed an arbitrator will be nominated at the request of either party by the President (or failing that the vice-President) for the time being of the Northern Ireland Chapter of the Irish Branch of the Chartered Institute of Arbitrators and such reference shall be deemed to be a reference to arbitration pursuant to the Arbitration Act (Northern Ireland) 1996.
 - 9.4 The parties agree that the decision of the arbitrator shall be final except in the case of manifest error.
 - 9.5 If the decision of the arbitrator is that the Agency has wrongly recovered monies under this deed in whole or in part then the Agency shall repay to the Permit Holder or such other person as directed by the Permit Holder within 20 Business Days of the arbitrator's decision that amount wrongly recovered together with Agreed Interest from the date

of wrongful recovery to the date of repayment to the Permit Holder or such other person as directed by the Permit Holder.

- 9.6 The parties agree that the costs of the arbitrator shall be paid as directed the arbitrator or in the absence of such direction each party shall bear its own costs.

APPENDIX (NOTICE)

THE FORM OF THE CERTIFICATE OF DEFAULT

To: Causeway Coast and Glens Borough Council (Permit Holder)

CERTIFICATE OF DEFAULT relating to Performance Deed

Dated 24th October 2017 and

MADE BETWEEN:

CAUSEWAY COAST AND GLENS BOROUGH COUNCIL (“the Permit Holder”)

-and-

THE NORTHERN IRELAND ENVIRONMENT AGENCY (“the Agency”)

The Agency whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA hereby certifies that default has been made by the Permit Holder in the observance and performance of its obligations under PPC Permit dated 1st April 2015 Reference P0148/06A/V3 (and subsequent Variation Notices) issued by the Agency and/or the Deed between the Agency and the Permit Holder in the following respects:-

As a result of the aforesaid default the Agency is entitled to recover under the above-mentioned Deed the amount **£ 3,782,292** which sum the Agency hereby requires you to pay pursuant to your obligation under the said Deed.

Dated this day of 20

Signed

(Authorised Officer of the Agency)

Authorised signatories:

IN WITNESS of which the parties have executed this Deed the day and year first written above

Present when the Seal of
Causeway Coast and Glens Borough Council
was affixed hereto

Chief Executive

Mayor

Signed and Delivered as a Deed by _____

on behalf of the Northern Ireland Environment Agency

dated _____ in the presence of:-

Signature of Witness: _____

Address of Witness: