



COMMISSIONING BOARD

Thursday 16 May 2013 at 2.00 pm

Meeting Room 2 - Ryedale House, Malton, North Yorkshire YO17 7HH

Agenda

PART ONE

- 1 **Emergency Evacuation Procedure**
- 2 **Apologies for Absence**
- 3 **Declarations of Interest**

PART TWO - B Items - Matters to be referred to Council

- 4 **The Introduction of Countywide Civil Parking Enforcement (CPE) (Pages 1 - 28)**

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REPORT TO: EXTRAORDINARY COMMISSIONING BOARD

DATE: 16 MAY 2013

REPORT OF THE: HEAD OF ENVIRONMENT, STREETSCENE, FACILITIES, IT
PHIL LONG

TITLE OF REPORT: THE INTRODUCTION OF COUNTY WIDE CIVIL PARKING
ENFORCEMENT (CPE)

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 As directed at Council 6 September 2013 Commissioning Board are to consider the NYCC Joint Underwriting Agreement and Scarborough Borough Council Service Level Agreement regarding implementation of Civil Parking Enforcement (CPE) in Ryedale and the proposal from North Yorkshire County Council regarding the introduction of a centralised back office and joint enforcement car parking operation managed by Scarborough Borough Council for on and off street car parks.
- 1.2 To recommend to Council to approve.

2.0 RECOMMENDATIONS

- 2.1 It is recommended that Member's:
- (i) Consider the NYCC Joint Underwriting Agreement and Scarborough Borough Council Service Level Agreement regarding implementation of Civil Parking Enforcement (CPE) in Ryedale

3.0 REASON FOR RECOMMENDATIONS

- 3.1 North Yorkshire County Council (NYCC) resolved on 18 October 2011 to introduce Civil Parking Enforcement (CPE) across the County (including Ryedale) during 2012 and 2013. The application was submitted to the Department for Transport at the end of October 2012. The DfT has confirmed that following their lawyers assessment they have approved the application. The projected implementation date remains the end May 2013 assuming agreement with all Districts.
- 3.2 Should one District Council decide not to support the application then the implementation date throughout the county is very likely to be delayed. The County Council has been told by the DfT that they would not support a proposal from NYCC for a District where CPE is introduced on-street under the Traffic Management Act

2004 and the District Council continue to enforce off-street under the Road Traffic Regulation Act 1984. Indeed the CPE Operational Guidance to local authorities states that *'the Secretary of State recommends that a CPE application is delayed if a district or borough is not prepared to include its off-street car parking within a Civil Enforcement Area'*.

- 3.3 The introduction of CPE will have a range of implications for the provision and management of off-street parking by the District Council and other providers, increasing the current levels of on street enforcement which should reduce traffic violations, congestion and potentially encourage greater use of off street car parks.
- 3.4 Under the proposed operational model RDC will retain; the function of parking authority responsible for off-street car parks, off-street income, cash collection, permit administration, car park maintenance and influence over enforcement levels.

4.0 SIGNIFICANT RISKS

- 4.1 Due to other statutory obligations and pressures it is increasingly difficult for North Yorkshire Police to commit sufficient resources to enforce on-street parking. Should CPE not be introduced in Ryedale, NYCC have concerns that there could be potential risk in the future that the Police stop enforcing on-street altogether though this is unquantifiable.
- 4.2 Once CPE powers are granted the changes to the law are not easily undone. Members should be aware that if, following the three year (plus two) trial, off street enforcement be taken back in house, RDC will have to continue to enforce under the 2004 Act, incurring reduced excess/penalty charge income. In addition cost of off street enforcement could increase for RDC due to retraining of staff, more time consuming operation and potential new software etc.
- 4.3 There will be increased cost associated with the introduction of CPE. The parking penalties that apply under CPE are set nationally and are currently less than RDC excess charges fixed under the old legislation. In addition initial analysis indicates that the proposed charges of the new arrangement - relating to the management of off street only - are more costly than RDC's current operation.
- 4.4 In mitigation, during the three year trial period (plus two year extension if required) NYCC guarantee (as per the Agreement) to underwrite any additional costs/loss of income caused by the joint arrangement/introduction of CPE, the worst case scenario during this period is cost neutral for RDC, however risk obviously exists at the end of the three (plus two year) trial period if the RDC is still incurring additional cost and the subsidy is discontinued. (Annex A).

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 In 2007/8 NYCC started consideration of a countywide CPE project, CPE having been operational in Harrogate Borough since 2002 and in Scarborough Borough since 2007. There is a commitment in the Local Transport Plan 3 to introduce CPE in the remaining five Districts within North Yorkshire, namely Craven, Hambleton, Richmondshire, Ryedale and Selby.
- 5.2 On 18 October 2011 the North Yorkshire Parking Strategy (NYPS) was adopted. The document set out the strategy for aspects of parking which fall under the control of

North Yorkshire County Council. It seeks to align with the District Councils, National Park and North Yorkshire Police parking objectives. Integral to the success of the strategy is the implementation of CPE.

- 5.3 A report regarding CPE implementation and implications for RDC was taken to Full Council 6 September 2012. It was resolved that Council:
- (i) Approve delegated authority be given to the Head of Environment in consultation with the Chairman of Commissioning Board to extend the deadline for revision of the RDC Car Parking Strategy if required;
 - (ii) Approve the inclusion of RDC managed off-street car parks in the Civil Parking Enforcement designation order;
 - (iii) Endorse in principle the introduction by NYCC of CPE across Ryedale on the basis that any additional costs incurred as a result by RDC will be reimbursed by NYCC for a three year trial period after which reimbursement of costs will be reviewed;
 - (iv) Approve in principle the introduction of a centralised back office and joint enforcement car parking operation managed by Scarborough Borough Council on a three year trial basis, with a mechanism for RDC retaining local influence over off-street enforcement and retention of all surplus off-street income, minus the costs of operation; and
 - (v) The service level agreement with Scarborough and details of the guarantee from the County Council will be referred to the Commissioning Board for their consideration.”

6.0 POLICY CONTEXT

6.1 **Council Aim 2:** To create the right conditions for economic success in Ryedale:

- To have economic structure an supporting infrastructure in place;
- Opportunity for people; increasing wage and skill levels.

Council Aim 3: To have a high quality, clean and sustainable environment.

- Reducing CO₂ emissions from Council operations.
- Adaptation to Climate Change.
- Improve the quality of our local environment.

Transform Ryedale District Council

- Building our capacity to deliver through collaboration and working in Partnership.

7.0 CONSULTATION

7.1 Public and stakeholder consultation has already been undertaken by NYCC to comply with Department for Transport (DfT) requirements for CPE. This identified views on the priorities for parking enforcement across the County and those locations where improved parking management would be beneficial. This intelligence has been used to inform the testing of operational models.

7.2 The twelve week public consultation ran from the 13 June to the 5 September 2011. The questionnaire was sent to every County Councillor, District Councillor, Parish Council and approximately 75 key stakeholders representing different interests. A press release was circulated to local papers throughout the county advising them of the consultation. The questionnaire was available in libraries and on the County Council website and sent to approximately 2,000 households across the county through the County Council's citizen's panel questionnaire.

8.0 REPORT DETAILS

8.1 Introducing countywide CPE means that the powers to enforce existing criminal parking offences would be transferred from the police to the County Council who would be able to issue PCN's for contraventions of on-street parking and waiting restrictions. The purpose of CPE is to increase compliance with parking regulations and, therefore, reduce illegal, dangerous and inconsiderate parking and the negative impacts this has on the highway regarding congestion and poorer air quality. There are higher and lower level on-street contraventions however, under CPE the police retain sole responsibility for the parking offences listed below:

- dangerous parking
- obstruction
- failure to comply with police 'no parking' signs placed in emergencies
- any vehicle where security or other traffic policing issues are involved

NYCC – CPE Proposal

8.2 The proposal put forward by NYCC is that the current Harrogate and Scarborough CPE operations are extended in the short to medium term, with a review built in after a period of three years to consider whether there are any benefits in moving to a countywide operational model in the longer term. On the basis of a joint on and off street enforcement operation:

- Scarborough would manage Ryedale, Hambleton and Richmondshire.
- Harrogate would manage Craven and Selby.

8.3 This proposal represents a natural geographic split and maximises the experience and expertise built up in the existing Harrogate and Scarborough operations. Also potential financial savings could be achieved through closer working relationships between the existing Harrogate and Scarborough operations e.g. joint procurement

8.4 Recommendations of NYCC officers are that the County Council should set up the operation with one on-street Civil Enforcement Officer (CEO) per current non-CPE district (five on street CEOs in total). This would be reviewed once the operation has been established.

Implications of CPE for Ryedale

8.5 Under the proposed NYCC operational model, management of off street enforcement and back office function regarding penalty charge notices will be transferred to Scarborough Borough Council. These changes are enshrined in the two documents attached as Annex 1 and 2.

The SBC Service Level Agreement: Covers the transfer, operational details, liabilities, responsibilities, costs, performance review, dispute resolution, apportionment of cost, termination, etc of the new service arrangement

The NYCC Underwriting Agreement: Outlines the financial provision regarding method of recompense owed to RDC regarding the additional cost of implementing CPE, dispute resolution etc.

Key points in summary:

- The current level of RDC off-street enforcement will be maintained, with the scope for RDC to alter as required.
- Under the proposed arrangement 1.3 staff equivalents would be transferred to Scarborough Borough Council under TUPE to ensure full protection of staff; however SBC terms and conditions are similar to RDC's.

- Staff have been fully consulted and have visited Scarborough to see the operation. Formal consultation will be dependant on member's decision to proceed.
- As Members are aware, additional cost will be incurred by RDC due to lost excess charge income (under CPE penalty charge rates are lower) and SBC management costs (which are higher than RDC's current operation), The Underwriting Agreement covers how RDC will be reimbursed by NYCC for a three year trial period. Following officers negotiation, NYCC have agreed that this would be extended (if required) to five years following the third year review.
- There still remains some financial risk for RDC if it is still incurring additional cost after 5 years and NYCC decide to discontinue the subsidy.
- Ryedale District Council will retain the function of parking authority responsible for RDC owned off-street car parks, all surplus off-street income - minus the costs of operation - and retain influence over the enforcement on off-street car parks. RDC will continue to manage in house:
 - Permit administration.
 - Cash collection and counting.
 - Machine leasing and maintenance.
 - Car park maintenance.
- Within the Underwriting Agreement NYCC suggest that improved on-street enforcement is likely to encourage greater use of off-street car parks, potentially increasing off-street income. NYCC feel this may help to offset the likely reduction in income/increased cost paid to Districts. RDC officers feel this would be almost impossible to quantify given all the variables of demand, as such a caveat has been mutually agreed regarding the 'Burden of Proof' being on NYCC to demonstrate that increased demand is primarily caused by CPE.

9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

- The implementation of CPE assumes coordination between on and off street parking enforcement operations.
- The proposed model of operation means that rather than delivering the enforcement of off-street car parks 'in house', RDC will be buying in a CPE service from Scarborough Borough Council.
- If there is an un-rectified breach in the agreement (i.e. failure to deliver the functions to a satisfactory standard) then the agreement can be terminated within 3 months.
- Stricter enforcement of on street parking could enhance usage of off street parking and/or impact on resident parking.
- The development of CPE could facilitate future consideration of resident parking schemes as appropriate. Income generated would go to NYCC.
- The County Council will fund the set-up costs associated with the requirement to consolidate existing off-street parking places orders into one order to enable the new enforcement method (CPE) under the Traffic Management Act 2004 requirement to amend off-street car park signing to reflect the new enforcement method

b) Legal

- The Secretary of State expects local authorities considering CPE to consult fully with stakeholders.
- NYCC have stated that the DfT will expect a joint collaborative bid between partner authorities. CPE operational guidance states that "*the Secretary of*

State recommends that a CPE application is delayed if a District or Borough is not prepared to include its off-street car parking within a Civil Enforcement Area, though it is legally possible to have different enforcement operators.

- The Department for Transport does not encourage a CPE business case based solely on income from PCNs, the primary purpose being to deter illegal parking and not to generate revenue. Should CPE increase compliance it is reasonable to expect that over time the number of PCNs issued will decrease, as demonstrated in both Harrogate and Scarborough Boroughs. It is therefore anticipated that the level of enforcement in the CPE operation throughout the county will continue to be balanced against income from on-street parking charges and PCNs.
 - First call on any income collected through on-street fines or on-street parking charges is the funding of the associated enforcement operation and adjudication systems. Any surplus income has to be used in accordance with the uses detailed in Section 55 of the RTRA which allows any remaining surplus to be used to contribute towards the cost of provision and maintenance of off-street parking however, if it is considered by the authority that further off-street parking accommodation is unnecessary or undesirable, the use of any surplus is restricted to road improvements and maintenance, provision of public transport services or environmental improvements.
 - There are implications regarding the difference in the levels of fine between the 1984 Road Traffic Regulation Act and the 2004 Traffic Management Act.
 - Local authorities are responsible for managing, directly or indirectly, all on-street and some off-street parking. The relevant powers are contained in the Road Traffic Regulation Act 1984 (RTRA).
- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder):
- Stricter enforcement of on street parking could require revaluation of current levels of provision for disabled parking.
 - Improved customer experience i.e. one enforcement authority.
 - Following consultation, TUPE implications will be considered regarding staff, however these are thought unlikely to cause an issue due to similar Terms and Conditions.

Phil Long
Head of Environment

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Background Papers:
Attached SLA with SBC
Attached Underwriting Agreement NYCC
The introduction of CPE report - Full Council 6 September 2012
SLA Schedules

INTRODUCTION OF COUNTY WIDE CIVIL PARKING ENFORCEMENT - RISK MATRIX ANNEX A						
Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
				is still making a loss		
Due to other statutory obligations and pressures it is increasingly difficult for North Yorkshire Police to commit sufficient resources to enforce on-street parking. Should CPE not be introduced in Ryedale NYCC feel that there is potential risk that they could stop enforcing on-street altogether.	Potentially no on street enforcement in RDC resulting in increased non compliance with road traffic regulations, congestion, illegal, dangerous, inconsiderate parking etc. Situation potentially compounded if CPE introduced into all other Districts in North Yorkshire.	3	B	Agree to introduce CPE	1	A
The revised CPE timescale could necessitate extension of the deadline for revision of the car parking strategy	Failure to meet committee deadline	3	B	Revise deadline will be required to fit in with new CPE timescale	1	A
Staff to be transferred across to SBC	TUPE implications	3	B	Should decision be made for intro of CPE staff will be further consulted and T&C's addressed under TUPE with union involvement. Terms and conditions seem similar already to SBC. Staff are	1	A

INTRODUCTION OF COUNTY WIDE CIVIL PARKING ENFORCEMENT - RISK MATRIX ANNEX A

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
				aware and have been fully involved with the process. To date no issues are foreseen		

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

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DATED

2013

SCARBOROUGH BOROUGH COUNCIL

AND

RYEDALE DISTRICT COUNCIL

AGREEMENT

**Relating to the Inclusion of Ryedale District Council's Managed Off-Street Parking,
Functions in connection with the Management in the Civil Parking Enforcement
Designation Order and Civil Parking Enforcement Operational Model**

**Head of Legal and Democratic Services
Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
North Yorkshire
YO11 2HG**

AGREEMENT dated

2013

BETWEEN

- (1) SCARBOROUGH BOROUGH COUNCIL (“the Borough Council”) of Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG.**

- (2) RYEDALE DISTRICT COUNCIL (“the District Council”) of Ryedale House, Old Malton Rd, Malton, North Yorkshire YO17 7HH.**

RECITALS

1. The Borough Council and the District Council are Local Authorities for the purposes of the Local Government Acts of 1972 and 2000.

2. Under Section 101 of the 1972 Act the District Council is empowered to arrange for the discharge of any of its non-executive functions by (inter alia) another local authority and under Part 1A of the 2000 Act is empowered to arrange for the discharge of any of its non-delegable functions by another local authority.

3. Pursuant to Section 43 and Schedule 3 of the Road Traffic Act 1991 the Secretary of State has made the Designation Order dated 30th May 2013 which has designated the whole of the county of North Yorkshire as a permitted parking area and a special parking area as therein defined and which allows the Borough Council to carry out civil parking enforcement in the area of the District Council.

4. North Yorkshire County Council (the “County Council”) is the local traffic authority for all roads in the County of North Yorkshire other than those for which the Secretary of State is the traffic authority. The County Council has agreed with the Borough Council through a Deed of Arrangement dated xxxxx for the enforcement and consequential administration of all Traffic Regulation Orders relating to the control of on-street parking in the District of Ryedale by the Borough Council to be in accordance with the powers conferred by the Designation Order.

5. The parties have agreed to implement an arrangement for the integrated control of both on-street and off-street parking enforcement under the Traffic Management Act 2004. The District Council as a parking authority and the owner of certain car parks and having control over other off-street parking places in the District of Ryedale

has agreed to arrange for the integrated control of such car parks and places and the exercise of the relevant Functions by the Borough Council together with the related statutory on-street parking functions.

6. The parties are aware of and will have regard to the Statutory Guidance (“Guidance”) as published by the Secretary of State for Transport under Section 87 of the Traffic Management Act 2004 dated 28th February 2008.

NOW IT IS AGREED as follows:

1. DEFINITIONS

- 1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings:

“the 1972 Act” means the Local Government Act 1972

“the 1984 Act” means the Road Traffic Regulation Act 1984

“the 1991 Act” means the Road Traffic Act 1991

“the 2000 Act” means the Local Government Act 2000

“Business Day” means any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

“Completion” means the performance by the parties of their respective obligations under clause 3.

“Completion Date” means the date on which Completion occurs.

“Contract Standards” means the standards prescribed within Schedule 2 of this agreement as required by the Borough Council or the District Council for the effective and efficient performance of the Functions in relation to off-street parking.

“the Designation Order” means the Order dated 30th May 2013 made by the Secretary of State for the County of North Yorkshire.

“the Functions” means the exercise of any power pursuant to the Designation Order so far as it relates to off-street parking in the District of Ryedale.

Without prejudice to the generality of the foregoing it is declared that the Functions also include: the issuing of Penalty Charges and any subsequent steps necessary to recover payments due; the operation of an adjudication service and collection of charges in connection therewith; and for the avoidance of doubt also includes the making of orders under Section 35 (1) of the 1984 Act the Designation Order and the 1991 Act and the issuing of notices under Sections 35C, 46A and 39(3) of the 1984 Act the Designation Order and the 1991 Act subject in both cases to the approval of the District Council and the provisions of clause 6.4 where appropriate.

“Indemnify” means to indemnify, keep indemnified and hold harmless the relevant party in full and on demand from and against all costs, expenses, liabilities, injuries, losses (including but not limited to any direct, indirect or consequential losses), damages, claims, penalties, proceedings (including all other reasonable legal and other professional fees and expenses) which the indemnified party incurs or suffers.

“Index” means the All Items Index of Retail Prices (RPI) published by the Office for National Statistics (or any government department upon which duties in connection with the completion or maintenance of the index shall have devolved) or in the event that the department shall cease to compile or publish the RPI such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined for the purposes of this Agreement as being an Index which gives an accurate indication of the rate of inflation of such items as are comprised in the RPI.

“Indexation” means an increase in line with any increase in the Index in relation to sums payable hereunder during the period commencing with June 2013 and ending with the actual increase for the year and month of payment of any such sum.

“Liabilities” means all costs, expenses, losses, claims, proceedings, awards and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

“Off Street Car Parks” means those car parks that are within the district of Ryedale and owned or controlled by the District Council.

“Parking Bays” means a part of a Parking Place marked out for the leaving of a vehicle.

“Parking Places” means those District Council managed purpose built car parks and areas of land designated by the District Council as “Off Street Car Parks” at the date of this Agreement.

1.2 The following have the meanings ascribed thereto in the 1991 Act:

“Parking Area”

“Parking Authority”

“Penalty Charge”

1.3 References in this Agreement to any statutory provision shall be deemed to include reference to any similar or corresponding provision in any subsequent enactment replacing or modifying the said provision so long as the provision as so replaced or modified is capable of forming the subject of agency arrangements.

1.4 In the interpretation of this Agreement the headings are for convenience only and shall not affect the interpretation of this Agreement and unless the context otherwise requires the singular shall include the plural and the masculine shall include the feminine and vice versa.

1.5 For the avoidance of doubt the Designation Order shall be considered to be a statutory provision.

1.6 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.

2. AGREEMENT TO TRANSFER

The District Council shall transfer and the Borough Council shall receive and discharge all of the Functions as herein provided with effect from the Completion Date for a period of 3 years subject to the termination provisions as set out in clause 5. The parties will review the operation of this agreement before the end of the 3 year period as set out in clause 16. The District Council shall have the option to extend this Agreement after the 3 year period for a further period of 2 years with the agreement of the Borough Council.

3. COMPLETION

3.1 Completion of the transfer of the Functions shall take place on and with effect from the close of business on the date hereof or on such other date as is agreed between the parties when the following shall take place.

3.2 The District Council shall execute and deliver to the Borough Council all instruments of transfer necessary or desirable for the transfer of all of the District Council's rights, title and interest in the Functions.

4. CONSIDERATION

4.1 The District Council will retain all income from Penalty Charges Notices and Pay and Display ticket income from off street car parks.

4.2 The Borough Council shall be responsible for collecting and banking all revenues from penalty charge notices received in the ordinary operation of off-street parking within the district of Ryedale.

5. TERMINATION

This Agreement may be determined by either party giving to the other a minimum of 6 months notice in writing. If there is agreement between both parties termination may be made earlier but only up to a minimum of three months notice in writing.

6. EXERCISE OF FUNCTIONS

6.1 In exercising any Functions under this Agreement both parties shall carry out the same efficiently and with all due diligence and skill in accordance with the Contract Standards, included in Schedule 2.

6.2 The District Council may in consultation with the Borough Council and by three months written notice to the Borough Council withdraw or add to any off street Parking Places or Parking Bays within Parking Places for the operation of the Functions under this Agreement. 6.3 Subject to the provisions of Sections 35(C), 39, and 46A of the 1984 Act the District Council shall retain the right to determine in accordance with any legislation applicable from time to time:

6.3.1 Provision for traffic regulation orders as set out in Section 35(1) of the Road Traffic Regulation Act 1984 including but not limited to :

6.3.2 the level of charges for use of and in connection with the Parking Places;

6.3.3 the vehicles or classes of vehicles entitled to use the Parking Places; and

6.3.4 the conditions on which the Parking Places may be used; including the days and hours of operation and maximum periods for which vehicles may wait in the Parking Places.

6.4 The Borough Council will inform the District Council of any changes in the pricing information on the operation of the Agreement. The level of costs to be charged and estimated income received by each party is included in Schedule 4 of this Agreement.

7. MAINTENANCE

7.1 The District Council shall at its own expense clean, maintain, repair and renew where necessary the Parking Places, all signage and surface markings installed at the Parking Places and all parking charge collection and/or pay and display machines.

8. THIRD PARTY ARRANGEMENTS

8.1 Notwithstanding the terms of this Agreement the District Council reserves the right exercisable at any time upon notice to the Borough Council to conclude arrangements with third parties in respect of contract or other parking allocation in relation to car Parking Places or Parking Bays within Parking Places and the rights of the Borough Council herein contained shall be subject thereto and to any existing arrangements at the date hereof with third parties and with District Council employees in respect of the use of the same.

9. EXCLUSION OF RIGHTS OF THIRD PARTIES

9.1 This agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.

10. LIABILITIES AND APPORTIONMENTS

- 10.1 Save as otherwise expressly provided, the District Council:
- 10.1.1 remains responsible for all Liabilities in connection with the Functions and parking places incurred up to the Completion Date.
 - 10.1.2 remains responsible for all claims in the connection with the Functions and parking places outstanding as at the Completion Date or any claims arising by reason of any act or omission of the Borough Council or in relation to the ownership or operation of the Functions up to the Completion Date.
 - 10.1.3 will deal with the Liabilities set out in clause 10.1.1 and where appropriate will settle the claims referred to in clause 10.1.2.
 - 10.1.4 will Indemnify the Borough Council as a result of the District Council's failure to comply with its obligations under clause 10.1.1 and 10.1.2.
- 10.2 Save as otherwise expressly provided, the Borough Council:
- 10.2.1 is responsible for all Liabilities in connection with the Function incurred after the Completion Date;
 - 10.2.2 will Indemnify the District Council as a result of the Borough Council's failure to comply with its obligations under clause 10.2.1.
- 10.3 All expenditure and outgoings in respect of the Functions and all payments received in respect of the Functions which, in each case, cover a period both before and after the Completion Date will be apportioned on a time basis so that such part of the relevant expenditure or payment received attributable to a period up to the Completion Date will be borne by, or for the benefit of, the District Council and such part of the relevant expenditure or payment received attributable to the period after the Completion Date will be borne by, or for the benefit of, the Borough Council.
- 10.4 The Borough Council and the District Council will within 28 days of Completion prepare a statement of adjustments setting out the net balance payable by either the Borough Council or the District Council to the other in accordance with clauses 10.1 and 10.2. All amounts due will be paid to the Borough Council or the District Council, as the case may be, within 28 days of completion of the statement of adjustments. Any payments pursuant to clauses 10.1 and 10.2 not included in such statement of adjustments but subsequently made or received by the Borough Council or the

District Council will be apportioned in accordance with clause 10.4 and any claim for reimbursement will be made by notice in writing supported by copy documentation evidencing the amount of the same and the calculation of the apportionment. All such sums due will be paid within 10 Business Days of a receipt of a notice of apportionment.

- 10.5 To the extent that any payment is made to the District Council after Completion in respect of the performance by the Borough Council or any contract with a customer or generally in relation to the carrying on of the Functions by the Borough Council after Completion the District Council will receive the same as trustee for the Borough Council and will account to the Borough Council for the same as soon as reasonably practicable and in any event within 5 Business Days following receipt.

11 COSTS

- 11.1 Each party to this Agreement will bear its own costs and expenses relating to the negotiation, preparation and implementation of this Agreement and arrange for reimbursement by the County Council if applicable.

12 NOTICES

- 12.1 Any notice or other communication given in connection with this Agreement will be in writing and will be delivered personally or sent by prepaid first class post to the recipient address set out below or to any other address which the recipient has notified in writing to the sender received not less than 7 Business Days before the notice was despatched:

Mr Stuart Clark
Parking and Venues Manager
Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
North Yorkshire
YO11 2HG

xxxxxxx

Head of Environment

Ryedale District Council
Ryedale House
Malton
North Yorkshire
YO17 7HH
xxxxxx

12.2 A notice or other communication is deemed given:

12.2.1 if delivered personally, upon delivery at the address provided for in this clause; or

12.2.2 if sent by prepaid first class post, on the second Business Day after posting it

12.3 The provisions of this clause will not apply, in the case of service of court documents, to the extent that such provisions are inconsistent with the Civil Procedure Rules.

13. ASSIGNMENT

13.1 The Borough Council may not assign the benefit of, or any of its rights under, this Agreement to any person whatsoever. The District Council may not assign the benefit of, or any of its rights under, this Agreement unless prior written consent has been obtained from the Borough Council such consent not to be unreasonably withheld.

14. DATA PROTECTION

14.1 The parties shall (and shall procure that any of their employees involved in the provision of the agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the agreement.

15. EQUALITIES

15.1 Each party shall ensure that it does not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, gender origin, religion, disability, sexual orientation or otherwise) in employment.

15.2 Each party shall take all reasonable steps to secure the observance of clause 15.1 by all servants, sub-contractors employees or agents of such party employed in performance of this Agreement.

16. SERVICE REVIEW AND GOVERNANCE

16.1 The parties' Project Managers (Mr Stuart Clark for the Borough Council and xxxxxx for Ryedale District Council, unless there is notification of a difference in personnel designation) shall have regular meetings (**Regular Meetings**) to monitor and review the performance of this agreement, to discuss any changes proposed in accordance with clause 1.1 (b) of Schedule 2 and to discuss the Service Standards as set out in Schedule 2. These meetings shall be minuted by the Borough Council's Project Manager and / or representative and copies of those minutes shall be circulated to, and approved by, both parties.

16.2 Before each Regular Meeting, the Borough Council's Project Managers shall notify the District Council's Project Manager, and vice versa, of any problems relating to the provision of the Functions for discussion at the Regular Meeting. At each such meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure see clause 20. Progress in implementing the plan shall be included in the agenda for the next Regular Meeting.

16.3 A review meeting to assess the performance of the parties in the delivery of the Functions shall be held at threemonthly intervals (**Review Meeting**). Each meeting shall be attended by senior representatives of the parties, together with the Project Managers.

16.4 The parties shall review the Service Standards (as included as Schedule 5 of this Agreement) and the Agreement at each Review Meeting and will, in accordance with clause 1.1 (b) of Schedule 2, agree modifications to reflect changes in the parties' requirements for the Functions and Service Standards.

17. GENERAL

17.1 This Agreement (and the documents referred to in it) constitute the entire agreement between the parties and supersede and replace any previous agreement,

understanding or arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement.

- 17.2 Each party will do, or procure the doing of, all acts and things and execute, or procure the execution of, all documents as are necessary to give full effect to the terms of this Agreement.
- 17.3 Failure or delay by any party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.
- 17.4 Any waiver of any breach of, or any default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 17.5 The rights and remedies expressly for by this Agreement will not exclude any rights or remedies provide by law.
- 17.6 No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement.

18. TUPE

- 18.1 The parties agree that the provisions of Schedule 3 shall apply to any Relevant Transfer of staff under this agreement.

19. GOVERNING LAW AND JURISDICTION

- 19.1 This Agreement will be governed by and construed in accordance with English law. The Courts of England will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the parties agreed to submit to that jurisdiction.

20. COUNTERPARTS

20.1 This Agreement may be executed in any number of counterparts each of which when executed and delivered will be an original, but all the counterparts will together constitute one and the same agreement.

21. DISPUTE RESOLUTION

21.1 Any dispute hereunder which cannot be resolved by a nominated officer shall be referred to the appropriate managers at the Borough Council and the District Council. Either party may then convene a meeting which both parties shall attend to discuss the matters in dispute.

21.2 In the event of the dispute not being resolved following a meeting referred to in clause 21.1 above the matter shall be referred to a single independent arbitrator in accordance with the Arbitration Act 1996 (the Arbitrator).

21.3 The Arbitrator shall be appointed at the request of either of the parties by or on behalf of the President for the time being of the Chartered Institute of Arbitrators.

21.4 The decision of the Arbitrator shall be final and binding on the parties and the costs of the arbitration shall be borne as the Arbitrator may determine.

**THE COMMON SEAL of
SCARBOROUGH COUNCIL
was hereunto affixed
in the presence of:**

**HEAD OF LEGAL SERVICES
The officer appointed for this purpose
HEAD OF SERVICE**

**THE COMMON SEAL of
RYEDALE DISTRICT COUNCIL
was hereunto affixed
in the presence of**

.....
Clerk to the Council

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THIS AGREEMENT IS DATED

2012

BETWEEN:

North Yorkshire County Council of County Hall, Northallerton, North Yorkshire, DL7 8AD (“NYCC”) and

X District Council of (‘‘XDC’’)

1. BACKGROUND

- 1.1 Civil Parking Enforcement (“CPE”) has been operational in Harrogate Borough since 2002 and in Scarborough Borough since 2007. NYCC is making an application to the Department for Transport (DfT) under the Traffic Management Act 2004 to operate CPE across the county of North Yorkshire.
- 1.2 XDC supports NYCC’s application to DfT and seeks to co-operate with NYCC in establishing countywide CPE in North Yorkshire.
- 1.3 XDC currently enforces off-street parking in its district under the Road Traffic Regulation Act 1984 while North Yorkshire Police is responsible for on-street parking enforcement in the district.
- 1.4 A partnership approach towards countywide CPE has been adopted by NYCC and the District Councils of the County including XDC.
- 1.5 When countywide CPE is implemented in North Yorkshire then both on-street and off-street parking enforcement will be operated under the Traffic Management Act 2004 throughout the County.
- 1.6 Currently XDC issue Excess Charge Notices under the Road Traffic Regulation Act 1984. The introduction of CPE will mean that a Penalty Charge Notice is issued for the contravention of a parking restriction. The parties accept that the introduction of CPE in the District of X may lead to a reduction in the income for XDC obtained per PCN issued. This is due to the fact that the Road Traffic Regulation Act 1984 allows local discretion in setting the ECN rate, where as the Traffic Management Act 2004 stipulates the rates for a PCN. The rates set in the Traffic Management Act 2004 are less than the rate currently used by XDC.
- 1.7 XDC intends to enter into an agreement with Scarborough / Harrogate Borough Council to deliver CPE in its off-street car parks (“the Enforcement Agreement”). The parties accept that the cost of buying in the CPE service from Harrogate / Scarborough Borough Council may be different from the in house cost of delivering the enforcement service currently incurred by XDC.
- 1.8 The parties accept that it is possible that better on-street enforcement through CPE may encourage greater use of off-street car parks resulting in increased income for XDC from pay and display parking charges and a higher number of PCNs being issued. However, it is also accepted that parking demand is highly volatile and subject to a range of external causal influences which could increase off-street parking demand. As such the burden of proof will be on the County Council to demonstrate that any increased off-street parking

demand and resultant income is primarily caused by CPE and the District Council acting reasonably will need to agree before this clause is enacted.

2. FINANCIAL PROVISIONS

2.1 In recognition of the potential net loss for XDC during the initial period of CPE in its District NYCC agrees to underwrite certain losses which may be incurred by XDC as set out in 2.2 below.

2.2 Subject to 2.3 below NYCC will for a period of three years, commencing from the date of the operational introduction of CPE into the off-street car parks operated by XDC ("the commencement date"), make an annual payment of x to XDC where $x = (A - B) - C$

A = the estimated balance agreed between the parties that XDC would expect to receive from enforcement activities in the relevant year taking into account operating costs and income from Excess Charge Notices ("the baseline")¹.

B = the actual balance from enforcement activities under the Enforcement Agreement for the relevant year taking into account operating costs² and income from Penalty Charge Notices.

C = any mutually agreed increased income, excluding income taken into account in the calculation (A – B) above, which has been received by XDC and which NYCC can demonstrate is attributable to the introduction of Civil Parking Enforcement.

2.3 XDC will keep an account ("the Account") in accordance with section 55 of the Road Traffic Regulation Act 1984 ("the 1984 Act"). Account monitoring information in the format required by the County Council shall be submitted by XDC at quarterly intervals by the 30th of the month following the quarter end. The final annual account covering the full financial year shall be submitted to the County Council by XDC by the 22nd April.

2.4 The County Council will make payments to XDC quarterly in arrears. The County Council and XDC will mutually agree the forecast due payment at the start of this Agreement and thereafter at the start of each financial year using the calculation in 2.2. The first three payments of each financial year will be for one quarter of the agreed forecast net loss for the year and will be paid by the County Council by the 30th of the month following quarter end. Should the actual net loss for the quarter vary from the forecast net loss by more than 20% either way, either authority can request a recalculation and a re-profiled payment. The final payment, which must be made by 15th May following the end of the financial year, will reflect the balance due to either authority taking into account any previous payments in respect of the actual net loss for the

¹ The base cost will be inflated from year 2 of the agreement on an annual basis. For staff costs the inflationary rate will be in accordance with the XDC pay reward and for non-staff costs the inflationary rate will be 2% per annum.

²Should XDC terminate "the Enforcement Agreement" with Scarborough / Harrogate Borough Council and decide to deliver CPE in its off-street car parks by another means the operating costs will be capped at the actual cost for the previous financial year

²Should XDC terminate "the Enforcement Agreement" with Scarborough / Harrogate Borough Council and decide to deliver CPE in its off-street car parks by another means the operating costs will be capped at the actual cost for the previous financial year

financial year. The first and last payments under the Agreement will be adjusted by agreement of the parties to reflect that they do not cover a full quarter.

- 2.5 NYCC agrees to fund any reasonable set-up costs associated with consolidating existing off-street parking orders into one order to enable CPE under the Traffic Management Act 2004 and amending off-street car parking signage to comply with the said Act.

3. DISPUTE RESOLUTION

- 3.1 Any dispute arising from this Agreement shall be referred to the Chief Executive of NYCC and the Chief Executive of XDC or properly appointed deputy to be determined jointly.
- 3.2 Where a dispute has been referred to the Chief Executives under the above clause but not resolved it shall be determined by an arbitrator to be appointed by agreement between the parties and in default of such agreement by the President of the Institution of Civil Engineers.

4. TERMINATION

- 4.1 The Agreement shall terminate on the third anniversary of the commencement date unless terminated earlier under 4.2.
- 4.2 Where a dispute cannot be resolved under 3.1 or 3.2 and either party (the first party) considers the other party (the second party) to be in breach of this Agreement it may give notice of default to the second party. If the second party fails to rectify the default within three months of notification of default the first party may terminate the agreement on three month's notice.
- 4.3 Prior to the third anniversary of the commencement date NYCC will review the Agreement. If XDC is still evidencing a net loss due to the implementation of CPE, NYCC will extend the Agreement for a further period of 2 years. The decision on whether to extend the Agreement will be taken by NYCC following consultation with XDC.

5. STATUTORY COMPLIANCE

- 5.1 The parties agree to comply with all relevant statutory provisions relating to this Agreement including, but not limited, those relating to:
 - (a) Data Protection.
 - (b) Equal Opportunities.
 - (c) Freedom of Information (in respect of which the parties will use their best endeavours to consult each other in connection with any request under the Freedom of Information Act made to one or both parties in relation to the subject matter of this Agreement).

6. GOOD FAITH

- 6.1 All transactions entered into by each party in pursuance of this Agreement shall be conducted in good faith and on the basis set out or referred to in this Agreement.
- 6.2 Each party shall at all times act in good faith towards the other and will use all reasonable endeavours to ensure that this Agreement is observed.
- 6.3 Each party will do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

7. THIRD PARTY RIGHTS

- 7.1 Any person who is not party to this Agreement will have no rights in respect to it or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 7.2 The right of the parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to the Agreement.

8. COUNTERPARTS

- 8.1 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

Signed for and on behalf of North Yorkshire }
County Council by its duly authorised representative }

Name:

Position:

Signed for and on behalf of X }
District Council by its duly authorised representative }

Name:

Position: