

Belfast City Council

Report to:	Shadow Strategic Policy and Resources Committee
Subject:	arc21 Collaborative Arrangements
Date:	30 January 2015
Reporting Officer:	Tim Walker, Head of Waste Management, Ext 3311
Contact Officer:	Tim Walker, Head of Waste Management, Ext 3311

1	Purpose of Report
1.1	To seek approval from Committee for the Council to continue to be a member of a newly reconstituted arc21, post local government reform, when the number of councils shrinks from 26 to eleven and to consider a proposal received from Newry, Mourne and Down District Council to also join the reconstituted arc21.

2	Background
2.1	This report is being submitted primarily to ensure that the administrative purposes of the Council continue without interruption over the local government reform period. Members are reminded that the Department of the Environment (DOE) is responsible for the development and publishing of a waste management strategy setting out policies in relation to the recovery and disposal of waste and councils are responsible for the publication and implementation of Waste Management Plans setting out their arrangements to collect and treat these wastes.
2.2	In 2000, eleven councils stretching from Ballymena Borough to Down District Council came together to form arc21, which is one of three Waste Management Groups in Northern Ireland, to fulfil these responsibilities. It was set up as a waste management joint committee under the Local Government Act (NI) 1972 with body corporate status giving it the legislative authority, in its own right, to employ staff, acquire assets and enter into contracts.
2.3	The DOE has advised arc21 that, in terms of local government reform, an early decision on the future arrangements for waste management is required to allow time for the necessary legislation to be put in place
2.4	The body corporate legislation for arc21 lists the existing 11 constituent councils of the arc21 Joint Committee but these will cease to exist as of April 2015. At this time, arc21 will be providing the following on behalf of Belfast and some of its constituent councils: <ul style="list-style-type: none">▪ a landfill contract▪ a garden & food waste treatment contract▪ the emptying and recycling of bring banks▪ the supply of bins▪ the supply of kitchen caddy liners and▪ a materials recovery facility (MRF) contract.

2.5	In addition, arc21 is entering into the final stages of the procurement for the development of major waste infrastructure for the long term treatment of residual waste which will facilitate the Council in achieving its statutory waste targets.
2.6	As the current constituent councils cease to exist, it would appear timely for the new councils to consider the adequacy of the existing waste management structure for delivery of their future waste management functions and, in particular, whether the governance and decision-making arrangements are fit for purpose.
2.7	<p>There are several potential delivery models for the future which might include:</p> <ol style="list-style-type: none"> 1. The establishment of a single waste authority, either voluntary or mandatory 2. The establishment of multiple joint committees, either voluntary or mandatory or 3. No cross-council co-operation
2.8	Since its early days, arc21 has been advocating that the first model could provide the best delivery model for Northern Ireland which has been endorsed by the constituent councils a number of times but, currently, the development of a single waste authority, either voluntary or mandatory and the development of mandatory joint committees would require changes to existing policy and primary legislation and are not achievable in the short term.
2.9	Therefore, to reflect the existing contractual arrangements and allow time for all options to be identified and fully considered, it is proposed to continue with a reconstituted arc21 which will permit the existing arrangements to continue. The Council's Legal Services section is currently working with arc21 on revising the Terms of Agreement and, in light of progress made to date, a draft copy of these has been appended to this report (see Appendix 1). Given the close involvement of Legal Services in revising this document, Members are requested to grant authority to the Chief Executive once the document has been finalised to expedite the necessary arrangements with the DOE for reconstituting arc21 and to ensure that delivery of the contracts above does not falter.
2.10	The original joint committee was established in perpetuity and the reconstitution process is to ensure continuity of the Joint Committee arrangements with the new councils. This is especially pertinent given that the new councils are taking on the liabilities of the old councils. Post April 2015, the new councils will then need to decide the longer term arrangements for the provision of waste management group services as per 2.6 above. Following such a strategic review, the new councils, which will have become participant councils in the reconstituted Joint Committee, will then be required to formalise any such arrangements with the DOE including, if required, winding up the Joint Committee.
2.11	Arising from the changes to council boundaries associated with local government reform, Newry & Mourne District Council will merge with Down District Council to form Newry, Mourne and Down (NMD) District Council. In late 2014, the issue of the membership of NMD District Council was raised with the arc21 Joint Committee and Members present expressed support for this council becoming a constituent council of arc21, subject to ratification of this decision by the shadow councils. A formal proposal seeking membership has been received by arc21 from NMD District Council, to ensure the continuity of the services needed, and associated contribution, to fulfil the obligations of Down District Council, in the short term.
2.12	Currently, Newry and Mourne District Council is a member of another Waste Management Group (SWaMP2008) but the contractual arrangements in place within SWaMP2008 mean that this council directly manages its own waste contracts. The new NMD District Council proposes to formally end its relationship and join arc21. As a consequence, the proposal from NMD is for one year to allow this formal process to be undertaken, including meeting any liabilities of ending its relationship.

2.13	Belfast City Council has now received a letter from the arc21 Chief Executive, on behalf of the Joint Committee, enquiring if the Council is in a position to consider proceeding to become members of a reconstituted arc21 Joint Committee and also to ask if it would be in a position to consider the proposal received from Newry, Mourne and Down District Council to join arc21.
------	---

3	Key Issues
3.1	Local government reform now means that the constituent councils of arc21 will cease to exist after April 2015.
3.2	Notwithstanding that, the adequacy of the existing waste management structure in terms of providing continuity of service for a number of existing contracts, needs to be maintained. Members are now being asked to become members of a reconstituted arc21 Joint Committee.
3.3	Furthermore, Members will also be asked, if they support joining a reconstituted arc21, to consider the proposal received from Newry, Mourne and Down District Council to also join the reconstituted arc21.

4	Resource Implications
	<p data-bbox="225 1012 1445 1086"><u>Financial Implications</u></p> <p data-bbox="225 1086 1445 1176">4.1 There are no direct financial implications for the Council with regards to this proposal.</p> <p data-bbox="225 1176 1445 1243"><u>Human Resources</u></p> <p data-bbox="225 1243 1445 1281">4.2 There are no direct HR implications for the Council with regards to this proposal.</p>

5	Equality and Good Relations Considerations
5.1	There are no relevant equality and good relations implications associated with this report.

6	Call-In
6.1	This report is subject to call-in.

7	Recommendations
7.1	Members are recommended that, to ensure service continuity from 1 April 2015, the Council agrees to continue with a reconstituted arc21 arrangement. Members are also requested to grant authority to the Chief Executive once the Terms of Agreement have been finalised to expedite the necessary arrangements with the DOE.
7.2	Finally, Members are recommended to support the proposal received from Newry, Mourne and Down District Council to join the reconstituted arc21.

8	Decision Tracking
	The Head of Waste Management will work with arc21 to ensure that the appropriate decisions are taken regarding maintaining contract service delivery and reconstituting arc21, and report any further constitutional matters to the Council for consideration in due course.
9	Abbreviations
	MRF – materials recovery facility NMD – Newry, Mourne & Down District Council
10	Appendices
	Appendix 1 – draft Terms of Agreement for a reconstituted arc21

DRAFT

APPENDIX 1

Dated this 1st day of April 2015

arc21 JOINT COMMITTEE

TERMS OF AGREEMENT

re: Proposal to reconstitute the Joint Committee with effect from 1 April 2015

Mr John Walsh
Town Solicitor
Belfast City Council
City Hall
Belfast BT1 5GS

THIS AGREEMENT made this day of 2015

BETWEEN : -

1. **ANTRIM and NEWTOWNABBEY DISTRICT COUNCIL**
2. **BELFAST CITY COUNCIL**
3. **EAST COAST BOROUGH COUNCIL**
4. **LISBURN & CASTLEREAGH CITY COUNCIL**
5. **MID AND EAST ANTRIM BOROUGH COUNCIL**
6. **NEWRY, MOURNE AND DOWN DISTRICT COUNCIL**

1. DEFINITIONS

In this Agreement, the expressions:-

- 1.1 'the 1972 Act' means the Local Government Act (Northern Ireland) 1972.
- 1.2 'the 2014 Act' means the Local Government Act (Northern Ireland) 2014.
- 1.3 'the 2014 Transitional' regulations means the Local Government (Transitional, Supplementary, Incidental Provisions and Modifications) Regulations (Northern Ireland) 2014
- 1.4 'the 1997 Order' means the Waste & Contaminated Land (NI) Order 1997.
- 1.5 'the 2003 Terms of Agreement' means the Agreement entered into by the Predecessor Councils and a copy of which is set out in Annex 3 to this Agreement.
- 1.6 'the Ancillary Functions' and 'the Core Functions' shall be construed in accordance with the provisions of the Principle of Functional Responsibilities, as set out in the Statement of Principles.
- 1.7 'the arc21 Waste Management Group Joint Committee' means the Joint Committee agreed to be established by the Participant Councils pursuant to Clause 3 of these Terms of Agreement, and to operate under the style "arc 21".
- 1.8 'the Department' means the Department of the Environment (Northern Ireland).
- 1.9 'the former arc 21' means the Joint Committee established by the Predecessor Councils pursuant to the 2003 Terms of Agreement.
- 1.10 'the Participant Councils' means those district councils expressed to be parties to these Terms of Agreement, the 2015 Terms of Agreement.

- 1.11 'the Predecessor Councils' means those former District Councils which were party to the 2003 Terms of Agreement.
- 1.12 'the Statement of Principles' means those principles as set out in Annex 1 to these Terms of Agreement.
- 1.13 'the Waste Management Plan' means the Sub-regional Waste Management Plan, (as subsequently amended) which was originally jointly adopted in the year 2003 by the Predecessor Councils.

2. BACKGROUND

- 2.1 Article 23 of the 1997 Order establishes a requirement for each district council in Northern Ireland to prepare a waste management plan, taking into account (inter alia) the Waste Strategy prepared by the Department pursuant to Article 19 of the 1997 Order, and including information as to (inter alia) what arrangements that council expects to make with other district councils.
- 2.2 The Department originally published its Northern Ireland Waste Management Strategy in May 2000, and further updated the strategy in 2006 with the publication of the Northern Ireland Waste Management Strategy 2006/2020 - 'Towards Resource Management', one of the objectives of the strategy being to put in place a framework for the preparation of joint waste management plans to develop an integrated network of regional waste management facilities which will be cost effective to the public.
- 2.3 In furtherance of the sub-regional approach promoted by the Department in its strategy, the Predecessor Councils established a Joint Committee, known as arc21, under the provisions of section 19 of the 1972 Act, and adopted the Statement of Principles as appended to the 2003 Terms of Agreement.
- 2.4 Having consulted with the Department in accordance with the provisions of Article 23 of the 1997 Order, arc21 adopted the Waste Management Plan, which sets out the proposals of the Predecessor Councils as to how they would collectively deal with their waste arising over the period up to 2020. The Plan was thereafter the subject of a review process in 2006 concluding in the formal determination by all Constituent Councils in March 2007,
- 2.5 The Waste Management Plan was again subject to a review process in 2014 and the reviewed plan was approved by the Department in June 2014 and subsequently formally adopted by all Constituent Councils.
- 2.6 Following the reorganisation of Local Government, and the making of the 2014 Act, arrangements are required to be put in place to ensure the continuity of waste management services provided by the former arc21 and, in particular, to enable the decisions, in relation to the major waste infrastructure facilities required to treat residual waste in compliance with the Northern Ireland Landfill Allowances Scheme and statutory waste management targets, to be taken.
- 2.7 The Participant Councils have agreed to reconstitute the Joint Committee by way of successor to the former arc21, and which will have, as a priority task, the implementation of those major procurement arrangements which will arise from the Waste Management Plan.

3. RECONSTITUTION OF THE JOINT COMMITTEE

- 3.1 The Participant Councils, acting pursuant to the powers conferred on them by Part 4 of the 2014 Act – Discharge of Functions - hereby collectively agree as follows: -

- 3.1.1 that they shall reconstitute the Joint Committee for the purpose of implementing the policies set out in the Waste Management Plan;
- 3.1.2 that they formally advise the Department that they wish the Joint Committee to be reconstituted a body corporate with perpetual succession by the name of 'arc 21', with power to continue accepting the assets, liabilities and staff of the former arc21 as at 31 March 2015, and to further have the power to employ staff, enter into financing arrangements, including the borrowing of money and holding of investments, acquire and hold property whether by agreement or otherwise, hold funds and enter into contracts;
- 3.1.3 that the functions of the Joint Committee shall be fixed by reference to these Terms of Agreement (including the Statement of Principles);
- 3.1.4 that the Department puts in place the necessary administrative arrangements, including, if appropriate, any amendments to the regulations or subordinate legislation to implement the requirements of these Terms of Agreement, including provision that section 19 of the Interpretation Act (NI) 1954 shall apply to the Joint Committee.
- 3.1.5 that the Participant Councils may agree to vary the terms and conditions of membership of any individual Participant Council following the formal request from such individual Participant Councils seeking to vary the terms and conditions of membership.

3.2 Additional Membership

- 3.2.1 The Participant Councils may allow other Councils to become members of the Joint Committee subject to the agreement with the Joint Committee and the Participant Councils of appropriate terms and conditions (including terms as to representation, voting rights, the participation in the procurement and award of waste service and supplies contracts, the contribution towards the funding of the activities of the Joint Committee and any other matters deemed appropriate).

Such changes to the membership of the Joint Committee will also require the agreement of the Department.

4. DELEGATED POWERS

- 4.1 The Participant Councils hereby agree that the Joint Committee shall have delegated powers and responsibilities as more particularly described and delimited in the Statement of Principles.
- 4.2 In relation to the acquisition of assets or the incurring of liabilities, a threshold of £250,000 shall apply and over which the unanimous agreement of the Joint Committee and approval of all of the Participant Councils shall be required (as referred to in the 'Principle of Limit of Delegation')

5. ESTABLISHMENT AND OPERATING COSTS

- 5.1.1 In accordance with the Principle of Equitable Shared Funding, the costs of establishing and operating the Joint Committee (including employee costs, premises costs, supplies and services costs, travel and transport costs, the costs associated with

management of operational waste services and supplies contracts) shall be borne by the Participant Councils by reference to their respective populations or in such other manner which the Joint Committee may agree, the percentage calculations of which are in accordance with the Mid Year Population Statistics as published by NISRA annually, but which shall be reviewed annually by the Joint Committee, and adjusted as appropriate.

- 5.1.2 In relation to the costs associated with the procuring of waste management services and supplies contracts including dealing with any legal action required to promote or defend the organisation, procuring the services of specialist advisors, securing regulatory consents (including Planning and Licensing), the updating of the statutory Waste Management Plan, and the provision of educational and promotional services, the costs incurred shall be re-charged to the Participant Councils by reference to their respective populations or in such other manner which the Joint Committee may agree.
- 5.1.3 In relation to the costs associated with other activities or functions which the Joint Committee may undertake on behalf of the Participant Councils, the costs incurred shall be re-charged to the Participant Councils by reference to their respective populations or in such other manner which the Joint Committee may agree.
- 5.2 The Joint Committee may (subject to the Principle of Consensus) award contracts for the provision of waste disposal and/or treatment facilities by external contractors on the basis that the costs of constructing the facilities will be amortised over the relevant contract periods or on the basis of such other commercial arrangements as might be appropriate. In determining the specifications of such contracts, the Joint Committee shall endeavour to ensure that:-
- contracts are appropriately bundled to achieve best value for money for the arc21 administrative area as a whole;
 - contracts shall provide for a suitable number of treatment facilities and waste transfer stations which shall, when taken with other contracts, reflect an equitable geographical distribution of such facilities and stations, having regard at all times to the overall objective of achieving due economies of scale;
 - the pricing specification of each contract shall, where circumstances permit, provide for a standard waste tonnage acceptance charge (or Unitary Charge Per Tonne/Unit) by the respective waste contractors or suppliers, subject to an economic appraisal being commissioned by the Joint Committee to ensure that, when taken with the pricing structure of other contracts awarded by the Joint Committee, there is no material element of cross-subsidisation of costs within the Participant Councils.
- 5.3 In relation to those waste disposal and/or treatment infrastructure facilities which are procured by the Joint Committee at a capital cost ('the procured facilities'), including the acquisition of Land and Property, the costs incurred shall be re-charged to the Participant Councils by reference to their respective populations or in such other manner which the Joint Committee may agree.
- 5.4 The Joint Committee shall hold the procured facilities (including Land and Property) in trust for the Participant Councils on a basis commensurate in percentage terms with the costs so re-charged.
- 5.5 In establishing the charges for acceptance of waste at such facilities, as set out in 5.3, the Joint Committee shall consider, where appropriate, the aggregate cost of operating groups

of procured facilities of similar treatment types for the purpose of establishing a fair rate to charge to the Participant Councils.

6. COMPOSITION AND PROCEDURE OF THE JOINT COMMITTEE

6.1 In accordance with the Principle of Equal Committee Representation, each of the Participant Councils shall have equal representation, agreed at 3 Members each, with no substitute Members allowed.

6.2 In addition to the Statutory Provisions already applied to arc21 by virtue of The Local Government (Constituting Joint Committees as Bodies Corporate) Order (Northern Ireland) 2012, which shall continue to apply subject to any repeals or alterations in the 2014 Act or otherwise, the provisions (and Schedules) of the Local Government Act (Northern Ireland) 2014, as set out below, shall apply to the Joint Committee :

- Part 4 - Discharge of Functions
 - Clauses 9 to 18
- Part 8 – Access to Meetings and Documents
 - Clause 46(3)– Any reference in this Part to a committee or sub-committee of a council includes (a) a joint committee or (b) a sub-committee of a joint committee
- Part 9 – Conduct of Councillors
- Part 15 – Amendments to the 2005 Order – the local government auditor
- Part 16 – Miscellaneous
 - Clause 111
 - Clauses 115 to 119
 - Clause 121 to 124
 - Clause 126 – Interpretation
- Schedule 2 – Appointment of Councillors to Committees, etc.
 - Clause 6
- Schedule 5 – Meetings and Proceedings
 - Clause 12 which incorporates clauses 8 to 11
- Schedule 6 – Access to Information : Exempt Information
- Schedule 7 – Minor and consequential amendments relating to Local Government Audit
- Schedule 8 – Transfer Schemes
- Schedule 9 – Minor and consequential amendments : General
 - Clause 5
- Schedule 10 – Repeals
 - The Local Government Act (Northern Ireland) 1972 Schedule 7 the entries relating to sections 23,24,25,26,27,39,47A,48,127 and 128

6.3 The quorum of the Joint Committee shall be six, provided that at least four of the Participant Councils are represented.

6.4 The proceedings of the Joint Committee shall be regulated by Standing Orders to be agreed and adopted by the Participant Councils.

7. DISPUTE RESOLUTION

In the event of any disagreement between the Participant Councils in relation to any matter arising pursuant to these Terms of Agreement, but entirely without prejudice to the provisions set out in the Statement of Principles (and in particular the Principle of Consensus), the Joint Committee may request the Department, or such other body as it might agree, to act as a conciliator in accordance with such procedure as shall be agreed by the parties, and to the intent that the parties shall endeavour to resolve their differences in the spirit of achieving the objectives of the Waste Management Plan.

8. EFFECTIVE DATE

These Terms of Agreement shall be deemed to come into effect on the 1st of April 2015, being the date that the new Councils' structure, as set out in the Local Government Act (Northern Ireland) 2014, becomes operational,

IN WITNESS whereof this Agreement is signed by the respective Chief Executives of each of the Participant Councils and each subscribing his or her signature hereto in a manner hereinafter appearing.

ANNEX 1

STATEMENT OF PRINCIPLES

arc21 JOINT COMMITTEE

THE FIVE PRINCIPLES

- Principle of Consensus
- Principle of Limit of Delegation
- Principle of Functional Responsibilities
- Principle of Equitable Shared Funding
- Principle of Equal Committee Representation

PRINCIPLE OF CONSENSUS

It shall be an overarching principle that all policy decisions and decisions with significant financial implications for the Joint Committee shall be taken on the basis of the consensus of all the Participant Councils, within the framework of the Waste Management Plan and these Terms of Agreement including this Statement of Principles. Accordingly, any material change in the Waste Plan or any decisions in relation to the acquisition or use of significant assets, or the incurring of significant liabilities will require the prior approval of the Participant Councils.

For the avoidance of doubt, significant financial implications shall relate to the amount shown in Clause 4.2 of these Terms of Agreement, £250,000.

Again for the avoidance of doubt, in terms of the awarding of a contract by Participant Councils, as recommended by the Joint Committee, only the consensus of those Participant Councils, actually participating in such contracts, is required.

PRINCIPLE OF LIMIT OF DELEGATION

The Participant Councils shall delegate powers and functions to the Joint Committee to the extent necessary to enable it to carry out its Core Functions and Ancillary Functions. This delegation shall be with a view to achieving economies of scale and minimising of costs. No further functions are to be transferred to the Joint Committee except with the prior approval of the Participant Councils.

PRINCIPLE OF FUNCTIONAL RESPONSIBILITIES

The Joint Committee shall have Core Functions and Ancillary Functions. The Core Functions shall be the procurement of waste services and supplies contracts for the acceptance, treatment and disposal of waste in accordance with the Waste Plan, and the management of those waste services and supplies contracts.

In relation to the Core Functions (as affecting both short and long-term contracts) the Joint Committee shall:-

- Approve the specifications and award criteria for the contracts
- Invite tenders for and award the contracts
- Operate the contracts
- Have the power to acquire (by agreement or otherwise), hold and use assets and investments
- Recover the contract operating costs from the Participant Councils on an equitable basis or in such other manner as the Participant Councils agree.

The Ancillary Functions shall be matters such as waste minimisation schemes, education programmes and other initiatives as may be agreed from time to time with the individual Participant Councils and to be operated on the basis of annual programmes and/or service level agreements.

PRINCIPLE OF EQUITABLE SHARED FUNDING

- The costs of establishing and operating the Joint Committee shall be pre-estimated, as far as possible, by reference to a business plan, and/or operating plan, and shall be recovered on an equitable basis (by reference to respective populations) from the Participant Councils in accordance with the provisions of Clause 5 of the Terms of Agreement, subject to Clause 3.1.5. and any further membership agreements entered into pursuant to clause 3.2.
- The Joint Committee's net costs of operating the Core Functions shall be recovered on an equitable basis from the Participant Councils, subject to Clause 3.1.5, in accordance with the provisions of the Terms of Agreement, having regard to all relevant cost factors arising in relation to the acceptance, treatment and disposal of waste of each of the Participant Councils, and take account of any further membership agreements entered into pursuant to clause 3.2.
- The costs of operating the Ancillary Functions shall be in accordance with the relevant annual service level agreements or revenue estimates process.

PRINCIPLE OF EQUAL COMMITTEE REPRESENTATION

The Joint Committee shall be constituted on the basis of equal representation, with each Participant Council entitled to three voting places.

Each Participant Council shall accordingly be entitled to appoint three members to the Joint Committee with no right to nominate substitutes to attend, and vote, in their absence.

The proceedings of the Joint Committee shall be regulated by Standing Orders to be agreed by the Participant Councils.

ANNEX 2

THE 2003 TERMS OF AGREEMENT

Dated this 1st day of July 2003

EASTERN REGION WASTE MANAGEMENT GROUP

TERMS OF AGREEMENT

re: Proposal to establish a Joint Committee

arc 21

C Quigley
Director of Legal Services
City Hall
BELFAST
BT1 5GS

THIS AGREEMENT made this day of 2003
BETWEEN : -

1. **ANTRIM BOROUGH COUNCIL of The Steeple, Antrim, Co. Antrim, BT41 1BJ**
2. **ARDS BOROUGH COUNCIL of 2 Church Street, Newtownards, Co. Down, BT23 4AP**
3. **BALLYMENA BOROUGH COUNCIL of Ardeevin, 80 Galgorm Road, Ballymena, Co. Antrim, BT42 1AB**
4. **BELFAST CITY COUNCIL of City Hall, Belfast, BT1 5GS**
5. **CARRICKFERGUS BOROUGH COUNCIL of Town Hall, Carrickfergus, Co. Antrim, BT38 7BL**
6. **CASTLEREAGH BOROUGH COUNCIL of Bradford Court, Upper Galwally, Castlereagh, BT8 6RB**
7. **DOWN DISTRICT COUNCIL of 24 Strangford Road, Downpatrick, Co Down, BT30 6SR**
8. **LARNE BOROUGH COUNCIL of Smiley Building, Victoria Road, Larne, Co. Antrim, BT40 1RU**
9. **LISBURN CITY COUNCIL of The Island, Lisburn, Co. Antrim, BT27 4RL**
10. **NEWTOWNABBEY BOROUGH COUNCIL of Mossley Mill, Newtownabbey, Co. Antrim, BT36 5QA**
11. **NORTH DOWN BOROUGH COUNCIL of Town Hall, The Castle, Bangor, Co. Down, BT20 4BT**

1. DEFINITIONS

In this Agreement, the expressions:-

- 1.1 'the 1972 Act' means the Local Government Act (NI) 1972.
- 1.2 'the 1997 Order' means the Waste & Contaminated Land (NI) Order 1997.
- 1.3 'the Ancillary Functions' and 'the Core Functions' shall be construed in accordance with the provisions of the Principle of Functional Responsibilities, as set out in the Statement of Principles.
- 1.4 'the Department' means the Department of the Environment for Northern Ireland.
- 1.5 'ERWMG' means the Eastern Region Waste Management Group (described in Clause 2.3).
- 1.6 'the Joint Committee' means the Joint Committee agreed to be established by the Participant Councils pursuant to Clause 3 of these Terms of Agreement.

- 1.7 'the Participant Councils' mean those above-named district councils expressed to be parties to these Terms of Agreement.
- 1.8 'the Statement of Principles' means those principles as set out in the Annex to these Terms of Agreement.
- 1.9 'the Waste Management Plan' means the Sub-regional Waste Management Plan which has been jointly adopted in this year 2003 by the Participant Councils as further described in Clause 2.4.

2. BACKGROUND

- 2.1 Article 23 of the 1997 Order establishes a requirement for each district council in Northern Ireland to prepare a waste management plan, taking into account (inter alia) the Waste Strategy prepared by the Department pursuant to Article 19 of the 1997 Order, and including information as to (inter alia) what arrangements that council expects to make with other district councils.
- 2.2 The Department published its Northern Ireland Waste Management Strategy in May 2000, one of the objectives of which was stated therein as being to put in place a framework for preparation of joint waste management plans to develop an integrated network of regional waste management facilities which would be cost effective to the public.
- 2.3 In furtherance of the sub-regional approach promoted by the Department in its strategy, the Participant Councils agreed to form the Eastern Region Waste Management Group for the purpose of developing a joint waste management plan.
- 2.4 ERWVG have now jointly adopted, having consulted with the Department in accordance with the provisions of Article 23 of the 1997 Order, the Waste Management Plan which sets out the proposals of the Participant Councils as to how they would collectively deal with their waste arising over the period of the next 20 years.
- 2.5 The Participant Councils have agreed that, for the purpose of establishing an appropriate legal vehicle tasked with implementing those major procurement arrangements which will arise from the Waste Management Plan, they shall form a Joint Committee pursuant to the provisions of section 19 of the Local Government Act (NI) 1972.
- 2.6 As a preliminary step towards the formation of the Joint Committee, the Participant Councils have separately and effectively adopted the Statement of Principles as those fundamental principles which underpin the role and purpose of the Joint Committee and which establish the parameters within which the Joint Committee shall function and operate.

3. ESTABLISHMENT OF JOINT COMMITTEE

- 3.1 The Participant Councils, acting pursuant to the powers conferred on them by section 19 of the 1972 Act, hereby collectively agree as follows: -
- 3.1.1 that they shall establish a Joint Committee for the purpose of implementing the policies set out in the Waste Management Plan;

- 3.1.2** that an application shall as soon as practicable be made to the Department to have the Joint Committee constituted a body corporate with perpetual succession by the name of 'Arc 21' with power to employ staff, enter into financing arrangements, including the borrowing of money, hold property and funds, and enter into contracts;
- 3.1.3** that the functions of the Joint Committee shall be fixed by reference to these Terms of Agreement (including the Statement of Principles);
- 3.1.4** that the Order to be made by the Department under section 19 of the 1972 Act shall make such further incidental and consequential provision as shall be reasonably necessary to implement the requirements of these Terms of Agreement, including provision that section 19 of the Interpretation Act (NI) 1954 shall apply to the Joint Committee.

4. DELEGATED POWERS

- 4.1** The Participant Councils hereby agree that the Joint Committee shall have delegated powers and responsibilities as more particularly described and delimited in the Statement of Principles.
- 4.2** In relation to the acquisition of assets or the incurring of liabilities, a threshold of £250,000 shall apply and over which the unanimous agreement of the Joint Committee and approval of all of the Participant Councils shall be required (as referred to in the 'Principle of Limit of Delegation')

5. ESTABLISHMENT AND OPERATING COSTS

- 5.1** In accordance with the Principle of Equitable Shared Funding, the costs of establishing and operating the Joint Committee (including contract administration and management costs) shall be borne by the Participant Councils by reference to their respective populations, the percentage calculations of which are set out in the Schedule to these Terms of Agreement, but which shall be reviewed by the Joint Committee every three years, and adjusted as appropriate.
- 5.2** The Joint Committee may (subject to the Principle of Consensus) award contracts for the provision of waste disposal and/or treatment facilities by external contractors on the basis that the costs of constructing the facilities will be amortised over the relevant contract periods or on the basis of such other commercial arrangements as might be appropriate. In determining the specifications of such contracts, the Joint Committee shall endeavour to ensure that:-
- contracts are appropriately bundled to achieve best value for money for the ERWVG as a whole;
 - contracts shall provide for a suitable number of treatment facilities and waste transfer stations which shall, when taken with other contracts, reflect an equitable geographical distribution of such facilities and stations, having regard at all times to the overall objective of achieving due economies of scale;

- the pricing specification of each contract shall, where circumstances permit, provide for a standard waste tonnage acceptance charge at transfer stations, subject to an economic appraisal being commissioned by the Joint Committee to ensure that, when taken with the pricing structure of other contracts awarded by the Joint Committee, there is no material element of cross-subsidisation of costs within the Participant Councils.

5.3 In relation to those waste disposal and/or treatment facilities (including, where appropriate, waste transfer stations) which are procured by the Joint Committee at a capital cost ('the procured facilities'), the costs incurred shall be re-charged to the Participant Councils on the same basis as set out in Clause 5.1. The Joint Committee shall hold the procured facilities in trust for the Participant Councils on a basis commensurate in percentage terms with the costs so re-charged. Tonnage charges shall, unless otherwise agreed, be assessed by reference to the Joint Committee's costs of operating the procured facilities. In establishing the charges for acceptance of waste at such facilities, the Joint Committee shall consider, where appropriate, the aggregate cost of operating groups of procured facilities of similar treatment types for the purpose of establishing a common rate, but ensuring that no material element of cross subsidisation of tonnage charges arises within the Participant Councils.

6. COMPOSITION AND PROCEDURE OF JOINT COMMITTEE

6.1 In accordance with the Principle of Equal Committee Representation, each of the Participant Councils shall have equal representation, agreed at 2 Members each.

6.2 The provisions of sections 19 – 22 and 142 and Schedules 2 and 7 of the 1972 Act shall apply to the Joint Committee.

6.3 The quorum of the Joint Committee shall be ten, provided that at least six of the Participant Councils are represented.

6.4 The proceedings of the Joint Committee shall be regulated by Standing Orders to be agreed and adopted by the Participant Councils.

7. DISPUTE RESOLUTION

In the event of any disagreement between the Participant Councils in relation to any matter arising pursuant to these Terms of Agreement, but entirely without prejudice to the provisions set out in the Statement of Principles (and in particular the Principle of Consensus), the Joint Committee may request the Department or such other body as it might agree to act as a conciliator in accordance with such procedure as shall be agreed by the parties, and to the intent that the parties shall endeavour to resolve their differences in the spirit of achieving the objectives of the Waste Management Plan.

8. EFFECTIVE DATE

These Terms of Agreement shall be deemed to come into effect on the day and year first herein written, being a date following the affixing hereto of all of the signatures of the respective Chief Executives of all of the Participant Councils as hereinafter provided for.

IN WITNESS whereof this Agreement is signed by the respective Chief Executives of each of the Participant Councils and each subscribing his signature hereto in manner hereinafter appearing.

DRAFT

SCHEDULE

POPULATION JUNE 2001 (MID-YEAR ESTIMATES)

Council	Actual Population	% of Total
Antrim	48,761	5.28%
Ards	73,435	7.96%
Ballymena	58,801	6.37%
Belfast	277,170	30.02%
Carrickfergus	37,730	4.09%
Castlereagh	66,533	7.21%
Down	64,147	6.95%
Larne	30,811	3.34%
Lisburn	108,997	11.81%
Newtownabbey	80,144	8.68%
North Down	76,578	8.29%
Total	923,107	100%

Annex

STATEMENT OF PRINCIPLES ARC 21

PROPOSAL FOR ESTABLISHMENT OF A JOINT COMMITTEE

EASTERN REGION WASTE MANAGEMENT GROUP

The Participant Councils are the eleven district councils of the ERWMG (ARC 21). Subject to their joint adoption of this Proposal Statement and Statement of Principles, the Participant Councils shall then enter into a formal Collaborative Agreement which will contain such further detail as shall be necessary to give legal efficacy thereto. The terms of the Collaborative Agreement shall also be subject to the prior approval of the Participant Councils.

PROPOSAL STATEMENT - CONTEXT OF ESTABLISHMENT

The Joint Committee shall be established by the Participant Councils as a body corporate under section 19 of the Local Government Act (NI) 1972 (pursuant to statutory order). It shall be set up solely in the context of the policies of the Eastern Region Waste Management Group as described in the ARC21 Waste Plan (including the Procurement Plan and the Implementation Plan). As a corporate body, the Joint Committee will have a distinct legal status with power to employ staff, enter into financing agreements, including the borrowing of money, hold property and funds, and enter into contracts.

THE FIVE PRINCIPLES

- Principle of Consensus
- Principle of Limit of Delegation
- Principle of Functional Responsibilities
- Principle of Equitable Shared Funding
- Principle of Equal Committee Representation

PRINCIPLE OF CONSENSUS

It shall be an overarching principle that all policy decisions and decisions with significant financial implications for the Joint Committee shall be taken on the basis of the consensus of all the Participant Councils, within the framework of the Waste Plan and this Proposal and Statement of Principles. Accordingly, any material change in the Waste Plan or any decisions in relation to the acquisition or use of significant assets, or the incurring of significant liabilities will require the prior approval of the Participant Councils.

PRINCIPLE OF LIMIT OF DELEGATION

The Participant Councils shall delegate powers and functions to the Joint Committee to the extent necessary to enable it to carry out its Core Functions and Ancillary Functions. This delegation shall be with a view to achieving economies of scale and minimising of costs. No further functions are to be transferred to the Joint Committee except with the prior approval of the Participant Councils. The Collaboration Agreement shall specify thresholds in relation to the acquisition of assets or the incurring of liabilities over which the unanimous agreement of the Joint Committee or the referral back to the Participant Councils shall be required.

PRINCIPLE OF FUNCTIONAL RESPONSIBILITIES

The Joint Committee shall have Core Functions and Ancillary Functions. The Core Functions shall be the acceptance, treatment and disposal of waste in accordance with the Waste Plan. In relation to the Core Functions (as affecting both short and long-term contracts) the Joint Committee shall:-

- Develop specifications and award criteria for the contracts
- Obtain the approval of the Participant Councils to the specifications and award criteria
- Invite tenders for and award the contracts
- Operate the contracts
- Have the power to acquire, hold and use assets
- Recover the contract operating costs from the Participant Councils on an equitable basis.

The Ancillary Functions shall be matters such as waste minimisation schemes, education programmes and other initiatives as may be agreed from time to time with the individual Participant Councils and to be operated on the basis of annual programmes and/or service level agreements.

PRINCIPLE OF EQUITABLE SHARED FUNDING

- The costs of establishing and operating the Joint Committee shall be pre-estimated as far as possible by reference to a business plan, and/or operating plan, and shall be recovered on an equitable basis (by reference to respective populations) from the Participant Councils in accordance with the provisions of the Collaborative Agreement.
- The Joint Committee's net costs of operating the Core Functions shall be recovered on an equitable basis from the Participant Councils in accordance with the provisions of the Collaborative Agreement, having regard to all relevant cost factors arising in relation to the acceptance, treatment and disposal of waste of each of the Participant Councils.
- The costs of operating the Ancillary Functions shall be in accordance with the relevant annual service level agreements.

PRINCIPLE OF EQUAL COMMITTEE REPRESENTATION

The Joint Committee shall be constituted on the basis of equal representation, with two member(s) to be nominated by each of the Participant Councils. The proceedings of the Joint Committee shall be regulated by Standing Orders to be set out in the Collaboration Agreement."

DRAFT