



Report to:	Strategic Policy and Resources Committee
Subject:	Social Clauses review and policy for consultation
Date:	19 September 2014
Reporting Officer:	Gerry Millar, Director of Property and Projects Ext 6217
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1.0	Purpose of report
1.1	<p>The purpose of this report is to:</p> <ul style="list-style-type: none"> • Update members on progress to date with the inclusion of social clauses in council contracts using the interim policy position of CIFNI criterion • Seek members feedback and direction on a draft council policy • Agree to the extent of data capture for compliance verification • Agree a partnership approach to the development of a third party delivery model for social clauses associated with employment
2.0	Relevant Background Information
2.1	As part of the £150 million Investment Programme (IP), members asked for the introduction, where appropriate, of social clauses and community benefit clauses into council tenders. On 4 July 2012, the Northern Ireland Assembly passed legislation that enables Councils to take account of certain non-commercial matters in the award of public works contracts. Such criteria were previously considered as ineligible.
2.2	The legislation introduced in July 2012 now enables councils to consider the use of social clauses as contractual conditions, requiring contractors, for example, to provide employment opportunities for the unemployed. These conditions must be incorporated in such a way that they do not infringe the general principles of EU law and also ensure that they remain compliant equality obligations.
2.3	The adoption of social clauses within the Northern Ireland public sector has primarily focused on delivering employability-related benefits. These are through the provision of apprenticeships and employment/work placements for students and the long-term unemployed. Whilst social clauses with an employability focus have been most high profile to date, a wider range of commercial, environmental and community-focused clauses exist.
2.4	Minimum standards for social clauses within construction works contracts have been agreed by CIFNI (Construction Industry Forum for Northern Ireland) and CPD. (Central Procurement Directorate) Similar standards are being developed for construction services as well as for goods and services contracts. To be legally admissible these clauses must be relevant to the subject matter of the contract
2.5	Whilst these standards are a useful benchmark, they don't necessarily maximise the economic return, nor do they allow for local economic and social conditions to be taken into account.

2.5	Members will also be aware that two motions in Council were adopted which impact on the development of the Councils policy formation. These were the inclusion of the living wage as a contract condition and a motion targeting the long term unemployed ('Real Jobs' motion). . Appendix A contains the wording of these motions.
3.0	Progress To Date
3.1	At the 23 October 2013 meeting of the Strategic Policy & Resources Committee, members were advised that this work had commenced. As an interim measure, they agreed that all council contracts with minimum labour values of £250,000 and contract duration of 6 months would be screened for the inclusion of social clauses. In the absence of a social clause policy, members also agreed to adopt the minimum social clause standards as agreed by CPD and CIFNI.
3.2	All internally administered council tenders are now screened against the agreed criteria and in conjunction with Legal Services, Economic Initiatives and agreement with other stakeholders, such as funders, to consider incorporating appropriate contract clauses seeking social benefit.
3.3	Appendix B outlines those current contracts which have been captured by the agreed criteria. In total there are 11 contracts with Social Clauses included and a further 8 tender opportunities identified with the programme of tenders and capital works programme for their inclusion. Both the works contracts at Woodvale and Dunville Parks had provision for social clauses but as these were applied respectively and were voluntary thus had only limited success.
3.4	Experience to date has identified the importance of engaging with local businesses and residents to support social clause delivery and maximise local benefit. For example to facilitate delivery of the social clauses for the Girdwood Community Hub project, extensive engagement has taken place with local community groups and training providers to promote employment and work placement opportunities available through this contract. Working through the Girdwood Community Forum a subgroup has been created to provide a conduit between council, the appointed contractors and community representatives to engage and inform residents and businesses of employment and supply chain opportunities arising through the social clauses. This engagement included the other non council contractors on this site and provides a joined up approach for social clause delivery across the Girdwood Park site. Although somewhat effective to date, this approach is very resource intensive and would be a challenge to deliver, at this level/ scale, in considering the number of contracts expected to be delivered in the forthcoming months across the capital programme.
3.5	Ongoing work is taking place with Department of Culture, Arts and Leisure (DCAL) regarding the social clauses included within the Windsor Park and Casement Park Stadia developments. Council is working in partnership with DCAL and Department of Employment and Learning (DEL) to engage with local communities and businesses to increase their accessibility to employment and supply chain opportunities arising from the social clauses in these projects. In addition officers have been working with DCAL officials on both Olympia and Andersonstown contracts incorporating, as part of the funding condition, an agreed set of social clauses. Whilst these clauses are broadly aligned to those adopted by council, the most notable difference requires contractors to employ new apprentices, in addition to a 5% of workforce industry standard agreed by industry and CPD. As outlined below clauses relating to apprenticeships present specific challenges for council.
4.0	Key Issues
4.1	Experience to date of integrating social clauses into council contracts has identified a number of challenges for council, these include: <ul style="list-style-type: none"> • The integration of social clauses within council contracts requires legal consideration on a per

	<p>contract basis.</p> <p>To minimise risk of non-compliance, significant resources will be required to support contractors to deliver upon these clauses in order to manage this risk.</p> <ul style="list-style-type: none"> • To effectively manage social clause delivery, resources will also be required to collect performance data and then collate this information to provide an overview of the collective impact of the clauses. • The most frequently used social clauses are employability related, with options available to employ the long term unemployed, apprenticeships and/or student placements amongst others.
4.2	<p>The nature of these types of clauses provide challenges for council including:</p> <ol style="list-style-type: none"> 1. The scale of council contracts in terms of value and duration may make it impracticable for suppliers to deliver longer-term employability benefits such as apprenticeships, the duration of which is expected to be longer than the timescale of the council’s contract. 2. Social clauses, are restricted to the timescale of the contract to which they apply, creating potentially unsustainable employment. Whilst Council can try to encourage Contractors to provide sustainable employment, this cannot be enforced or managed by council post contract delivery. 3. Resources are available through DEL to assist contractors to source long term unemployed people for employment opportunities, work placements or apprenticeships. However this is an advisory and signposting service only; it is still the responsibility of the contractor to find the candidates to fulfil employment related social clause requirements, which is unsatisfactory for number of reasons. Without a coherent policy position across the public sector in terms of a pipeline of projects and serious economic development support to source, skill and support people needing jobs, the impact of social clause will be piecemeal and limited.
4.3	<p>Experience has shown through the development of the Girdwood social clauses that policy and contractual clauses should only be regarded as a means to an end, as it is more important that all the stakeholders including the contractors embrace the spirit of the policy.</p>
4.4	<p>The draft policy for consultation, see Appendix C, attempts to capture an evolving understanding of what it is possible to achieve within current council resources. It allows for the continuation of the existing industry standard criteria and will be accompanied by a guidance document which is still to be drafted. The policy is intended to lay a foundation for a more progressive solution as both the industry and the council attunes itself. It has attempted to capture the IP commitments as well as the subsequent motions adopted by the council by targeting long term unemployed and creating apprenticeships.</p>
4.5	<p>On 6 January 2014 a notice of motion was adopted by Council calling for a ‘real jobs’ contract clause. Specifically it asked that:</p> <p><i>“The ‘Real Jobs’ clause will guarantee ring fenced, fully paid jobs and apprenticeships for the long-term unemployed (12+ months).”</i></p> <p>This has been captured within the policy in the form of employment weeks for the long term unemployed as it prevents unscrupulous contractors creating ‘one day’ jobs. It is constrained by being only applicable for the duration of that specific contract.</p>
4.6	<p>Following the adoption of the ‘living wage’ motion officers held discussions with CEF. Their view is</p>

	<p>the impact of the Living Wage motion is unlikely to impact on construction contracts as allowances already exceed the Living Wage. However when we attempted to apply these to service contracts we have been advised following European case law tests that legal opinion suggests that the Living Wage may not always be legally permissible, because in certain circumstances it could be seen to disadvantage Contractors from other member states.</p>
5.0	Monitoring and Reporting
	<p>Clauses have the potential to span a number of areas including employability, promotion of supply chain opportunities, environmental benefits and/or project specific community and regeneration benefits. Therefore the data collection issues alone mean that there is a need to consider how this information is gathered on a contract by contract basis and then brought together to give an overview of the collective impact of the clauses. To minimise the risk of non-compliance, a streamlined reporting process needs to be established through which contractors would report upon progress against social clause requirements. Members should be aware that there is no existing capacity within current staff resources to undertake this dedicated role and this would need to be addressed.</p>
5.1	<p>A reporting template is available through CIFNI and this has been used by the council. This template requires contractors to report against social clause requirements on a monthly /quarterly basis in order to validate contractual obligations. The existing template requires the reporting of personal data on the individuals benefiting from employability-related clauses. Due to the transfer of personal data, this may have data protection implications for council.</p>
5.2	<p>It is proposed that some amendments would be made to the template to simplify the information requested from the contractor, removing the need to capture personal data. Instead, the postcode of the apprentice/work placement candidate would be recorded, as well as the number of weeks employment/work placement weeks achieved.</p>
5.3	<p>This will help confirm how many apprentices/work placements were from the council area. It would also ensure that the wider social clause requirements in terms of apprentice/work placement numbers and duration of employment were available for recording. In order to provide assurances to the council that there was no double counting, we intend to ask contractors to provide the last three digits of the candidate's national insurance number and we could compare these across all the reports received. However it will not be possible to use the DEL verification process to check the information.</p>
6.0	Potential Collaborative Model for Apprenticeships
6.1	<p>Alluded to previously the Council is limited in what it can achieve when acting on this matter in isolation from others with similar contract clauses. Potential exists to work in partnership with others in the city leading key investment projects such as the University of Ulster Belfast campus development and SIB, to create a pool of public sector contracts with social clauses included. Collectively the scale and duration of these individual contracts, would create the potential for much larger economic returns and would accommodate longer term employment opportunities such as apprenticeships.</p>
6.2	<p>Good practice examples, See Appendix D, highlights that these third party models, which feed off a collective pipeline of contracts, has been successful in both Greater Manchester and Liverpool. In both these examples social enterprises act as a delivery vehicle for the fulfilment of the contractual obligations for contractors, across a number of contracts from a range of public sector organisations. This particular model which has operated under a different legislative framework for some time has additional advantages in that it can quite legitimately be focused at a local level.</p>

6.3	The set up costs of such a model are not insignificant and would be required to be shared amongst those wishing to avail of it. Whilst there have been some discussions with the relevant organisations no firm commitment has been given to the collaborative apprenticeship model. Likewise, any potential operator of such a scheme would need to be assured of a pipeline of opportunities in order to make the commitment to recruiting the apprentices and ensuring that they would be able to complete their full apprenticeship programme.
6.4	Corporate Management Team is in discussion with the Chief Executive of Centre of Economic and Social Inclusion as well as the Director of skills Employment at New Economy Manchester to: <ul style="list-style-type: none"> • Identify how other local authorities in the UK have played an active role in local employability and skills strategies • Understand how other local authorities have moved away from multiple delivery agents towards a more targeted and streamlined approach • Understand how economic competitiveness can be maximised while ensuring that those further from the labour market have the opportunity to build their skills and avail of employment opportunities, A further report will be brought back to members

7.0	Equality Implications
7.1	The draft policy will be subject to equality screening.

8.0	Finance and Human Resource Implications
8.1	Financial Implications <ul style="list-style-type: none"> • Social clauses costs are incorporated in the tender returns to the council and are incorporated with current budgets. • The financial implications of developing a third party Social Enterprise model to cover the entirety of the policy will require to be assessed and be subject to further committee approval
8.2	Human Resource <ul style="list-style-type: none"> • An assessment of the resource implications of developing the Council's role in overseeing Social Clauses will be carried out and a further report submitted to committee.

9.0	Decisions required
9.1	The Committee is requested to:- <ol style="list-style-type: none"> (a) Note the progress to date and the lessons learnt (b) Review the draft policy and provide feedback (c) Agree to the refined extent of data capture (d) Agree to explore the potential collaborative model for apprenticeships with other city stakeholders with a view to forming a third party delivery model for employment (e) Note the incorporation of the 'Real Jobs' motion adopted by council
10.0	Decision Tracking
	Further to committee direction, the Corporate Management Team will review the proposals and draft an action plan for implementation

Key to Abbreviations

CEF:- Construction Employer Forum

CIFNI:- Construction Industry Forum Northern Ireland

CPD:- Central Procurement Directorate

DCal:- Department of Culture Arts and Leisure

DEL:- Department of Employment and Learning

EU:- European Union

IP:- Investment Programme

OFMDFM:-Office of First Minister and Deputy First Minister

SIB:- Strategic Investment Board

UU:- University of Ulster

Attachments

Appendix A - Motions Passed in Council

Appendix B - Table of Contracts and Associated Clauses

Appendix C - Draft Policy for Comment

Appendix D - Good Practice Examples

Appendix A
Motions Adopted by Council

'Living Wage'

The Living Wage presented to Council on 3 February 2014 included a requirement

'To review the extent to which the Council's Living Wage policy might be able to be applied to currently contracted out services or as each contract comes up for renewal'.

'Real Jobs'

Members will be aware that on 6 January 2014 the following notice of motion was proposed to Council:

"This Council recognises the increasing social and economic hardship experienced by people in our communities as a result of growing unemployment and cuts to welfare benefits. The Council accepts that it has a duty to use the powers available to it (including but not limited to planning, regulation and procurement powers), to generate positive outcomes for the most marginalised in our communities and hereby commits to including at every available opportunity a 'Real Jobs' clause in contracts tendered by the Council to procure goods, services and capital works. The 'Real Jobs' clause will guarantee ring fenced, fully paid jobs and apprenticeships for the long-term unemployed (12+ months)."

Appendix B
Contract and Social Clause Summary

Contract	Social Clause Summary
CONTRACTS FOR WORK WITH ASSOCIATED SERVICES	
Phase 1 Connswater Community Greenway /East Belfast Flood Alleviation Scheme – Phase 1	<ul style="list-style-type: none"> • 52 person weeks of work experience or employment opportunities • 5% of the Contractors and Tier 1 sub contractors workforce must be employed on formally recognised paid apprenticeship schemes • 40 person week employed placement opportunities for students on a University or College of Further and Higher Education course • 52 person weeks of work placement for Training for Success (TFS) trainees
Connswater Greenway / East Belfast Flood Alleviation Scheme – Phase II Integrated Consultant Team	<ul style="list-style-type: none"> • Work placements to be provided under the Department of Employment and Learning approved scheme to be provided within the Integrated Design Team (IDT) or its supply chain as follows: <ul style="list-style-type: none"> • 8 weeks per £125,000 of fee value • 5% of the workforce of the Integrated Design Team to be student/graduate associate members of a relevant construction related professional institution working towards corporate status. • The consultants shall ensure that one 40 week Graduate Trainee/ Student Placement for fee value of between £500k- £1000k and two placements for a fee value greater than £1000k
Connswater Greenway Phase 2 Main Contractor	<ul style="list-style-type: none"> • Participation in a minimum of 2 supplier information days to promote supply chain opportunities arising from this contract to small businesses and social enterprises. • 390 paid person weeks of employment for the long term unemployed • 5% of the Contractors and Tier 1 sub contractors workforce must be employed on formally recognised paid apprenticeship schemes • 80 person weeks of paid employed placement opportunities for students on a University or College of Further and Higher Education course • 120 person weeks of work placement for Training for Success (TFS) trainees
Waterfront Hall – Main Contractor	<ul style="list-style-type: none"> • Participation in a minimum of 2 supplier information days to promote supply chain opportunities arising from this contract to small businesses and social enterprises. • 300 paid person weeks of employment for the long term unemployed • 5% of the Contractors and Tier 1 sub contractors workforce must be employed on formally recognised paid apprenticeship schemes • 80 person weeks of paid employed placement opportunities for students on a University or College of Further and Higher Education course • 96 person weeks of work placement for Training for Success (TFS) trainees
Waterfront Hall –	<ul style="list-style-type: none"> • Work placements to be provided under the Department of Employment

<p>Integrated Design Team</p>	<p>and Learning approved scheme to be provided within the Integrated Design Team (IDT) or its supply chain as follows:</p> <ul style="list-style-type: none"> • 8 weeks per £125,000 of fee value • 5% of the workforce of the Integrated Design Team to be student/graduate associate members of a relevant construction related professional institution working towards corporate status • The consultants shall ensure that one 40 week Graduate Trainee/ Student Placement for fee value of between £500k- £1000k and two placements for a fee value greater than £1000k
<p>North Foreshore Integrated Design Team</p>	<ul style="list-style-type: none"> • Participation in a minimum of 1 supplier information days to promote supply chain opportunities arising from this contract to small businesses and social enterprises • 146 paid person weeks of employment for the long term unemployed • 5% of the Contractors and Tier 1 sub contractors workforce must be employed on formally recognised paid apprenticeship schemes • 40 person weeks of paid employed placement opportunities for students on a University or College of Further and Higher Education course • 45 person weeks of work placement for Training for Success (TFS) trainees
<p>Olympia regeneration Phase 1(Shell)</p>	<ul style="list-style-type: none"> • Participation in a minimum of 1 supplier information day to promote supply chain opportunities arising from this contract to small businesses and social enterprises • 135 paid person weeks of employment for the long term unemployed • 1 new apprenticeship • 5% of the Contractors and Tier 1 sub contractors workforce must be employed on formally recognised paid apprenticeship schemes • 40 person weeks of paid employed placement opportunities for students on a University or College of Further and Higher Education course
<p>Girdwood Community Hub</p>	<ul style="list-style-type: none"> • Participation in a minimum of 2 supplier information day to promote supply chain opportunities arising from this contract to small businesses and social enterprises. • 130 paid person weeks of employment for the long term unemployed • 5% of the Contractors and Tier 1 sub contractors workforce must be employed on formally recognised paid apprenticeship schemes • 40 person weeks of paid employed placement opportunities for students on a University or College of Further and Higher Education course • 45 person weeks of work placement for Training for Success (TFS) trainees

<p>Forthriver Innovation Centre</p> <p>Only one contract as it is a design and build solution.</p>	<ul style="list-style-type: none"> • Participation in a minimum of 2 supplier information days to promote supply chain opportunities arising from this contract to small businesses and social enterprises • 156 paid person weeks of employment for the long term unemployed • 5% of the Contractors and Tier 1 sub contractors workforce must be employed on formally recognised paid apprenticeship schemes • 40 person weeks of paid employed placement opportunities for students on a University or College of Further and Higher Education course • 48 person weeks of work placement for Training for Success (TFS) trainees
SUPPILES AND SERVICE CONTRACTS	
<p>Manned Guarding Security Services – Lot 1</p>	<ul style="list-style-type: none"> • Throughout the duration of the contract, the Contractor will recruit 30% in year one, increasing by 5% for each subsequent year until a maximum 45% is achieved, of its new recruits from among the long term unemployed • 65 person weeks of work placement for Department of Employment and Learning (DEL) supported trainees
<p>Kerbside Collection</p>	<ul style="list-style-type: none"> • 48 person weeks of work experience, for the unemployed through a Department for Employment and Learning (DEL) approved scheme or equivalent • 40 person weeks, employment opportunity for a student undertaking a University or College of Further and Higher Education environmental management or business related course

Appendix C



BELFAST CITY COUNCIL

Policy on the use of Social Clauses in Council Contracts

1 INTRODUCTION

1.1 The Council is committed to generating, through its commissioning and procurement activities, positive outcomes for Belfast and the people of Belfast. We will do this by ensuring that, where practicable, the money we spend on procuring goods, works and services benefits the people, the communities and the economy of Belfast. To achieve this, this document sets out the Council's policy on the use of social clauses in Council contracts.

1.2 Social clauses are clauses added to contracts that are intended to result in benefits to the wider community. The benefits can be social, economic and/or environmental in nature and are intended to be in addition to the benefits secured by the provision of the goods, works or services themselves.

1.3 The decisions made by directors, service commissioners, procurement officers and managers within the Council can have key implications for the sustainability of business and the growth of jobs and wealth within the Belfast area. In addition to the very significant annual investment in the purchase of supplies and services, the Council also makes significant capital investment in infrastructure. Our goal is to ensure that this public spending reaps maximum local economic, social and environmental benefit.

2 CONTEXT AND BACKGROUND

2.1 The incorporation of social clauses into contracts procured by the public sector has been gathering momentum in recent years. In part this has been facilitated by a change in the legislation relating to purchasing. The use of social clauses to deliver significant social and economic benefits is also a key commitment of the NI Executive's Programme for Government 2011-2015.

2.2 The Council is committed to the use of social clauses to increase the economic, social, and environmental benefit of its procurement spend. This commitment is shown in our Investment Programme and our Procurement Strategy.

2.3 Our Investment Programme for 2012 – 2015 contains the following actions to:

- introduce the use of social clauses in our tenders which will aim to give long term unemployed people opportunities to access the labour market;

- look at how community benefit clauses can be secured in contracts – for example securing the use of facilities for community use; and

- work with partners on the Belfast Social Clause Delivery Forum, ensuring that government contracts contain appropriate social clauses to support employment and apprenticeship opportunities that can be easily managed and monitored.

2.4 Our Procurement Strategy aims to “manage and maximise the potential of the Council’s procurement spend to support the local economy and environment.” It stresses the need to get best value from our purchasing and to develop formalised process for the inclusion of social clauses into our contracts.

2.5 In addition, Local Government Reform increases the powers available to the Council especially with regard to regeneration and planning. This presents further opportunities to incorporate social clauses into our procurement process.

2.6 On the 19th June 2014 the Council approved a motion to address economic hardship in our communities due to unemployment and welfare changes. The motion stated that Council would aim to increase the opportunities for real jobs and apprenticeships especially for the long-term (greater than 12 months) unemployed. This policy will support this motion and the Council’s wider economic strategy via appropriate social clauses that meet the necessary legal requirements for the duration of appropriate contracts.

- 2.7 Consequently, by means of this policy, we will exploit the potential of the Council's spending power to harness extra economic, social and environmental benefit for local people and communities by ensuring that appropriate social clauses are always considered in accordance within the agreed criteria.

3 THE LEGISLATIVE FRAMEWORK

- 3.1 The Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012 enables district Councils to take account of certain matters in the award of public contracts that were previously considered to be non-commercial considerations. Such matters include the terms and conditions of employment, etc., of a contractor's workforce and the conduct of contractors or their workers in industrial disputes.
- 3.2 The relaxation represented by the 2012 Order potentially makes it easier for the Council to integrate social considerations and social clauses into its contracts. However, some constraints do remain because of the requirements of EU procurement law. There is an inherent tension between the desire to promote the *local* economy by boosting procurement spend with local businesses, etc, and the obligations deriving from EU procurement law, the aim of which is to open up the EU market so that contractors throughout the EU can freely access and compete for opportunities in other member states. Restricting opportunities so that only local contractors can bid for contracts, for example, would be illegal under EU procurement law.
- 3.3 In summary, EU procurement law permits the inclusion of social and environmental requirements as contract conditions, provided those conditions are compatible with EU law and are indicated in the contract notice and contract documents.¹

4 THE AIMS OF THE POLICY

- 4.1 The aims of this policy are as follows:
- 4.1.1 to ensure that directors, commissioners, Council officers and all those engaged in procurement activity consider the opportunity to embed social considerations in a prospective purchase at the outset of the procurement process;
 - 4.1.2 to engage with the market and so encourage suppliers to include as much social value within contracts as possible;
 - 4.1.3 to ensure that, wherever possible, appropriate social clauses are included in all Council contracts; and
 - 4.1.4 to ensure that every pound spent on public service provision and procuring goods, works and services reaps maximum economic, social and environmental value and benefit, ultimately resulting in an improved quality of life in Belfast and its communities.
- 4.2 More broadly, the policy is intended to provide a solid foundation for the inclusion of social clauses in all appropriate Council contracts. To inform staff across the Council, particularly those involved in commissioning, when and how to assess the suitability of, integrate (where appropriate), manage and monitor social clauses in Council contracts.

5 WHO IS THE POLICY AIMED AT?

- 5.1 The policy is aimed at staff across the Council but particularly those with responsibility for making, influencing or sanctioning investment or spending decisions. It is aimed at directors, service commissioners, procurement managers, procurement officers, and contract managers. The policy is also intended to

¹ Regulation 39 of the Public Contracts Regulations 2006

influence contractors so that they are better able to accommodate social clauses and to identify ways in which they can increase the economic, social and environmental value of their work.

- 5.2 A separate guidance note for staff on how to implement and monitor social clauses sits alongside this policy. **[Note – we will include the guidance note once drafted as an appendix to this document]**

6 **WHAT OUTPUTS ARE WE SEEKING TO ACHIEVE?**

We aim to provide additional outputs that are germane to the main contract. Examples include:

- creating employment opportunities for the long-term unemployed (defined as those being unemployed/economically inactive for a minimum of 12 months);
- providing work placements and skills development for young people;
- sustaining/creating apprenticeships;
- promoting essential skills amongst suppliers existing workforce;
- providing paid placement opportunities for students on a University or College of Further and Higher course;
- delivering supply chain events to increase accessibility to supply chain opportunities for SMEs, micro-businesses and social enterprises;
- engagement with local schools/community groups to promote enterprise or careers in key sectors;
- delivering environmental improvements such as waste minimisation and/or recycling schemes, carbon reduction, CEEQUAL or BREEAM etc.
- identifying and delivering relevant community focused projects.
- identifying and delivering other contributory social benefits that are complementary to the main contract.

7 **WHAT TYPES OF CONTRACT ARE APPROPRIATE TO THE POLICY?**

- 7.1 The scope of this policy does not extend to leases or grants. Instead, it relates specifically to contracts let by the Council for goods, works and services. This includes a very broad range of contracts and will cover construction contracts, facility management contracts, and contracts for the purchase of goods. Every time the need for such a contract arises, an assessment of the potential to incorporate social clauses into that contract should be undertaken.

- 7.2 Factors to be considered include the nature of the purchase (goods/works/services) and the expertise of the potential providers/suppliers; the value of the contract; the size of the contract and the duration or term. Straightforward supply contracts, for example, will not be able to accommodate skills, training or employment opportunities but such requirements should be capable of being included in contracts for works.

- 7.3 A flowchart is included in the accompanying guidance note for staff to help determine when a contract should be considered for the inclusion of social clauses.

8 **WHAT TYPES OF CLAUSES ARE APPROPRIATE?**

- 8.1 There are constraints around the inclusion of social clauses in public contracts. These derive from EU procurement law. For example, it is not permissible to include

in a public contract a clause obligating a contractor to employ only local labour. Nor is it permissible to confine the opportunity to bid for Council contracts to only local firms.

8.2 Some key points to remember are set out below:

- Don't use the word "local" in your contract documents or specifications - instead think of more creative ways to achieve the end result you want;
- Do think about the use of social clauses early on and what the procurement process can achieve;
- Do calibrate the clauses to the contract - for example, there is generally no point in including employment-related clauses in contracts for the procurement of goods;
- Don't randomly employ social clauses in contracts unsuited to their inclusion;
- Do get the message out to suppliers that sustainable procurement is important to the Council - there will be better buy-in from suppliers who will come to see the inclusion of social clauses in Council contracts as a matter of course;
- Do seek further advice if you have any queries about the use of social clauses.

9 **WHEN SHOULD THE POLICY BE CONSIDERED?**

9.1 The consideration of the opportunities for including social clauses in contracts must become embedded within the Council's purchasing process. A determination of what social benefits can be derived from a particular contract should be as much a part of the procurement process as drafting the specification.

9.2 In order to successfully secure social benefit through the commissioning and procurement process, social benefit needs to be thought about as early as possible in the process. Ideally it should form part of the decision to invest. There needs to be real internal buy-in from key stakeholders within the Council to driving additional social value out of the procurement process.

9.3 In short, this policy should be considered every time a decision is made to spend money on the procurement of goods, services or works. As a minimum, contracts with a minimum labour value of £250,000 and contract duration of at least 6 months are to be screened for the inclusion of social clauses, in line with the guidance produced by the Construction Industry Forum for Northern Ireland (CIFNI).

10 **MONITORING SOCIAL CLAUSES**

10.1 To ensure the use of social clauses is effective and delivering the desired outcomes, clauses need to be monitored and reported. Monitoring needs to be appropriate to the size of the contract and the type of social clause. Further details are included in the accompanying guidance for officers. The results will be reported through the Council's existing performance management framework.

Appendix 1

[A glossary with clear definitions of key terms, such as "Long-term Unemployed", "Apprentice", "SME", etc.]

Appendix 2

Example - Social Clauses²

This list will be amended and added to as the Council increases its experience in the use of social clauses.

Economic Requirements

- The *Contractor* lists and publicises opportunities available within the supply chain on the *Contractor's* web-site and/or where appropriate, in the local press.
- Within four weeks of the commencement of the contract the *Contractor* notifies the Project Manager of the sub contract and supply chain opportunities, the expected timescale for opportunities and the minimum eligibility requirements suppliers will be required to fulfil.
- The *Contractor* is required to participate in at least one supplier information day, to be facilitated by Belfast City Council. Events will be developed in consultation with The *Contractor* however participation is likely to include a presentation on upcoming opportunities and one to one engagement with attendees. Events will be specifically targeted towards small businesses and social enterprises.
- The *Contractor* supplies the *Project Manager* with details and web links to information published on the *Contractor's* Website for inclusion in the ISNI tracking Database
- The *Contractor* complies with the Code of Practice for Government Construction Clients and their Supply Chains. See [Code Of Practice For Government Construction Clients And Their Supply Chains](#)
- The *Employer* requires the *Contractor* and the supply chain sign an agreement with the *Employer* to meet the Fair Payment commitments set out in the 'Fair Payment' Charter. (See Appendix A of the [Code of Practice for Government Construction Practice](#).) The *Contractor* will also comply, as part of the Charter agreement, with the following supply chain practice requirements:-
 - Payment to supply chain to be a standing item on the agenda for project meetings;
 - To provide the *Project Manager* with contact details for all supply chain members;
 - To provide a report to the *Project Manager* on payments made to these supply chain members at each project meeting; and
 - Any sub-contracts entered into by the Contractor for the completion of this contract shall include a requirement that, on the request of the *Project Manager*, the sub-contractor will report to the *Project Manager* on the moneys due to, and the payments received by the subcontractor from the *Contractor*. The report shall include an explanation for any moneys withheld by the *Contractor*. The content and format of the report shall be agreed in advance with the *Project Manager*.
- The *Project Manager* will carry out periodic checks with subcontractors on the payment performance of the *Contractor*.
- The *Contractor* procures the *works* to achieve the Best Value for Money for the *Employer* representing the optimum combination of Price and Quality (or fitness and purpose) over the lifecycle of the *works* while contributing to the wider Government objectives on Economic, Social and Environmental Sustainability. The *Contractor* uses Whole Life Value studies and Whole Life Costing techniques and methods to support the decision making process to achieve of Best value for Money.
- The *Contractor* provides access to accounts (as part of the open book process) to allow timeliness of payments to subcontractors and suppliers to be verified.

² For more information, see "Proposal for promoting equality and sustainable development by sustainable procurement in construction - Sustainability requirements, guidance & model contract clauses" by the CIFNI - sustainability task group (September 2012).

Social Requirements

- The *Contractor* submits an Employment Plan to the *Employer* within four weeks of the *starting date* setting out the *Contractor's* plans, procedures and programme for providing opportunities for the unemployed, apprentices, students and trainees as set out in the Works Information.
- The *Contractor* will be required to liaise with Belfast City Council, DEL and/or any organisations identified by Council to agree the approach for the promotion of employment, student, placement and apprenticeship opportunities provided through this contract. Promotion of these opportunities will be delivered in association with Belfast City Council, DEL and/or any organisations identified by Council.

Opportunities for the Unemployed

(Figures will be calculated based on labour value of the contract – every £250k of labour value equates to 13 employment weeks.)

- The *Contractor* either directly or through its supply chain provides XXXXX paid employment weeks for the long term unemployed (defined as those who have been unemployed for 12 months or more). The *Contractor* is required to liaise with Belfast City Council, DEL and/or any organisations identified by Council to promote employment and apprenticeship opportunities provided through this contract.
- The *Contractor* must ensure that the employment opportunities provide meaningful work experience, development and marketable skills which will enhance the person's skill set for continued and future employment. It is the ambition of the *Employer* that employment opportunities should be sustainable, where possible.
- In the event that an unemployed participant commences the employment but withdraws or is removed before completing the employment opportunity, the *Contractor* arranges for a replacement unless the completion date of the contract is within two months.
- The *Contractor* provides:- An update at monthly intervals on the number of participant weeks delivered within the *Contractor's* Sustainability Project Report using Table A of *Contractors' Sustainability Project Report*.

Apprentices

- Five percent (5%) of the *Contractor's* workforce (if the *Contractor* has 20 or more employees) are employed on formally recognised paid apprenticeships.
- Five percent (5%) of the workforce of each first tier Subcontractor (with 20 or more employees) are employed on formally recognised paid apprenticeships.
- A paid apprenticeship is one that is recognised within the DEL ApprenticeshipsNI programme e.g. [Level 2 framework apprentices](#) or [Level 3 framework apprentices](#) or a similar scheme.
- The *Contractor* provides:-
 - Within four weeks of the *starting date*, a list of apprentices using Table B within the *Contractor's* Sustainability Project Report; and
 - Within four weeks of the *starting date*, evidence (e.g. PAYE printout) of the number of people employed by the *Contractor* and each first tier Subcontractor (with 20 or more employees) and records the data using Table B within the *Contractor's* Sustainability Project Report.
 - an update at monthly intervals on the number of apprentices and individuals employed by the *Contractor* and each first tier Subcontractor (with 20 or more employees) using Table B within the *Contractor's* Sustainability Project Report.
- If at any time before the Completion Date the proportion of apprentices drops below the five percent (5%) requirement the *Contractor* submits to the Project Manager an apprentice recruitment plan and implements this plan promptly to ensure that the requirement set out in the Works Information is achieved.
- The *Contractor* must ensure that the employment opportunities provide meaningful work providing experience, development and marketable skills which will enhance the person's skill set for continued and future employment. It is the ambition of the *Employer* that employment opportunities should be sustainable, where possible.

Student Work Placements

(Figures will be calculated on labour value, between £2-5million – 40 student placement weeks, £5 million plus 80 student placement weeks.)

- The *Contractor* provides XXXX person weeks of paid placement opportunities for students on a University or College of Further and Higher course.
- In the event than a student commences the employment opportunity but withdraws or is removed before completing the required number of weeks, the Contractor arranges for a replacement participant unless the completion date of the contract is within two months.
- The Contractor must ensure that the employment opportunities provide meaningful work providing experience, development and marketable skills which will enhance the person's skill set for continued and future employment. It is the ambition of the Employer that employment opportunities should be sustainable, where possible.
- The *Contractor* provides at monthly intervals, an update on the number of student weeks actually delivered using Table C within the *Contractor's* Sustainability Project Report.

Trainees

(Figures will be calculated based on labour value, every £500k of labour value equates to 8 TFS weeks.)

- The Contractor either directly, or through its supply chain, provides XXXXX person weeks of work placement for Training for Success (TFS) trainees through the Department for Employment and Learning (DEL) contracted training suppliers or equivalent.
- The *Contractor* is required to liaise with Belfast City Council, DEL and/or any organisations identified by Council to promote placement opportunities and to arrange TFS placements.
- In the event that a TFS trainee commences the work placement, but withdraws or is removed from the placement before the required number of weeks has been completed, the Contractor arranges for a replacement TFS trainee unless the total number of person-week placements yet to be delivered under the contract is less than 2 weeks.
- The Contractor provides the TFS trainee in conjunction with their training supplier with relevant work experience, training and development which will enhance their opportunities for future employment.
- The Contractor provides an update at monthly intervals on the number of TFS participant weeks actually delivered using Table D within the Contractor's Sustainability Project Report.

Essential Skills

- The *Contractor* and supply chain will provide opportunities for all employees to develop essential skills through, for example, the promotion of the DEL Essential Skills Programme.

Equality of Opportunity

To promote equality in the workplace.

- The *Contractor* shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and the Employment Rights (Northern Ireland) Order 1996 and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the *Contractor* under this agreement he has due regard to the need to promote equality of treatment and opportunity between:
 - persons of different religious beliefs or political opinions;
 - men and women or married and unmarried persons;
 - persons with and without dependants (including women who are pregnant or on maternity leave and man on paternity leave);

- persons of different racial groups (within the meaning of the Race Relations Northern Ireland) Order 1997);
 - persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
 - persons of different ages; and
 - persons of differing sexual orientation.
- The *Contractor* shall take all reasonable steps to ensure the observance of the provisions of the above clause by all servants, agents, employees, consultants and sub-contractors of the *Contractor*.

Respect for People

To promote Respect for People.

- The *Contractor* and supply chain agree to comply with the requirements of the 'Respect for People (RfP) – Code of Good Working Health and Safety Practices' incorporating the 'Code of practice for Industrial Relations and Health and Safety'. Compliance with this Code will include payment of operatives in accordance with the industry Working Rules Agreements For link see:- <http://www.strategicforum.org.uk/pdf/codeofpractice.pdf>
- The *Contractor* will calculate the Constructing Excellence Key Performance Indicators on Respect for People and report the KPIs to the *Employer*

Health & Safety - BuildSafe-NI

To promote best practice in Health and Safety.

- The requirements are contained within Works Information Volume 3B - "Safety, Health and Welfare"

Waste Minimisation and Management

- The Contractor is required to implement where possible cost-effective methods of good practice waste minimisation during the design of the project and thereafter during construction. As a minimum, the Contractor should:
 - Identify appropriate methods of waste minimisation in design before detailed design commences and report to the Project Manager on the economic and practical implications of adopting these methods during the development of the design.
 - Agree with the Project Manager which methods of waste minimisation to implement at the appropriate design stage and demonstrate how the methods have been incorporated into the design.
 - Include a list of measures within the Site Waste Management Plan to minimise waste from on-site operations (for example, damage, theft etc) and demonstrate how these measures have been implemented.
 - The Site Waste Management Plan is to be implemented in all construction site activities in line with good practice published by Waste & Resources Action Programme (WRAP). The Plan is required to set a target for waste reduction and recovery. It is expected that this target will be set to better the current waste bench mark for project type as published in: www.smartwaste.co.uk/benchmarking.jsp unless otherwise agreed with the Employer.
- The Contractor is also required to meet specified minimum waste recovery rates for the waste streams with the largest cost-effective recovery potential (to be known as 'selected Quick Wins'). The Contractor is required to identify and agree with the Project Manager/Employer's Agent the key opportunities for Quick Wins on the project and set minimum recovery rates to be achieved. Specifically, the Contractor's responsibility (in association with his trade sub-Contractors and waste management Contractors where appropriate) shall be to:-
 - Identify, and continually review as the pre-construction design develops, the waste streams with the largest potential and estimate likely recovery rates to be adopted for the project: Agree with the Project Manager/Employer's Agent before the commencement of construction those waste streams that will provide the most significant opportunities for cost-effective recovery (to be known as 'selected Quick Wins') and the minimum recovery rates to be adopted for the project;

- Meet the agreed minimum recovery rates for the selected Quick Wins unless otherwise agreed in writing by the Client:
 - Measure waste arising during the works and compare with the minimum recovery rates set for the project and then report these findings to the Project Manager (in a form to be agreed) every four weeks at project meetings including the measures to be implemented to meet the minimum recovery rates if actual recovery is below target; and
 - Appoint trade sub-contractors and waste management Contractors with the same liability as under the Employer's Requirements to meet minimum recovery rates (where applicable) and to support the Contractor to measure, monitor and report actual waste during the works.
- To assist the effective delivery of the above requirements, the Contractor should develop and implement a Site Waste Management Plan (SWMP) to achieve good practice waste management on the project. Specific Contractor responsibilities will be to:-
 - Provide and agree a methodology with the Project Manager before detailed design commences regarding how the SWMP will be developed and implemented with specific reference to the constraints of the project, the management of these constraints, their supply chain, programme of key steps and reviewing performance. This should take into account good practice guidance published by WRAP and other organisations.
 - Develop the SWMP as the design progresses in accordance with the agreed methodology for completion prior to construction commencing. A copy of the completed SWMP should be provided to the Employer's Agent prior to construction commencing;
 - Implement the SWMP during construction in accordance with the agreed methodology; and
 - Ensure compliance of all appointed trade sub-contractors and waste management Contractors with the legal requirements under the Duty of Care regulations and take all reasonable actions as appropriate for non-compliance.
- For some approved uses of Greenfield soil as outlined in NIEA's Regulatory Position Statement 'Guidance on the Regulation of Greenfield Soil in Construction and Development' such as road and verge construction, landscaping and sustainable drainage systems, waste controls may not be applied. However, in order to benefit from the regulatory position, the producer or receiver of the soil must:-
 - Complete and sign the declaration form at Appendix 2 of the Regulatory Position Statement or
 - Submit a declaration form on line at www.ni-environment.gov.uk/apply_online.htm

Recycling and Reuse of Construction Materials

- As a minimum outcome, at least 10% [or as otherwise stated in A06/210] of the total value of materials used in the construction project derives from recycled and re-used content in the products and materials selected. (* see below) The Contractor must also demonstrate that the most cost effective cost-neutral opportunities to increase the value of materials deriving from recycled and re-used content (i.e. the relevant Quick Wins) have been identified and implemented, and that targeted improvements made in the total recycled content above "baseline practice" for the project have been quantified.
- Tools and resources for evaluating recycled content and identifying Quick Wins with minimum effort are available from www.wrap.org.uk/construction
- Wherever technically and commercially feasible, the Contractor's specification should require the use of products with recycled content that equals or exceeds the 'good' practice performance for that component.
- Where the Contractor considers that the use of materials with higher recycled content for identified Quick Wins may be unachievable or that there is an additional cost in meeting this level, the Contractor must contact the Project Manager during the design development period with supporting information which states:-
 - Identified Quick Wins (e.g. as indicated by the WRAP tools)
 - The reasons for selecting not all of the identified Quick Wins or for pursuing levels of recycled content value below "good practice" for the identified Quick Wins, identifying cost, programme and / or quality issues resulting in this decision.

- The Contractor must identify the minimum value for the recycled content in each of the selected Quick Wins. The Contractor must ensure that all corresponding materials achieve the required recycled content value, and retain evidence of their use through the collation of invoices and manufacturers' data. This information is to be made available to the Project Manager within five working days upon request.
- At the end of the project, the Contractor must report to the Sustainability Auditor (or Project Manager, if designated) the improvement made in the total recycled content above "baseline practice" for the project and the estimated outcome for total recycled content by value.
- The value of materials deriving from recycled content on a project may be calculated using the following summation across all the products and materials used: (quantity of product A) x (cost of product A) x (% recycled content by mass of product A).

*Recycled content is the proportion, by mass, of recycled materials in a product, excluding waste material (such as process scrap) reutilised within the same process that generated it - see ISO14021 for a formal definition. Where a product or material is reused (e.g. is removed and replaced or moved to another location), then it is credited at 100% reused content by value. The cost of a product is the unit delivered price for the materials, excluding installation costs.

- The Contractor is to calculate and report the recycled content as an environmental Key Performance Indicator.

Environmental Assessment

- The Contractor and supply chain shall work to achieve a CEEQUAL or BREEAM rating of "Excellent" and "Very Good", or equivalent, for new build and refurbishment projects, respectively.
- The Contractor is to Construct the works in accordance with the BREEAM rating achieved during the Design Stage and obtain from the BREEAM assessor/authority a certificate certifying the works, as built, comply with the design intent and BREEAM Rating achieved at Design Stage.

Reduction in Energy, Water Consumption and Carbon Emissions

- The Contractor is to comply (where applicable) with the minimum mandatory specifications and if possible with the best practice specifications of Defra's 'Government's Buying Standards'. See: <http://www.defra.gov.uk/sustainable/government/advice/public/buying/products/index.htm>

Appendix D

Good Practice Examples

Manchester

Construction GTA

Delivered through the Greater Manchester Chamber of Commerce (GMAA), the Construction GTA operates a Shared Apprenticeship Scheme, which aims to generate a sustainable programme of work to host apprentices by pooling local authority capital expenditure, and to encourage contractors to collaborate and 'share' apprenticeship training.

With local authority capital budgets reducing, and members of the supply chain unable to commit to training long term, the shared apprenticeship scheme enables organisations to pool their projects into programmes making more sustainable employment opportunities for apprentices.

In this arrangement, a third party partner, Kinetic, becomes the employer of the apprentice and the on-the-job training is shared amongst various 'host employers' who provide placements as and when they can. This approach is dependent on visibility and access to a pipeline of construction contracts to ensure the apprentices have enough work to complete their apprenticeship term.

The GTA's shared apprenticeship scheme was the catalyst to bringing clients and contractors together to collaborate, and to look at what industry requires. The GTA has grown considerably since its launch and the team is currently managing numerous projects.

Liverpool Fusion 21

Fusion21 is a social enterprise that promotes public procurement as a means to save money and create social outcomes.

Working nationally, Fusion21 links spending programmes across numerous organisations, to the creation of training opportunities and sustainable jobs for local people. As well as generating social value this model improves efficiency in the procurement process and generates significant cash savings.

As a social enterprise, Fusion 21 invests any surplus back into the delivery of social outcomes and creation of social value across the country. The model has gained widespread acclaim and has been recognised with numerous awards. Similar to GTA Construction, Fusion 21 also provide a shared apprenticeship scheme.