

**Private and Confidential**

**Castlereagh Borough Council**

**Investigation into the Award of a Lease  
at the Lock keeper's Inn**

**25 August 2011**

***FINAL REPORT***

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**Deloitte LLP  
19 Bedford Street  
Belfast  
BT2 7EJ**

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## **1. INTRODUCTION AND TERMS OF REFERENCE**

### **1.1 Background to our work**

Deloitte LLP<sup>1</sup> (“Deloitte”, “we” and/or “us”) was appointed by Castlereagh Borough Council (“the Council” or “you”), under the terms of our Letter of Engagement dated 30<sup>th</sup> June 2010. You instructed us to conduct an administrative investigation into the events and circumstances surrounding the award of the lease in respect of the catering facility known as the Lock Keeper’s Inn which is located within Lagan Valley Regional Park.

Our Proposed Investigation Strategy, appended to our Letter of Engagement, is attached to this report as Appendix 1.

### **1.2 Background to our work**

Following the broadcast of BBC Northern Ireland’s Spotlight programme on 7<sup>th</sup> January 2010 which reported an alleged relationship between Alderman Iris Robinson, a Member of Castlereagh Borough Council and Kirk McCambley, to whom the Council had awarded a lease in respect of a catering facility known as the Lock Keeper’s Inn, Deloitte was engaged by the Council to conduct an administrative investigation into the award of this lease.

Our investigation was originally scheduled to commence in January 2010 as part of the Council’s response to the allegations made within the Spotlight programme. However, the initial fieldwork was postponed at the outset as the Police Service of Northern Ireland (PSNI) informed the Council that it was to conduct a criminal investigation into aspects of the allegations made within the programme. Our investigation then commenced on 30<sup>th</sup> June 2010, once the Council received confirmation from PSNI that its investigation had sufficiently advanced to allow this to proceed. In the course of conducting our investigation we have not been made aware of the scope of the PSNI investigation, however we are aware that since the date of our fieldwork the PSNI investigation has concluded and the Public Prosecution Service is not pursuing any action.

Our initial fieldwork was conducted during the period 30<sup>th</sup> June to 25<sup>th</sup> August 2010 with a number of interviews and discussions taking place over the subsequent period.

A reporting protocol was agreed with the Council whereby regular progress reports would be provided to each Acting Chief Executive during the fieldwork phase of the investigation. Furthermore, the protocol required the Draft Final report to then be submitted to the Mayor and Chief Executive (following his appointment in January 2011) in line with the Council’s requirement outlined within the original Terms of Reference for the engagement. Protocols were also

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agreed with the Chief Executive regarding the presentation of the Final Draft report to Council and the arrangements whereby the accuracy of the report and findings contained therein could be agreed accordingly to ensure the confidentiality of the report would be maintained until such times as it was formally issued in its final version.

### **1.3 Objectives and work performed**

In line with the requirements of our Letter of Engagement / Proposed Investigation Strategy dated 30th June 2010, our work comprised the following:

#### ***Objective 1:***

*To identify if the Council incurred any financial loss as a result of the award of the lease at the Lock-Keeper's Inn.*

#### ***Work Performed***

Review of:

- the lease, including its terms and conditions and a comparison of terms and conditions for other similar catering type franchises offered / granted by the Council including appropriateness of any specific concessions e.g. rent vacations, equipment grants etc.;
- any documentation outlining changes / amendments to the lease and conditions of the lease granted (since the initial granting of the lease) and completeness of acquired approvals attained; and
- internal Council financial reporting to confirm receipt of all monies due / recoverable to the Council in respect of the lease. We have not inspected individual invoices raised or receipts collected with regard to Mr McCambley's financial liabilities to the Council in respect of the Lock Keeper's Inn.

#### ***Objective 2:***

*Investigate any impropriety on the part of the Council officers and elected representatives in the award of the lease at the Lock-Keeper's Inn.*

#### ***Work Performed***

Review of:

- documentation to support the decision to develop a cafeteria facility in the vicinity of the Lock-Keeper's Cottage i.e.:
  - The Redevelopment of Newforge Lock Site: Fred Hammond for Stephen Warnock Land Assessment and Countryside Management Consultant (May 1996); and
  - Redevelopment of Lock Keeper's Cottage, Shaw's Bridge Business Plan: PricewaterhouseCoopers LLP (December 2006);
- documentation relating to the Expression of Interest issued by the Council in respect of the potential lease for the Lock-Keeper's Inn facility;
- documentation pertaining to the receipt of completed tender documentation (including use of independent tender opening panel, pre-agreed criteria to

assess bids, contents of any evaluation report produced outlining decision of panel and clarification process to deal with queries);

- documentation dealing with reporting to the Council and any sub committees on the outcome of the evaluation process and decisions to award the lease and provide the lessee with specific concessions i.e. rent vacation and contribution for essential kitchen equipment; and
- review of Council minutes from April 2007 to September 2008, with cross reference to relevant Finance and General Purposes Committee and Economic Development Sub Committee minutes, where considered appropriate, within the context of our review.

### **Objective 3:**

*To investigate whether officers and elected representatives complied with the requirements of local government legislation listed below and guidance in the awarding of the above-mentioned lease.*

### **Work Performed**

Consideration of:

- relevant documentation to attain evidence of compliance and note specifically instances of any non compliance with the following legislation and guidance:
  - Local Government Act (Northern Ireland) 1972 as amended;
  - Local Government (Miscellaneous Provisions) Act 1982 as amended;
  - Procurement (including EU procurement requirements);
  - Castlereagh Council internal procedures relating to:
    - Procurement (including invitation to tender, establishment of panels, and evaluation criteria);
    - Register of Interests and Conflicts of Interest;
    - Granting and awarding of licences; and
  - Nolan Principles.
- NI Code of Local Government Conduct – A Code of Recommended Practice for Guidance of Councillors; and
- Castlereagh Borough Council Standing Orders.

### **Interviews**

In addition to reviewing the documentation, as detailed at Appendix 2, in relation to the three investigation objectives above, we also conducted a series of structured interviews to support our review. These were with the following:

- Director of Finance;
- Economic Development Manager; and
- All other members of the Assessment Panel responsible for assessing submitted business plans with regard to the award of the lease for Lock Keeper's Inn during the second campaign namely:

- Alderman Jim White; and
- Alderman Jack Beattie.

We also interviewed the Director of Administration & Community Services regarding the Council's arrangements for managing and declaring Conflicts of Interests and other issues deemed to be relevant to the investigation and the Procurement Officer (who was not in office at the time the lease was awarded) for his views regarding the Council's Procurement Policy and Procedures and the relevance of these to the process of tendering and awarding a lease.

Furthermore, we met with the Chief Local Government Auditor within the Northern Ireland Audit Office (NIAO) to discuss the scope of the work performed and gain an understanding of any broader concerns that NIAO may have regarding the award of this lease and of any associated issues they may be aware of in this regard, that would have an impact upon our review.

#### **1.4 Limitations of the work performed**

The scope of our work was limited to considering the award of the lease for the Lock Keeper's Inn and did not consider the wider allegations made within the BBC NI Spotlight programme of 7<sup>th</sup> January 2010. Whilst we have reported our findings in accordance with the agreed scope of our work, having considered the information provided to us (listed within Appendix 2) in the course of carrying out the Services (as defined in our Letter of Engagement), additional information that you may regard as relevant may exist that has not been provided to (and therefore not considered by) us. In addition, we have not undertaken a review of emails (beyond those that have been provided to us) or an interrogation of your IT systems. Accordingly, our report and our work should not be relied upon as being comprehensive in such respects. We accept no responsibility for matters not covered by or omitted from our report due to the specific nature of our work.

Our interviews have been limited to Council Officers and Members involved in the award of the lease. We have not conducted interviews with external parties including, but not limited to, the then Alderman Iris Robinson, Kirk McCambley and other third parties who registered an initial interest in the letting of the lease. Arrangements were made to offer Mrs Iris Robinson and Kirk McCambley (via their respective solicitors) access to a copy of the draft report dated 26th May 2011 on completion of a standard release letter, given our terms of engagement are with the Council. Copies of the Draft Final Report were also provided, under the same arrangements as above, to those members of the Assessment Panel (responsible for assessing submitted business plans within the process to award the lease of Lock Keeper's Inn) to validate the accuracy of the findings in this regard. Their comments have been reflected within this report. Kirk McCambley's solicitor confirmed that he had no comment to make on the report. However, Mrs Iris Robinson's solicitors confirmed that they would not sign our standard release letter for the report. As an alternative, to ensure she and her representative had the opportunity to comment on the draft report Mrs Robinson's solicitors were offered the opportunity to review the report at the Deloitte offices, for as long as was required, at any time from 3rd August 2011 – 17th August 2011. This offer was again declined and consequently, Mrs Robinson has not provided any comments on the report or its findings. However, it should be noted that, at the time of the police investigation referred to previously, PSNI requested sight of an early draft of

our report. At this time Mrs Robinson's solicitors were also provided with a copy of this report, outside of our normal release procedures.

For the purposes of this report, save where we have been able to corroborate information, we have had to assume that the documents or other information made available to us are reliable and complete. Our review was dependent on the co-operation and honesty of the people to whom we spoke and the completeness and integrity of the documentation that we reviewed. This report should be considered in that light and we cannot accept any liability for our findings being prejudiced through provision of incomplete or unreliable information or material.

This report should not be construed as expressing opinions on relevant regulation. However, it necessarily reflects our understanding thereof. It should also be noted that we were not tasked with providing legal advice on the issues that were considered.

### **1.5 Limitations on the use of this report**

This report has been prepared for the internal use of the Council only. It should not be copied, referred to or quoted to any other party or be used for any other purpose other than as outlined within the agreed Terms of Reference. No other party is entitled to rely on this report for any purpose whatsoever.

We remind you of the Terms of Business attached to our Letter of Engagement, particularly in relation to confidentiality. These preclude you from disclosing this report to any third party without our prior written consent.

However, we understand that you may be required to disclose copies of our report to the Local Government Auditor i.e. Northern Ireland Audit Office (NIAO). We would be happy for you to do so, although we will need to make it clear to NIAO that disclosure of the report to them will not create any duty, liability or responsibility whatsoever on our part to them in relation to our report or any of its contents. Moreover, we cannot and do not warrant that the information set out in our report will provide a comprehensive response to any request from NIAO and it is your responsibility to ensure that the materials provided to NIAO comprise a complete response to such requests.

We will accept no liability to third parties or anyone else for the contents of the report or other work product so disclosed including any third party recipient under the Freedom of Information Act 2000. You should consult with us promptly should you receive any request which you consider requires disclosure of the contents of this report, either in whole or in part, under the Freedom of Information Act 2000.

### **1.6 Structure of this report**

This report is set out as follows:

- at Section 2 of the report, we set out a summary of the relevant allegations made in the BBC NI Spotlight programme of 7<sup>th</sup> January 2010 as context to the investigation;
- at Section 3 we have set out the detailed findings and recommendations arising from our work; and
- at Section 4 of the report we have concluded our findings in relation to each of the stated objectives for this review.

## 2. SUMMARY OF RELEVANT ALLEGATIONS MADE WITHIN BBC NI SPOTLIGHT PROGRAMME 7<sup>TH</sup> JANUARY 2010

### 2.1 Context

In this section, we have briefly outlined the context and background issues which prompted the Council to initiate this investigation. These centre on the BBC Northern Ireland Spotlight programme of 7<sup>th</sup> January 2010 which alleged a relationship between the then Alderman Iris Robinson, a Member of Castlereagh Borough Council and Kirk McCambley, to whom the Council had awarded a lease in respect of a catering facility known as the Lock Keeper's Inn.

### 2.2 Allegations raised within the BBC NI Spotlight Programme

This programme made a number of allegations including some regarding the appropriateness of the award of the lease of the Lock Keeper's Inn to Kirk McCambley, given the alleged nature of his relationship with the then Alderman Iris Robinson.

A summary of the allegations made within the Spotlight programme, that were relevant to this review, were taken directly from the BBC website and have been outlined in Table 2.1 below.

Table 2.1: Summary of Allegations Made within BBC NI Spotlight Programme

	Specific Allegations
A	Spotlight revealed that the man with whom Mrs Robinson had the affair was Kirk McCambley, now 21, and the joint owner of Lock Keeper's Inn off the Shaw's Road in South Belfast.
B	At that time Castlereagh Borough Council, on which Mrs Robinson served as a councillor, had advertised for a tenant to run a cafe at a new project on the banks of the River Lagan.
C	Spotlight reported that in July 2008, six weeks after Castlereagh Borough Council advertised for expressions of interest in the cafe project, only one applicant met the criteria - Mr McCambley.
D	The deal was sealed on 28 <sup>th</sup> August 2008 and Iris Robinson was in attendance as the council authorised the signing of the lease.
E	The laws covering local government state that once Mrs Robinson had a financial interest in the business, she was obliged to declare it at any meeting she attended where it was being considered. She failed to do so.
F	Spotlight reported that she also broke a cluster of other rules in the Code of Conduct for councillors - as many as five elements of the code.
<i>Source: BBC Website – <a href="http://news.bbc.co.uk/1/hi/northern_ireland/8448005.stm">http://news.bbc.co.uk/1/hi/northern_ireland/8448005.stm</a></i>	

As set out in Section 1, this review has primarily considered the allegations **directly related to the award of the lease of Lock Keeper's Inn by the Council to Kirk McCambley** and investigated the circumstances behind these specific allegations to understand whether there was any impropriety on behalf of Council Officers or elected Members that enabled Kirk McCambley to gain an undue advantage and / or that resulted in the Council incurring any financial loss through the award of this lease, given the allegations made within the Spotlight programme regarding his relationship with the then Alderman Iris Robinson.

**It should be noted that the wider allegations, made by the Spotlight programme, were not considered within the terms of reference and scope of this investigation.**

### **3. DETAILED FINDINGS AND RECOMMENDATIONS**

#### **3.1 Introduction**

In this section we have outlined the background to the broader development of the Lock Keeper's Cottage Project and the Council's intention to establish a tea room facility at the location. We have also provided a chronology of events and related findings and recommendations resulting from the awarding of the specific lease under review. We have aligned our findings and recommendations to the six stage process that the Council were to follow for the award of this lease. Wider findings and recommendations regarding the Council's procedures for managing declarations of interest have been reported separately under Section 3.6 of the report.

#### **3.2 Introduction and Background to Lock Keeper's Cottage Project**

In 1996 a report was commissioned on behalf of the Environment and Heritage Agency of the Department of the Environment (Northern Ireland). Its focus was on the then vacant Lock Keeper's Cottage on the Lagan Navigation tow path at Newforge which the Council was in the process of acquiring for re-development as a public amenity. The report suggested that the best use of the Lock Keeper's Cottage would be as an interpretive exhibition highlighting the development of the canal. It further suggested the construction of a new building to house public toilets, tea room and an information point.

The Council purchased the Lock Keeper's Cottage in 1996 from the McBride family for a cost of £42k with additional assistance from the Heritage Lottery Fund and European Regional Development Fund. It was considered that the purchase of the cottage was essential to ensure that this important part of Castlereagh's industrial heritage could be effectively maintained and the building could be opened to members of the public for their enjoyment.

The Lock Keeper's Cottage subsequently featured in the BBC 2 Restoration Programme in 2004 and whilst it did not win, the Council subsequently secured funding from both the EU Building Sustainable Prosperity Programme under the Northern Ireland European Regional Development Fund and Heritage Lottery Fund Landscape Partnership Scheme to guarantee its sympathetic restoration.

The Lock Keeper's Cottage and surrounding site underwent a major building and restoration programme during the period 2004 to 2007. This involved the tender and award of contracts, consultations and design, site investigations and other preparation work. The first valuation certificate associated with the project was paid for in April 2007.

To further enhance its attraction as a public amenity the Council were keen to establish a tea room at this facility, which subsequently became known as the Lock Keeper's Inn.

### 3.3 Chronology of Events

Table 3.3.1 summarises the timeline outlining the key events leading to the award of the lease of Lock Keeper's Inn by the Council to Kirk McCambley.

*Table 3.3.1 Chronology of Events leading to Award of Lease to Kirk McCambley*

Date	Event
Apr 07	Council's Economic Development Manager was authorised to advertise for expressions of interest for the franchise for the catering facility at Lock Keeper's Visitor Centre.
2 May 07	Advertisement inviting Expressions of Interest appeared in Belfast Telegraph.
18 May 07	Only two parties recorded their interest. [Applicants 1&2]. By October 2007 both parties had withdrawn their interest seemingly due to too many aspects of the proposed business being unquantifiable to enable them to make a balanced economic judgment.
Mar 08	A further party [Applicant 3] then contacted the Acting Economic Development Manager to express an interest in the catering facility at Lock Keeper's Cottage. She met with the Economic Development Sub Committee on 10 <sup>th</sup> March 2008 but as her business proposals were considered by the Committee to be unclear this option was not pursued any further.
13 Jun 08	A second Expression of Interest advertisement was placed in the Belfast Telegraph. Those interested were to request an information pack from the Council. Five requests for the information pack were subsequently received. Four of these were from members of the public and one was received from the then Alderman Iris Robinson. We were informed by the current Economic Development Manager that the Business Officer in post at that time subsequently invited tenants from the first campaign to reapply to the second campaign - this contact was undertaken by phone.
2 Jul 08	Four Expression of Interests were received. Two were late submissions [Applicants 4&5] and one was simply a letter expressing an interest rather than providing an appropriate submission form [Applicant 6]. Only one, Kirk McCambley, met the submission criteria. All those who recorded their interest were asked to submit Business Plans for assessment by 18 <sup>th</sup> July with Applicants 4, 5 & 6 being advised that this would be subject to Economic Development Sub Committee approval given that they had not adhered to the submission requirements. A Business Plan template (8 pages max.) was provided to enable submissions to be comparatively assessed.
8 Jul 08	Economic Development Sub Committee approved a proposal to accept all four submissions in the interest of competition 'given that there was not a specific policy or cost element relating to expressions of interest'.
10 Jul 08	Applicant 5 wrote to withdraw her expression of interest citing that a colleague who was planning to assist her in the venture had withdrawn their support. In a follow-up phone call to the Council, Applicant 5 also expressed her concerns regarding personal security particularly during evening hours of business.
21 Jul 08	Applicants 4&6 did not submit a business plan and were contacted by the Economic Development Manager. Applicant 6 advised that he had not submitted a business plan due to his own current business pressures while Applicant 4 stated that he did not do so because he was going on holidays and was under pressure due to the pending wedding of his daughter.
23 Jul 08	Kirk McCambley presented his business plan to the Assessment Panel and answered follow-up questions on this. Following his presentation, Kirk McCambley was given a score of 83% by the Panel against pre-agreed assessment criteria.
24 Jul 08	Council approved the award of lease and instructed officers to liaise with Kirk McCambley on the terms of the lease. The minutes show that the then Alderman Iris Robinson was not present at this meeting.
28 Aug 08	Council approved the terms of the lease. Council records confirm that Alderman Iris Robinson was in attendance at this meeting but left early. It was not possible to understand conclusively from these records whether she was present when the item regarding the Lock Keeper's Inn was discussed, although it would appear she may not have been present for that agenda item and there is no record of her commenting on the agenda item. Councillor Jimmy Spratt confirmed that the then Alderman Iris Robinson left the Council meeting prior to the agenda item regarding the award of the lease for Lock Keeper's Inn. The Director of Administration & Community Services also confirmed that, in her considered opinion, the then Alderman Iris Robinson left the meeting after the planning / roads agenda items were completed and prior to the agenda item regarding the terms of the lease for Lock Keeper's Inn being tabled.
12 Sept 08	Lease of premises at the Tea Rooms, Lock Keeper's Cottage was formally signed.
<i>Source: Documentation inspected (See Appendix 2) and interviews conducted</i>	

### 3.4 Overview of the Council Process for Awarding of a Lease

The Council adopted a 6 stage process that was to be followed in respect of the assessment and award of the lease for the Lock Keeper's Inn. This process has been outlined within Table 3.4.1 below.

Table 3.4.1: Council Process for Awarding Lease

Stages	Event
Stage 1	Expression of Interest
Stage 2	Select list invited to submit business plan
Stage 3	Selection interview
Stage 4	Successful and reserve tenant approved
Stage 5	Tenancy and specific negotiations
Stage 6	Lease finalised

Source: Council document entitled "Supplementary Information and Expression of Interest Form for a Catering and Complimentary Business Tenancy at the Visitors' Centre at the Lock Keeper's Cottage.

### 3.5 Findings and Recommendations

In this section we have outlined our understanding of activities and related events associated with each stage in the above-mentioned process. We have summarised the key findings which we deem to be relevant to the allegations being investigated within the scope of this review. We have also raised recommendations relating to these key findings which the Council should now consider for future implementation, as appropriate.

#### 3.5.1 Stage 1 - Expression of Interest

##### *First Campaign*

In April 2007 the Council's Economic Development Manager was authorised to advertise for expression of interests for the franchise for the catering facility at the Lock Keeper's Visitors' Centre. The advertisement appeared in the Belfast Telegraph on 2<sup>nd</sup> May 2007 and interested parties were required to respond directly to Council by 4pm on 18<sup>th</sup> May 2007. Only two parties [Applicants 1&2] recorded an expression of interest and they were invited to meet with members of the Economic Development Sub Committee to discuss the opportunity further. Both parties subsequently withdrew their interest. In a letter advising the Council of her decision to withdraw her interest Applicant 2 stated that '*there are too many aspects that are unquantifiable in terms of footfall, our costs and resource requirements. Without these it has not been possible for us to make a balanced economic judgment.*' We understand that there is no record outlining the reason for Applicant 1's withdrawal from the process.

In March 2008 the then Acting Economic Development Manager received a letter from another party [Applicant 3] expressing an interest in the catering franchise at the Lock Keeper's Cottage. Applicant 3 was asked to come along to meet with members of the Economic Development Sub Committee to discuss this opportunity but as the applicant had no business plan and business proposals appeared unclear the Sub Committee decided not to pursue this option any further. However, this decision was not formally communicated to the party concerned (i.e. Applicant 3), although the Director of Finance does recollect communicating this decision by telephone.

## ***Second Campaign***

The Council then embarked on a second campaign to find a tenant for the Lock Keeper's Visitor's Centre's catering facility. It placed a second Expression of Interest advertisement in the Belfast Telegraph on 13<sup>th</sup> June 2008 with a closing date of 27<sup>th</sup> June. Documentation held by the Council indicates that the advertisement for the Expression of Interest was also placed on Craft NI and Arts Council NI websites. We were informed by the current Economic Development Manager that the Business Officer in post at that time subsequently invited tenants from the first campaign to reapply to the second campaign - this contact was undertaken by telephone.

The Council received five requests for information packs regarding the Expression of Interest including one from a councillor, the then Alderman Iris Robinson. It transpired that this request was made on behalf of Kirk McCambley. The then Alderman Iris Robinson advised the Economic Development Manager at the time that her request was on behalf of a contact known to her through her church. We were advised by officers that it would not be considered unusual for Members to request information such as this on behalf of their constituents.

### ***Stage 1 - Summary Findings and Recommendations in respect of allegations***

There was evidence of a long term intention to develop and establish a tea room facility at the Lock Keeper's Cottage.

There was evidence of a formal process to award the lease through a competitive exercise. The unsuccessful outcome of the first campaign meant that the Council had to embark upon a second campaign to be completed within appropriate timescales.

Between the first and second campaigns a party came forward to register their interest in the lease for the tea room at Lock Keeper's Cottage. While the Council met with this individual they decided not to pursue this option as the individual concerned had no clear business plans to support this venture. However this was not formally communicated to the individual concerned, although the Director of Finance does recollect communicating the decision to this party by telephone.

**Recommendation 1:** *To ensure that there was appropriate transparency over the process to award the lease we consider that the Council should have formally advised Applicant 3 of its position on this matter and of its decision not to pursue their proposed option, in order to ensure that the matter was appropriately closed off. The need to formally advise all interested parties involved in a competitive exercise of decisions and outcomes that are relevant to them should be a procedural requirement for any competitive award process, such as was conducted by the Council in this instance.*

As part of the second campaign the then Alderman Iris Robinson requested an expression of interest form, advising the Economic Development Manager that this request was on behalf of a contact known to her through her church.

**Recommendation 2:** *We would recommend that, when requests are received from Members under such circumstances, Officers are then required to clarify with the Member concerned as to whether the request represents a personal, pecuniary or prejudicial interest and then ensure that the Officer's query and the Member's response to it, are appropriately recorded.*

### 3.5.2 Stage 2 - Select list invited to submit business plan

The Expression of Interests were opened by the Deputy Mayor and witnessed by the Economic Development Manager on 2<sup>nd</sup> July 2008. Of the four Expression of Interests received, two were submitted after the stated deadline [Applicants 4&5] and another was not submitted in the required format [Applicant 6] as it was simply a letter expressing an interest rather than an appropriately detailed submission form. Only the submission provided by Kirk McCambley fully met the specified requirements. The Assessment Panel, which comprised Alderman Jim White, Diane Irvine (Business Development Manager), Philip Taylor (Business Officer) and Colin McCabrey (Economic Development Manager) produced an Expression of Interest Record document detailing the assessment process and outcomes from the Expression of Interests exercise, along with their recommendations for moving the process forward.

This was submitted to the Economic Development Sub Committee and approved at its meeting on 8<sup>th</sup> July 2008.

The minutes of this meeting record the Economic Development Sub Committee's decision that in the interest of competition and given *'there was not specific policy or cost element relating to expressions of interest, that the late submissions should be accepted'*. In making this decision the Economic Development Sub Committee accepted that the Expressions of Interest returned would not now be scored against the pre-determined assessment criteria, and all applicants would now be invited to submit Business Plans. It should be noted that the then Alderman Iris Robinson was neither a member of this Sub Committee nor the parent Finance and General Purposes Committee. While we appreciate that this decision was taken in the interest of promoting competition it was nevertheless a breach of the pre-agreed process as outlined within the information pack sent to those registering an initial interest. This stated that the Expression of Interest would be assessed against the following criteria: i) Relevant Catering Experience; ii) Business Management Experience; and iii) Business Proposals including details of any complimentary business ideas. Consequently, the Council could have potentially faced a subsequent challenge from interested parties as to the appropriateness of the process that was applied in practice. However, it should be noted that Kirk McCambley was the sole party that potentially could have been disadvantaged by this decision.

#### ***Stage 2 - Summary Findings and Recommendations in respect of allegations***

The Economic Development Sub Committee agreed to accept two expressions of interest that were submitted after the deadline and a further submission that was not in the required format. All parties were then invited to progress to the next stage of the process without the Expression of Interests being considered in line with the pre-agreed and advertised assessment criteria.

Kirk McCambley was the only party that could have potentially been disadvantaged by this decision.

While the Council has a formal procurement policy and procedures it has no such policy governing the tender and award of leases.

**Recommendation 3:** *We acknowledge that the Council decided to accept non compliant Expression of Interests in an attempt to foster competition. However,*

*we recommend that the Council adheres to any pre-agreed assessment process for such awards to ensure that the process and subsequent award is demonstrated as being consistent, fair and appropriate.*

*Furthermore, the Council should develop an appropriate policy and associated procedures regarding the tender and award of leases. Given the complexity of this area we would recommend that the Council seeks appropriate legal advice when doing so.*

*We would then recommend that Members and Officers involved in the competitive award of leases are then provided with appropriately comprehensive training around the principles and regulations governing the award of leases.*

### **3.5.3 Stage 3 - Selection Interview**

Of the four parties who registered an Expression of Interest and were then invited to submit a business plan for assessment, three subsequently withdrew. Applicant 5 wrote to withdraw her expression of interest, citing that a colleague who was planning to assist her in the venture had withdrawn their support. In a follow-up telephone call with the Economic Development Manager she also expressed her concerns regarding personal security, particularly during evening hours of business. Applicants 4&6 did not submit a business plan and when contacted by the Economic Development Manager, Applicant 6 advised that this was because of his current business pressures, while Applicant 4 explained that he did not do so because he was going on holiday and was under pressure due to his daughter's pending wedding. The Council's Economic Development Manager has maintained a documented record of these telephone calls.

This left Kirk McCambley as the only applicant to submit a business plan for assessment.

Kirk McCambley was invited to meet and discuss his business plan with a second Assessment Panel drawn from the Economic Development Sub Committee. This consisted of Alderman Jim White, Alderman Jack Beattie, the Director of Finance and the Economic Development Manager. It should be noted that the then Alderman Iris Robinson was not a member of this Sub Committee and therefore had no involvement with the Assessment Panel.

From our discussions with members of the Assessment Panel we were advised that it was imperative to the Council that the Lock Keeper's Inn was a success because, should this unknown business venture have failed, the Council was of the view that it would then prove very difficult to find a new client to take over. Feedback from individuals sitting on the Panel indicated that the assessment process was rigorous in terms of reviewing and questioning the applicant's business plan around key areas such as access to funding, cash flow projections and marketing, as well as his suitability and experience to take this venture forward. The assessment criteria agreed by the Panel, included i) marketing and sales; ii) team skills; iii) operations; iv) business proposal – products and services; v) market; and vi) financial forecast.

Following the meeting on the 23<sup>rd</sup> July 2008, Kirk McCambley's Business Plan was given a score of 83% by the panel. The breakdown of this score is shown in Table 3.3 below.

As part of our interview process we asked all the members of the Business Plan Assessment Panel whether they had contact, at any time, with Alderman Iris Robinson regarding their decision to award the lease of the Lock Keeper's Inn. Each confirmed that there had been no such contact.

*Table 3.5.3: Assessment of Kirk McCambley's Business Plan Proposals*

Assessment of:	Guiding Questions	Possible Score	Actual Score
Marketing / Sales	How will they position themselves? Have they different customer segments? How will they promote themselves?	5	5
Team Skills	Have they included organisational structure and key skills of each team member? Have they the right drive, skills, experience to succeed? (Skills include sales, marketing, financial management and operational skills)	5	4
Operations	Does this type of business necessitate extensive capital investment in facilities that will increase the potential risk? Are the facilities essential to sustain the business? Have they considered the pros and cons of baking on-site or buying from a supplier? Do they have complimentary facilities off site?	5	3
Business Proposal	Is it a suitable type of business? What are proposed products and services? Do they have a realistic and suitable vision for the new business?	5	5
Your Market	Any market research? Have they a clearly defined target market? Have they considered competitors in the market? Do they know important trends and drivers in the sector?	5	4
Financial Forecast	Does what they say in their business plan translate into their financial forecast? How much capital do they need and how will this be sourced?	5	4
Total		30	25 (83%)

*Source: Castlereagh Borough Council's Evaluation Sheets for Award of Lease at Lock Keeper's Cottage*

***Stage 3 – Summary Findings in respect of allegations***

Of the four parties that registered their expression of interest, three subsequently withdrew leaving Kirk McCambley as the only applicant to submit a business plan for assessment.

Kirk McCambley was interviewed by the assessment panel and scored a total of 83% against pre-agreed criteria.

It should be noted that the then Alderman Iris Robinson was neither a member of the Assessment Panel, the Economic and Development Sub Committee nor the parent Finance and General Purposes Committee and therefore had no involvement in the assessment process for the award of the lease.

***3.5.4 Stage 4 - Successful and reserved tenant approved.***

Given that Kirk McCambley was the only remaining candidate and that his business plan and associated interview was scored highly by the Assessment Panel, a recommendation was put before Council, at its meeting on 24<sup>th</sup> July 2008, that Officers liaise with Kirk McCambley regarding the terms of the lease to ensure that the facility was open for business by August/September 2008.

The minutes record that the then Alderman Iris Robinson was not in attendance at the Council meeting of the 24<sup>th</sup> July 2008.

***Stage 4 – Summary Findings in respect of allegations***

The then Alderman Iris Robinson was not in attendance when the Council approved the recommendation made by the Economic Development Sub Committee that Officers proceed to liaise with Kirk McCambley regarding the terms of the lease.

***3.5.5 Stage 5 - Tenancy and Specific Negotiations***

The Officers then met with Kirk McCambley to finalise the terms of the lease. The rent was set at £7k per annum, a value that had been assessed independently by Land and Property Services. The Lessee was also granted a seven month rent vacation to protect the Council's investment, given that the facility was now opening in September, which is considered to be the end of the peak summer season. Such rent vacations were found to have been offered by the Council at a number of other Council sites, including catering facilities. Furthermore, the opportunity to negotiate tenancy conditions and take advantage of an introductory period that would run from 1<sup>st</sup> September 2008 to 31<sup>st</sup> March 2009 were detailed within the original Expression of Interest packs sent to all initial applicants.

The Council also provided a contribution of £6k in relation to fixtures and fittings for the kitchen at Lock Keeper's Cottage. It should be noted that the independent report into the redevelopment of the Newforge Lock Site (1996) considered that *'the fitting out of a small to medium sized kitchen with the relevant appliances and work surfaces and the tea room itself with tables and chairs is estimated to cost upwards of £25k.'* Again the Expression of Interest information pack clearly stated to all applicants that: *'kitchen appliances have not been purchased to ensure that the equipment satisfies the successful tenant's requirements. Depending on the tenant's requirements the Council, during stage five of the application process (Tenancy and Specification Negotiations),*

*will give consideration to a financial contribution towards kitchen appliances that are deemed essential to making the tea room business feasible (to be agreed by Council and the potential tenant).* Furthermore, under the terms of the lease, the £6k of kitchen equipment would remain Council assets at expiration of the term granted. It should also be noted that Kirk McCambley provided a considerable financial contribution, estimated at around £40k, to fit out and equip the premises at the Lock Keeper's Inn.

The terms of the lease for the Lock Keeper's Inn were then put forward for approval by Council on the 28<sup>th</sup> August 2008. The minutes show that Alderman Iris Robinson was in attendance at this meeting, although she arrived 55 minutes late for the 7pm meeting.

The Council minutes indicate that, at the start of the meeting, Members agreed to a suspension of standing orders to permit residents affected by recent flooding in the Merok area, to speak on the matter. The Health and Safety Checklist, that is maintained for the Civic Offices at Castlereaugh Borough Council by an external security firm indicates that these residents then left the building at 8pm. This fact, together with the entry in the minutes recording the arrival of Alderman Iris Robinson at 7.55pm, provide a strong indication that the first matter of business on the agenda (i.e. Planning) commenced at around 7.45pm. We were advised by the Council's Director of Administration & Community Services that this agenda item would typically take between 1-1½ hours to complete which would suggest a likely finish time of between 8.45pm and 9.15pm.

While the Council minutes do not record the then Alderman Iris Robinson leaving the Chamber, the Health and Safety Checklist retained at the reception area of the Civic Offices indicates that she left the building at 9pm. The minutes indicate that the meeting concluded at around 10.10pm. This is in keeping with the member sign outs recorded on the Health and Safety Checklist which shows those attendees remaining at the end of the meeting to have left the Civic Offices at around 10.15pm. This Checklist also records a number of other councillors leaving the Civic Offices before the end of the meeting however, we found that their early departure from the Council Chamber had not been recorded in the minutes either.

There is no indication in the Council minutes as to the timing of each agenda item and consequently, from our review of the minutes we were unable to conclude whether or not the then Alderman Iris Robinson was present at this Council meeting when the terms of the lease for the tea rooms at Lock Keeper's Cottage were approved.

However, we note that the then Alderman Iris Robinson left the meeting around an hour before the end, and that the last reference to her in the minutes of this Council meeting was during item 2008/543 (NB: Lock Keeper's Cottage – Tenant for Tea Rooms within the Visitors' Centre was agenda number 2008/563 – some 20 agenda items later) which would suggest that she was not present for this agenda item (see Appendix 3).

A request was then sent to Members and Officers, who we understand were in attendance at 28<sup>th</sup> August 2008 Council meeting, asking whether they could recall the then Alderman Iris Robinson leaving this meeting early and if so, the corresponding point in the agenda when she left. The majority of members and officers who responded stated that they were unable to confirm at what stage the

then Alderman Iris Robinson left the meeting. However, Councillor Jimmy Spratt provided a response in which he confirmed the following:

*'On 28 August 2008 I was made aware as Group Leader, after the meeting commenced, that Alderman Mrs Robinson was coming to the meeting. I cannot confirm the exact time she arrived.*

*However I can very clearly recollect that at the end of the planning section of the meeting, Mrs Robinson picked up her papers and was leaving the meeting. I followed Mrs Robinson out of the chamber with the purpose of speaking to her. We had a short conversation in the foyer outside the Council chamber. I can clearly recollect our conversation. She then left and went down the stairs. I took a voice message on my mobile phone and saw her leave the building. I then returned to the chamber. At no time did Mrs Robinson return to the Council chamber. I then left the Council meeting at around 10:00 pm before the meeting ended.'*

Furthermore, the Director of Administration & Community Services provided the following response:

*'I am aware from the Health and Safety sheet that she (the then Alderman Iris Robinson) left the meeting at 9pm. Having reviewed the agenda, and matters under discussion on that evening, I am of the considered opinion that she left when planning/roads were completed. This would have been the normal juncture for our tea break, as it also allowed senior officers to reposition themselves at the top table, after planners had left the meeting. While I am unable to provide categorical evidence to this effect, my 34 years experience in attending council meetings would suggest this time line. I also do not personally recall her being in the meeting during any of the items under discussion after the business of planning.'*

We were also advised by Mrs Iris Robinson's solicitors (email dated 1<sup>st</sup> December 2010) that *'Mrs Robinson is adamant she was not present in the meeting on 28th August 2008 when the relevant item of business was taken.'*

Furthermore, the minutes of the meeting indicate that the terms of the lease were simply accepted by Council without any recorded debate or discussion.

***Stage 5 – Summary Findings and Recommendations in respect of allegations***

The rent for the tea room at Lock Keeper's Cottage was set at £7k per annum, a figure determined independently by Land and Property Services.

The Lessee was also granted a seven month rent vacation. Such rent vacations have been offered by the Council on previous occasions.

The opportunity to negotiate tenancy conditions and take advantage of an introductory period were detailed within the original Expression of Interest packs sent to all initial applicants.

The Council also provided a contribution of £6k in relation to fixtures and fittings for the kitchen at Lock Keeper's Inn. Again the Expression of Interest information pack clearly stated to all applicants that the Council would give consideration to a financial contribution towards kitchen appliances that are deemed essential to making the tea room business feasible. Under the terms of the lease the £6k of kitchen equipment would remain Council assets.

The terms of the lease for the Lock Keeper's Inn were then put forward for approval by Council on 28<sup>th</sup> August 2008. The then Alderman Iris Robinson

was in attendance at this meeting but the Health and Safety Checklist records, maintained by an external security firm, indicate that she left the building early at 9pm. As this is not recorded in the minutes it is not possible for us to conclude from these records whether the then Alderman Iris Robinson was present when the terms of the lease of Lock Keeper's Inn was discussed by Council.

A request was then sent to those Members and Officers in attendance at 28<sup>th</sup> August 2008 Council meeting, asking whether they could recall the then Alderman Iris Robinson leaving this meeting early and if so, the corresponding point in the agenda when she left. Whilst several Members have confirmed that they cannot recall at what point the then Alderman Iris Robinson left the meeting, Councillor Jimmy Spratt confirmed that she left the Chamber following consideration of matters pertaining to planning (i.e. agenda item 2008/554 with award of lease for Lock Keeper's Inn being agenda item 2008/563), and did not return to the Chamber but rather left the building.

The Director of Administration & Community Services also responded that she was *'of the considered opinion that she (the then Alderman Iris Robinson) left (the Council meeting) when planning/roads were completed.'*

We were also advised by Mrs Iris Robinson's solicitors that *'Mrs Robinson is adamant she was not present in the meeting on 28 August 2008 when the relevant item of business was taken'*.

By reference to the information available and statements made to us, we consider there to be evidence to suggest that the then Alderman Iris Robinson was not present for the agenda item to discuss / accept the terms of the lease for Lock Keeper's Inn.

The minutes of the meeting indicate that the terms of the lease were simply accepted by Council without any recorded debate or discussion.

### **3.5.6 Stage 6 - Lease Finalised.**

The Council instructed its solicitors to draw up a formal Lease of Premises at the Tea Rooms, Lock-Keeper's Cottage.

The Lease, which included details of the annual rent, the rent vacation and Council contribution towards kitchen fixtures and fittings, was signed on behalf of the Council by the then Mayor and Chief Executive as well as by Kirk McCambley and his solicitor on 12<sup>th</sup> September 2008.

In the Economic Development Manager's report to the Finance and General Purposes Committee on 14<sup>th</sup> January 2009 it was outlined that Kirk McCambley had requested the Council to consider permitting him to add the name of his business partner to the lease. The additional party would then become an equal partner in the business. Officers liaised with the Council's solicitor who advised that this presented no particular issue to the Council. A Deed of Assignment was then drawn up by the Council's Solicitors to be sealed by the Council, pending the provision of satisfactory references, proof of address and bank checks in relation to the additional party. However, the Council has since decided not to formally sign the Deed of Assignment until such time as the independent investigation into the award of the lease for Lock Keeper's Inn has been completed.

Officers have confirmed that all monies due to the Council by Kirk McCambley, in respect of the Lock Keeper's Inn, have been collected

accordingly. We were informed by Officers that there was an issue with one month's rent arrears in September 2009, however this was resolved promptly following a meeting between the Economic Development Manager and Kirk McCambley.

***Stage 6 – Summary Findings in respect of allegations***

The lease was drawn up by the Council's Solicitors.

The lease includes details of the annual rent, the rent vacation and the Council's contribution towards kitchen fittings.

The lease was signed by the Mayor and Chief Executive for the Council and also by Kirk McCambley and his solicitor on 12<sup>th</sup> September 2008.

Kirk McCambley made a request to add his business partner to the lease. A Deed of Assignment has been drawn up by the Council's solicitors but a decision has been taken by the Council that this should not be signed until such time as this investigation is completed and the findings known.

There were no issues identified in this regard.

**3.6 *Managing Declarations of Interest within the Council***

In the annual Management Letter 2006/07 the Local Government Auditor reported that councillors' interests were only being updated on an ad hoc basis as they attend meetings and update the register themselves and that there is no formal declaration of interest letters sent out to councillors annually as would be best practice within Councils.

As a result the Council initiated a process to issue and collect an Annual Declaration of Interests from councillors. However, in the Management Letter 2008/09 the Deputy Chief Local Government Auditor reported that not all letters detailing interests were being returned by councillors. However, we noted that the Council has since taken appropriate measures to improve the process and all returns were in place for 2009/10 and 2010/11 (with the exception of one Member who had been absent through long term illness).

Furthermore, the Council's Standing Orders have now been amended (adopted on 24<sup>th</sup> June 2010) whereby councillors are now required to declare any interests at the start of meetings under a standing agenda item. They are also required to declare any conflicts as the meeting progresses, should areas of potential conflicts arise.

A proposed change to the Standing Orders was introduced in February 2010 whereby a Councillor wishing to leave or enter a Council / committee meeting would be required to notify the Committee Clerk in attendance of this. However, in April 2010 Members reported that this procedure was unworkable and referred it back to Central Services Committee, while acknowledging that it would take 6 months before the Minute could be rescinded. However, an alternative measure was proposed and seconded, whereby elected members wishing to leave the Council/committee meeting should rise from their chair and make their way to the door but not leave until their intent had been verbally acknowledged by the Chairperson. We would support this proposal and recommend that either it or a comparable arrangement is fully adopted by the Council as soon as possible given the findings reported at Section 3.5.5

regarding the limitation of the Council's records in relation to councillors leaving the chamber early.

Under the Local Government (NI) Act 1972, the Council is required to ensure that Members, on appointment to office, formally sign a declaration to affirm that they have read and will be guided by the NI Code of Local Government Conduct (A Code of Recommended Practice for the Guidance of Councillors) in the performance of their functions as a councillor. The then Alderman Iris Robinson signed her declaration on 19<sup>th</sup> May 2005 which was the start date of her term of Office following elections that year. All other councillors also have such signed declarations in place.

We also note that neither the Local Government (NI) Act 1972 nor the associated NI Code of Local Government Conduct guidance clearly defines what constitutes a private or non-pecuniary interest within the local government context other than the Code stating that *'an interest [private or personal non pecuniary] will be significant where you anticipate that a decision on the matter might reasonably be deemed to benefit or disadvantage yourself to a greater extent than other council constituents'*. The latter document does however, outline the requirement that councillors *'should not, either officially or otherwise, use your position to gain advantage (financial or otherwise) for yourself, a family member or friend or business associate'*. This guidance does not define a 'friend' or 'family' member but states that the key principle in this regard is the *'need for transparency so that a member of the public, acting reasonably, could not regard any of your decisions as being favourable towards an individual (who appears to be a family member or friend) and contrary to your responsibility as a councillor to act in the public interest at all times'*.

We understand that the Local Government (Re-organisation) Bill, which is to be drafted following a consultative process, will provide for a new ethical standards framework for local government, including a mandatory code of conduct for council Members. It is envisaged that investigations of alleged breaches of the mandatory code would come under the Office of the Ombudsman with appropriate sanctions imposed where a breach was found. The Local Government (Re-organisation) Bill may more clearly and comprehensively define what is deemed to be an interest within the local government context to better inform and appropriately guide members and officers in this regard.

The introduction of this mandatory code of conduct would appropriately reinforce the requirements placed upon the councillors within all councils in this regard and help ensure that these are fully complied with in fulfilling their duties as a councillor. In the interim, the statutory powers to hold councillors to account and apply appropriate sanctions for any wilful misconduct remains with the local government auditors.

#### ***Declarations of Interest – Summary Findings***

In the annual Management Letter 2006/07 the Local Government Auditor reported that councillors' interests were only being updated on an ad hoc basis.

As a result the Council initiated a process to issue and collect an Annual Declaration of Interests from councillors. However, in the Management Letter 2008/09 the Deputy Chief Local Government Auditor reported that not all letters detailing interests were being returned by councillors.

The Council has since taken appropriate measures to improve the process and all returns were in place for 2009/10 and 2010/11 (with the exception of one Member who was currently absent through long term illness).

The Council's Standing Orders have now been amended (adopted on 24<sup>th</sup> June 2010) whereby councillors are now required to declare any interests at the start of meetings. They are also required to declare any conflicts as the meeting progresses should areas of potential conflicts arise.

**Recommendation 4** - *To ensure that these requirements are fully understood we recommend that councillors are given specific training on conflicts of interest. We would consider that this training would cover aspects such as personal integrity, pecuniary interest, dispensations, gifts and hospitality etc.*

On acceptance of office the Council requires Members to formally sign a declaration to affirm that they have read and will be guided by the NI Code of Local Government Conduct in the performance of their functions as a councillor. The then Alderman Iris Robinson signed her declaration on 19<sup>th</sup> May 2005 accordingly.

The Local Government (Re-organisation) Bill will provide for a new ethical standards framework for local government, including a mandatory code of conduct for council Members.

A proposed change to the Standing Orders was introduced in February 2010 whereby a Councillor who wishes to leave or enter a Council / committee meeting was to notify the Committee Clerk in attendance of this. However, in April 2010 Members reported that this procedure was unworkable and referred it back to Central Services Committee. However, an alternative measure was proposed and seconded, whereby elected members wishing to leave the Council/committee meeting should rise from their chair and make their way to the door but not leave until their intent had been verbally acknowledged by the Chairperson.

**Recommendation 5:** *We would strongly support this proposal and recommend that either it or a comparable arrangement is fully adopted by Council, as soon as possible, particularly given the issue reported earlier regarding the limitation of the Council's meeting records.*

## 4. CONCLUSIONS

In the paragraphs below we have concluded our findings in relation to each of the stated objectives for this review.

### 4.1 *Objective 1:*

*To identify if the Council incurred any financial loss as a result of the award of the lease at the Lock-Keeper's Inn.*

Our review identified no evidence of the Council incurring any financial loss as a result of the award of the lease at Lock Keeper's Inn.

The rent for the tea room at Lock Keeper's Cottage was set at £7k per annum, a figure independently determined by Land and Property Services. While the Lessee was granted a seven month rent vacation such concessions have been offered by the Council at a number of other Council sites, including catering facilities. We also found that the opportunity to negotiate tenancy conditions and take advantage of an introductory period were detailed within the original Expressions of Interest packs sent to all initial applicants.

We noted that the Council also provided a contribution of £6k in relation to fixtures and fittings for the kitchen at Lock Keeper's Inn. Under the terms of the lease this equipment is to remain as assets of the Council at the expiration of the term granted. Furthermore, the appropriateness of this sum should be considered in the context of the original independent report into the redevelopment of the Newforge Lock Site which, in 1996, estimated that the fitting out of a small to medium sized kitchen with the relevant appliances and work surfaces, and the tea room itself with tables and chairs, would cost upwards of £25k. Furthermore, the Expression of Interest information pack clearly stated to all applicants that the Council would give consideration to a financial contribution towards kitchen appliances that are deemed essential to making the tea room business feasible. The £6k sum provided by the Council should also be considered in the context of the considerable financial contribution made by Kirk McCambley in respect of equipping and furnishing the Lock Keeper's Inn which the Council estimates to be around £40k.

The Economic Development Manager confirmed that all monies due to the Council from Kirk McCambley in respect of the Lock Keeper's Inn had been settled accordingly at the time of our review.

### 4.2 *Objective 2:*

*Investigate any impropriety on the part of the Council Officers and elected representatives in the award of the lease at the Lock-Keeper's Inn.*

There was no evidence from our review to suggest any impropriety on behalf of Council Officers or Members directly involved in the Assessment Panel that was responsible for administering the process for the award of the lease at the Lock Keeper's Inn and making recommendations to Council in this regard. Our investigation did however identify some procedural issues regarding the award process whereby late and non compliant expression of interests were accepted and these applicants were then invited to progress to the next stage of the award process. While we have made a number of recommendations within the report with regard to this issue, it is important to appreciate that this decision to breach the pre-agreed award procedure in place was taken by the Economic

Development Sub Committee in the interest of competition and that the only party that could have been potentially disadvantaged by this breach of procedure was Kirk McCambley.

#### **4.3 Objective 3:**

*To investigate whether Officers and elected representatives complied with the requirements of relevant local government legislation and guidance in the awarding of the above-mentioned lease.*

We found no evidence within the scope of our review and the work performed in this regard to suggest that officers or elected representatives did not comply with the requirements of relevant local government legislation and guidance in the awarding of the lease to the Lock Keeper's Inn. Our review found that the then Alderman Iris Robinson did not sit on the Assessment Panel for the lease award or the Council's Economic Development Committee and therefore had no direct involvement in the main processes for awarding the lease of Lock Keeper's Inn.

Furthermore, our investigation found that the then Alderman Iris Robinson was not in attendance at the Council meeting on 24<sup>th</sup> July 2008 at which Officers were instructed by Council to proceed and liaise with Kirk McCambley to finalise the terms of the lease to the Lock Keeper's Inn.

The then Alderman Iris Robinson was in attendance at the Council meeting of 28<sup>th</sup> August 2008 where the terms of the lease were put forward for approval by Council. However, the minutes show that she arrived for the 7pm meeting at 7.55pm.

While the minutes do not record the then Alderman Iris Robinson leaving the meeting early, the Health and Safety Checklist, that is maintained for Civic Offices at Castlereagh Borough Council by an external security firm, records the then Alderman Iris Robinson leaving the building at 9pm with the Council meeting then finishing at around 10.10pm. (We note that the Health and Safety Checklist records a number of council members who left the Council meeting early - none of whom were recorded in the minutes.) Furthermore, the last reference to the then Alderman Iris Robinson within the Council minutes was during item 2008/543, whereas the agenda item for Lock Keeper's Cottage was number 2008/563, some 20 items later (see Appendix 3 for the estimated timeline for the Council meeting of 28<sup>th</sup> August 2008).

As part of our work we contacted the other attendees at the Council meeting of 28<sup>th</sup> August 2008 to ask whether they had any recollection of the then Alderman Iris Robinson leaving this meeting and, if so, at what point in the agenda that would have coincided with.

Whilst several Members have confirmed that they cannot recall at what point the then Alderman Iris Robinson left the meeting, Councillor Jimmy Spratt has stated that she left the Chamber with him following consideration of matters pertaining to planning (agenda item 2008/554) and that the then Alderman Iris Robinson did not return to the Chamber but rather left the building. The award of the lease of Lock Keeper's Inn was agenda item 2008/563.

The Director of Administration & Community Services also responded that she was of the considered opinion that the then Alderman Iris Robinson) left the Council meeting when planning/roads agenda items were completed.

Furthermore, the solicitors acting for Mrs Iris Robinson advised us (email dated 1<sup>st</sup> December 2010) that ‘*Mrs Robinson is adamant she was not present in the meeting on 28<sup>th</sup> August 2008 when the relevant item of business was taken.*’ By reference to the available information and statements made to us, we consider there to be evidence to suggest that she was not present when this item was being discussed in which case we consider there to be no breach of guidance with the Code of Conduct. The minutes of the meeting indicate that the terms of the lease were simply accepted by Council without any recorded debate or discussion.

In any case the current guidance on conflicts of interest lacks clarity and it would be difficult to assess without clearer definitions what constitutes an interest. We note that the NI Code of Local Government Conduct is a code of recommended practice for the guidance of councillors and is voluntary in nature with no sanctions available to Council for those found to be in breach of the Code other than onward reporting to the Local Government Auditor / Department of Environment for their response and action when the actions of councillors are considered to be significant and in breach of the legislative requirements of the Local Government Act (NI) 1972. We understand that the Local Government (Re-organisation) Bill will provide for a new ethical standards framework for local government, including a mandatory code of conduct for council Members. We consider that the introduction of a mandatory code of conduct would appropriately reinforce and clarify the requirements placed upon the councillors in Castlereagh in this regard and help ensure that these are fully complied with in fulfilling their duties as councillors.

Furthermore, it is expected the Local Government (Re-Organisation) Bill will include a broader and more comprehensive definition as to what constitutes a personal or non-pecuniary interest to appropriately clarify this matter for both officers and members as neither the current Local Government (NI) Act nor the NI Code of Local Government Conduct (A Code of Practice for the Guidance of Councillors), in our view, appropriately defines this.

## **5. SCHEDULE OF FINDINGS AND RECOMMENDATIONS**

In this section we have summarised the finding and recommendations of our review and included these within Table 5.1 (over) alongside Castlereagh Borough Council's management responses and the estimated implementation dates for each of these.

Table 5.1 – Schedule of Findings and Recommendations

Report Ref	Finding	Recommendation	Management's Response	Estimated Implementation Date
3.5.1	Between the first and second campaigns a party came forward to register their interest in the lease for the tea room at Lock Keeper's Cottage. While the Council met with this individual they decided not to pursue this option as the individual concerned had no clear business plans to support this venture. However, this was not formally communicated to the individual concerned although the Director of Finance does recollect communicating this to the party by telephone.	<i>To ensure that there was appropriate transparency over the process to award the lease we consider that the Council should have formally advised this applicant of its position on this matter and of its decision not to pursue her proposed option, in order to provide transparency over the award process and ensure that the matter was appropriately closed off. The need to advise all interested parties involved in a competitive exercise of decisions and outcomes that are relevant to them should be a procedural requirement for any competitive award process such as was conducted by the Council in this instance.</i>		
3.5.1	As part of the second campaign the then Alderman Iris Robinson requested an expression of interest, advising the Economic Development Manager that this request was on behalf of a contact known to her.	<i>We would recommend that when requests are received from Members under such circumstances that Officers are required to clarify with the Member whether the request represents a personal, pecuniary or prejudicial interest and then ensure that the Officer's query and the Member's response to it, are appropriately recorded.</i>		
3.5.2	The Economic Development Sub Committee agreed to accept two expressions of interest that were submitted after the deadline and a further submission that was not in the required format. All parties were then invited to progress to the next stage of the process without the Expressions of Interest being considered in line with the pre-	<i>We understand that the Council decided to accept non compliant Expression of Interests in an attempt to foster competition. However, we recommend that the Council adheres to any pre-agreed assessment process for such awards to ensure that the award is demonstrated as being fair and</i>		

Report Ref	Finding	Recommendation	Management's Response	Estimated Implementation Date
	<p>agreed and advertised assessment criteria.</p> <p>While the Council has a formal procurement policy and procedures it has no such policy governing the tender and award of leases.</p>	<p><i>appropriate.</i></p> <p><i>Furthermore, the Council should develop an appropriate policy and associated procedures regarding the tender and award of leases. Given the complexity of this area we would recommend that the Council seek appropriate legal advice when doing so.</i></p> <p><i>We would then recommend that Members and Officers involved in the competitive award of leases are then provided with appropriately comprehensive training around the principles and regulations governing the award of leases.</i></p>		
3.5.6	<p>The Council's Standing Orders have now been amended (adopted on 24<sup>th</sup> June 2010) whereby councillors are now required to declare any interests at the start of meetings. They are also required to declare any conflicts as the meeting progresses should areas of potential conflicts arise.</p>	<p><i>To ensure that these requirements are fully understood we recommend that councillors are given specific training on conflicts of interest. We would consider that this training would cover aspects such as personal integrity, pecuniary interest, dispensations, gifts and hospitality etc.</i></p>		
3.5.6	<p>A proposed change to the Standing Orders was introduced in February 2010 whereby a Councillor who wishes to leave or enter a Council / committee meeting was to notify the Committee Clerk in attendance of this. However, in April 2010 Members reported that this procedure was unworkable and referred it back to Central Services Committee while acknowledging that it would take 6 months before the Minute could be rescinded. However, an alternative measure was proposed and seconded whereby elected members</p>	<p><i>We would strongly support this proposal and recommend that it or a comparable arrangement is fully adopted by Council as soon as possible, particularly given the issue reported earlier regarding the inadequacy of the Council's meeting records as outlined within this report..</i></p>		

Report Ref	Finding	Recommendation	Management's Response	Estimated Implementation Date
	wishing to leave the Council/committee meeting should rise from their chair and make their way to the door but not leave until their intent had been verbally acknowledged by the Chairperson.			

**APPENDIX 1**  
**PROPOSED INVESTIGATION STRATEGY**  
(as outlined within our Letter of Engagement dated 30<sup>th</sup> June 2010)

**Administrative investigation into Awarding of a Lease at the Lock-Keeper's Inn**

**1. OVERVIEW**

This paper outlines our proposed approach to conducting our investigation into the awarding of a lease at the Lock-Keeper's Inn. The investigation will be based on completion of agreed upon procedures, inspection of specific documentation as outlined below supplemented by a series of interviews. As the investigation progresses we will revisit the Investigation Strategy and the original Terms of Reference to ensure that these remain appropriate. Should any changes be required to the original Terms of Reference we will ensure that these are agreed and approved by the Acting Chief Executive.

It should be noted that a full list of the actual documentation reviewed has been provided at Appendix 2.

Further details on the approach are outlined below.

**2. Approach**

**Phase 1**

*Inspection of specific transcript from Spotlight investigation to define details of specific allegations made in respect of Castlereagh Borough Council granting of lease in respect of Lock-Keeper's Inn.*

**Phase 2**

Detailed Fieldwork

*To identify if the Council incurred any financial loss as a result of the award of the lease at the Lock-Keeper's Inn*

- Inspection of lease including terms and conditions and comparison of terms and conditions contained to other similar catering type franchises offered / granted by the Council (specific contracts to be selected) including appropriateness of any specific concessions e.g. rent vacations, equipment grants etc.
- Inspection of any documentation outlining any changes / amendments to lease and conditions of lease granted since the initial granting of the lease and completeness of acquired approvals attained.
- Inspection of documentation to confirm receipt of all monies due / recoverable to the Council in respect of the lease.

Structured Interviews to include, but not limited to:

- Director of Finance or representative;
- Economic Development Manager or representative; and
- Other individuals as required during the course of the investigation.

*To investigate any impropriety on the part of the Council officers and elected representatives in the award of the lease at the Lock-Keeper's Inn*

- Inspection of relevant Economic Development Strategy which contained plans for broader development plans i.e. Lock-Keeper's Cottage and Visitors Centre (including details of approval by Council including any sub committees).
- *We were advised that the Council had documented an Economic Development strategy in 1996 however, this wasn't able to be produced for review. There was no Economic Development strategy then produced until the current 2009-11 version. We did however, review the following documents as alternatives:*
  - *Redevelopment of Newforge Lock Site; Fred Hammond for Steven Warnock, Landscape Assessment and Countryside Management Consultant (May 1996);*
  - *Redevelopment of Lock Keeper's Cottage Business Plan; Price Waterhouse Coopers (December 1996);*
- Inspection of economic appraisal or other documentation to support decision to develop a cafeteria facility (including details of approval by Council including any sub committees) in the vicinity of the Lock-Keeper's Cottage.
- Inspection of documentation relating to Expression of Interest issued by Council in respect of potential lease for Lock-Keeper's Inn facility (including but not limited to advertising process, background information provided to potential interested parties, follow up of any queries raised by potential interested parties, timeline for completed responses).
- Inspection of documentation pertaining to receipt of completed tender documentation (including to but not limited to use of independent tender opening panel, pre agreed criteria to assess bids, contents of any evaluation report produced outlining decision of panel, clarification process to deal with queries ).
- Inspection of documentation dealing with reporting to Council and any sub committees of outcome of evaluation process and decisions to award lease and provide lessee with specific concessions i.e. rent vacation and contribution for essential kitchen equipment.
- Inspection of Council and use of authorised signatories to sign lease on behalf of Council and recording of same in Council records.

Structured Interviews to include, but not limited to:

- Head of Economic Development or representative;
- Director of Finance or representative;
- Members of Evaluation Panel involved in evaluation of bids for the Lock-Keeper's Inn; and
- Other individuals as required during the course of the investigation.

*To investigate whether officers and elected representatives complied with the requirements of all relevant local government legislation and guidance in the awarding of the above-mentioned lease.*

To attain evidence of compliance and note specifically instances of any non compliance with the following legislation and guidance:

- Local Government (NI) Act 1972;
- Local Government Miscellaneous Provisions Act (1982);
- Procurement including EU procurement requirements;
- Castlereagh Council internal procedures relating to:
  - Procurement (incl invitation to tender, establishment of panels, evaluation criteria);
  - Register of Interests and Conflicts of Interest;
  - Granting and awarding of licenses;
  - Other specific guidance; and
- Nolan Principles.

Structured Interviews to include, but not limited to:

- Director of Finance;
- Head of Economic Development;
- Cllr Jack Beattie;
- Ald Jim White; and
- Other individuals as required during the course of the investigation.

### **Phase 3**

*To make any recommendations to the Council, where necessary, arising from the findings of the investigation on how its processes and governance arrangements could be improved upon.*

To develop a report which details our findings in respect of work completed. Where any weaknesses in control are identified we will provide the Council with detailed recommendations as to how relevant processes and governance arrangements could be improved upon. We acknowledge that the Council has not yet fully confirmed the details of the reporting protocols to be followed. We would seek clarity in terms of specific arrangements to be followed in respect of agreeing all draft findings prior to presentation of final report to the Mayor.

**Listing of Documentation Reviewed**

- Transcript of BBC Spotlight programme (Jan 2010);
- Overview document providing a chronology of key events leading to the award of the lease to the Lock-Keeper's Inn (provided by Castlereagh Borough Council);
- Redevelopment of Newforge Lock Site; Fred Hammond for Steven Warnock, Landscape Assessment and Countryside Management Consultant (May 1996);
- Redevelopment of Lock Keeper's Cottage Business Plan; Price Waterhouse Coopers (December 1996);
- Copy of documentation relating to Expression of Interest issued by Council in respect of potential lease for Lock-Keeper's Inn facility (including advertising process, background information provided to potential interested parties, follow up of any queries raised by potential interested parties and communication with interested parties);
- Copy of documentation pertaining to receipt of completed tender documentation (including, use of independent tender opening panel, pre agreed criteria to assess bids, make up of assessment panel, contents of any evaluation report produced outlining decision of panel, clarification process to deal with queries );
- Copy of documentation dealing with reporting to Council and any relevant committees and sub committees on the outcome of the evaluation process and decisions to award lease;
- Copy of documentation proposing provision to lessee of specific concessions i.e. rent vacation and contribution for essential kitchen equipment and subsequent documentation approving this;
- Copy of documentation outlining Council arrangements for the use of authorised signatories to sign lease on behalf of Council and recording of same in Council records;
- Copy of lease documentation including terms and conditions and comparison of terms and conditions contained to other similar catering type franchises offered / granted by the Council including appropriateness of any specific concessions e.g. rent vacations, equipment grants etc. This should include any subsequent documentation outlining any changes / amendments to lease and conditions of lease granted since the initial granting of the lease and completeness of acquired approvals attained;
- Copy of Lease of the premises at the Tea Rooms, Lock Keeper's Cottage;
- Copy of documentation to confirm receipt of all monies due / recoverable to the Council in respect of the lease;
- Copy of Minutes from Council, Committee and Sub Committee meetings from 2007 onwards,
- Copies of Castlereagh Council's internal procedures relating to:
  - Procurement (incl invitation to tender, establishment of panels, evaluation criteria);
  - Register of Interests and Conflicts of Interest;
  - Granting and awarding of licences;
- Other specific Council guidance such as on the Nolan Principles;
- Copy of Kirk McCambley's Business Plan for Lock Keeper's Inn (July 2008);

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*Castlereagh Borough Council*

*Investigation into Award of Lease at Lock Keeper's Inn*

*Private & Confidential: Prepared under the terms of our engagement letter dated 30<sup>th</sup> June 2010*

- Declarations of Councillors on acceptance of office;
- Disclosure of Pecuniary and Other Interests by Councillors (2009/10 and 2010/11);
- Copy of Management Letters 2002 onwards;
- Copy of financial documentation relating to monies due to Council by Mr McCambley in relation to Lock Keeper's Inn;
- Amended draft Standing Orders dated July 2010;
- Castlereagh Borough Council Procurement Procedures;
- NI Public Procurement Policy;
- EU Procurement Directives;
- Local Government (NI) Act 1972
- Code of Conduct Guide for Members; Standards Board for England (2007);
- NI Code of Local Government Conduct – A Code of Recommended Practice for Guidance of Councillors; and
- Health & Safety Checklist in the Event of A Fire Occurring at Castlereagh Borough Council Offices – 28 August 2008.

Estimated Timeline of Council Meeting (28<sup>th</sup> August 2008)

Est Time	Act Time	Agenda Item	Item	Event	Evidence
	7.00	2008/534		Opening of Meeting	Minutes
		2008/535		Minutes from previous meeting	
		2008/536		Suspension of Standing Orders to permit residents affected by recent flooding in Merok area to speak on matter	
7.45		2008/537	2008/538	Planning	
	7.55	2008/539		Planning	Alderman Robinson arrived at meeting
8.00					Merok residents left building
		2008/540	2008/548	Planning	Council's Director of Admin & Community Services indicated that planning matters typically take between 1-1½ hours to complete which would suggest that last Planning agenda item completed sometime between 8.45 and 9.15pm (est 9pm).
		2008/549	2008/554	Other Planning Business	Alderman Iris Robinson spoke on matter 2008/543 and this was minuted
	9.00	2008/555		Roads (estimated point in agenda)	Alderman Iris Robinson left the building
		2008/556		NILGA Update	Signed out on H&S Check list.
		2008/557		Finance	
		2008/558	2008/560	Legal	
		2008/561		Mayor/Deputy Mayor's Business	
		2008/562		Report from Officers	
		2008/563		Report from Economic Development Manager - Lock Keeper's Cottage	
		2008/564		Report from Economic Development Manager - Hanwood Building	
		2008/565	2008/566	Report from Acting Environmental Health Manager	
		2008/567		Display of Circus signs	
		2008/568	2008/569	Report from Operational Service Manager	
		2008/570	2008/576	Report from Director of Administration & Community Services	
		2008/577	2008/600	General	
		2008/601	2008/602	Annual Reports	
		2008/603	2008/605	Any Other Business	
		2008/606		In Committee	
		2008/607		Environmental Health Staffing Matters	
	10.10			Meeting Concluded	Minutes

The above table outlines the timeline for the Council meeting of 28<sup>th</sup> August 2008 when the terms of the lease for Lock Keeper's Inn were approved. This highlights when Alderman Iris Robinson was minuted as joining the meeting and the time she was signed out as leaving the building on the Health and Safety checklist, shown against the estimated timing of the relevant agenda items based upon evidence in place and our understanding of the typical duration of regular agenda items.

