Isle of Man
Government
Reiltys Ellan Vannin

infrastructure
bun-troggalys

Office of the Minister
and Chief Executive

Contact: Phil Gawne
Email: localgovernment@gov.im
Date: 30th March 2015

[redacted]
Clerk to Malew Parish Commissioners
Commissioners' New Offices
Main Road
Ballasalla
Isle of Man
IM9 2RQ

Dear [redacted]

Re: Exercise of Certain Functions by Malew Parish Commissioners ("the Local Authority")

Under section 124(3) of the Highways Act 1986 ("the Act"), the Department of Infrastructure ("the Department") may give its consent to a local authority to exercise certain powers conferred by the provisions specified in subsection 124(2)(a) of the Act.

The Department hereby gives its consent for the Local Authority to carry out the activities provided for in Section 51 of the Act in relation to highways within its district which are highways maintainable at public expense

For ease of reference a copy of Sections 124 and 51 of the Act are appended hereto.

Yours sincerely

[redacted]

Phil Gawne MHK
Minister for Infrastructure

SIGNED on behalf of Malew Parish Commissioners

[redacted]

HIGHWAYS ACT 1986

Delegation of Functions to Malew Parish Commissioners

In order to bring about the localisation of highway maintenance services and in exercise of the powers conferred on the Department of Infrastructure ("the Department") by Section 2(1) of the Highways Act 1986 ("the Act") and by agreement between the parties hereto Malew Parish Commissioners ("the Local Authority") is hereby authorised until further order to exercise the functions of the Department set out hereunder

Highway maintenance limited to:

- Street Sweeping
- Gully emptying
- Removal of Weeds
- Maintenance of highway verges
- Any other functions with respect to the maintenance and improvement of, and other dealing with, any highway to which the parties may agree and agreement to which shall be evidenced by a memorandum to be appended to this delegation

(together "the Delegated Functions")

on highways within its district save and except those highways shown on the plan incorporated herein as Schedule 1

This delegation of functions is subject to the provisions of Section 2 of the Highways Act 1986.

This delegation of functions is subject to the conditions set out in Section 2(2) and without prejudice thereto, to the following conditions and limitations:-

Conditions

1. The cost of the Delegated Functions is met by the Local Authority;

2. Without prejudice to Section 2(2)(c) of the Act the Delegated Functions shall be carried out to at least the following standards, as far as reasonably practicable, such standards not to be amended or varied without the written agreement of the Local Authority:

   2.1 Street sweeping – as far as reasonably practicable, at all times highways should be kept clear of material that may endanger users of the highway, or affect the highway drainage;

   2.2 Gully emptying – gullies should be running at all times. If the gully pot is empty, and any blockage cannot be cleared, this should be reported to the Department which will arrange to clear the blockage at its cost;

   2.3 Removal of Weeds – weeds which may obstruct drainage, or are damaging or likely to damage the fabric of the highway should be removed as soon as reasonably practicable; and

   2.4 Maintenance of highway verges – vegetation should not be allowed to grow to the extent so as to hinder the reasonable use of the highway by any person entitled to the use thereof, or so as to be a nuisance or injurious to the owner or occupier of premises adjacent to the highway.

3. The Delegated Functions shall not include emergency call outs (which are extraordinary events which have to be dealt with immediately and which may include but are not limited to oil spills, clearing up road traffic collision debris etc) for which, together with associated costs, the Department shall retain responsibility.

4. The Local Authority shall provide to the Department contact details for a responsible officer (authorised in writing) who is at all times empowered to discuss the Delegated Functions and any changes thereto;

5. The Local Authority shall indemnify the Department against any liability, loss, claim, expense or proceedings whatsoever, whether arising by common law or statute, in respect of death or injury to persons, or of damage to property, real or personal, arising out of any act or omission by the Local Authority, or in the course of, or in connection with the Delegated Functions carried out by the Local Authority PROVIDED THAT the Department shall not settle any proceedings in connection

therewith and to which the indemnity relates without prior consultation with the Local Authority;

6. 6.1 The Local Authority shall maintain Public and Products Liability and Employers Liability insurance with a minimum indemnity level of Ten million pounds (£10,000,000.00) throughout the period in respect of which this delegation is valid and while the Local Authority is liable or potentially liable in respect of the Delegated Functions and shall produce such evidence thereof as the Department may request upon demand;

   6.2 The Local Authority shall procure that any subcontractor agent or servant engaged by them in connection with the Delegated Functions shall maintain adequate insurance in respect of any potential liability arising from their involvement therewith;

7. In carrying out the Delegated Functions the Local Authority shall comply with all applicable statutes, regulations, and orders, and without prejudice to the generality of this Condition 7, in particular the Health & Safety at Work Etc Act 1977 requirements and regulations (for the time being in force) regarding use of plant and equipment, training of operatives and the handling of materials which may be deleterious to operatives health.

8. Any dispute between the Department and the Local Authority relating to the Delegated Functions or this delegation shall be determined by a single arbitrator appointed by agreement between the parties or in default of agreement by the President for the time being of the Isle of Man Law Society pursuant to the terms of the Arbitration Act, 1976 (or any amendment or statutory re-enactment thereof).

9. The terms and conditions of this delegation of functions shall be reviewed not less than annually and any variations considered necessary by either of the parties and agreed by both parties to this delegation recorded by a memorandum to be signed by both Parties and appended to every copy hereof.

SIGNED by the Minister or a person duly authorised by the Minister for Infrastructure in the presence of:-

[redacted]

Print name: HON PHIL GAWNE MHK

Position: MINISTER

Date: 5.6.15

Witness Signature: [redacted]

Witness Full Name: [redacted]

Witness Address: SEA TERMINAL,

DOUGLAS ISLE OF MAN

Witness Occupation: ADMINISTRATIVE OFFICER

By way of evidence of the agreement of the Local Authority

SIGNED on behalf of Malew Parish Commissioners

[redacted]

Date: 3/6/2015

Highways Act 1986

51 Cutting etc of vegetation

(1) Where a hedge, tree, shrub or other vegetation overhangs a highway or any other road or path to which the public has access so as to endanger or obstruct the passage of any traffic, or so as to obstruct or interfere with the view of drivers of vehicles or the light from a public lamp, the Department may, by notice to the owner of the hedge, tree, shrub or other vegetation, or to the occupier of the land on which it is growing, require him so to lop or cut it as to remove the cause of the danger, obstruction or interference

(2) Where it appears to the Department —

(a) that any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted; and (b) that by reason of its condition it, or part of it, is likely to cause danger by falling on any such highway, road or footpath as is mentioned in subsection (1);
the Department may, by notice to the owner of the hedge, tree or shrub, or to the occupier of the land on which it is growing, require him so to cut or fell it as to remove the likelihood of danger.
(3) However, the Department may instead itself carry out any appropriate cutting, lopping or felling —

(a) if, in the opinion of the Department, the danger is such that it needs to be carried out immediately; or
(b) otherwise at any time after 14 days have elapsed since service of a notice under subsection (1) or subsection (2), if it has not been carried out by the owner or occupier.
(4) Where the Department, in carrying out any works pursuant to subsection (3), removes any thing from a highway, the Department may dispose of it in such manner as it thinks fit, but if the Department sells the thing, it must pay the proceeds of sale, less any expenses of removal and sale, to the owner.
(5) Where the Department carries out any works pursuant to subsection (3) it may recover the cost of doing so from the owner or occupier of the land on which the hedge, tree, shrub or other vegetation is situated.
(6) No act of the Department or of its servants or agents carried out in good faith under this section is a contravention of the *Tree Preservation Act 1993*.

83 Appeals, offences, recovery of expenses, and disposal of things removed

(1) A person aggrieved by a requirement contained in a notice under section 45(2), 46, 47, 48, 49, 50(2), 51, 58, 59, 60, 61(a), 63(4), 71(1), 72(5) or 73A(2) may, within the time for compliance with the requirement, appeal to the High Bailiff, who may uphold, quash or vary the requirement.
(2) Subject to any order made on appeal, if a person on whom any such notice is served fails within such time to comply with any requirement contained therein, —

(a) he shall be guilty of an offence; and
(b) the Department may itself carry out the works thereby required to be carried out.
(3) The Department may recover from a person on whom any such notice is served the expenses reasonably incurred by it in carrying out the works required by the notice to be carried out.

(4) Where the Department, in carrying out any works pursuant to subsection (2)(b), removes any thing from a highway or from any land or premises, the Department —

(a) shall, subject to the payment of the expenses of removal, deliver it to the owner on a claim made by him within 7 days of its removal; or

(b) may, if the thing is not claimed by the owner within that time, or if the Department considers that it is of little or no value or cannot reasonably be kept for that time, dispose of it in such manner as it thinks fit, but if the Department sells the thing, it shall pay the proceeds of sale, less any expenses of removal and sale, to the owner.

124 Exercise of certain powers by local authorities

1. Subject to subsection (3), a local authority may, in relation to any road in its district exercise any of the powers conferred by the provisions specified in subsection (2)(a) on the Department in relation to a highway and the provisions specified in subsection (2)(b) shall apply to the exercise of such powers by a local authority; and accordingly in those provisions as they have effect by virtue of this section —

(i) references to the Department shall be construed as references to a local authority; and

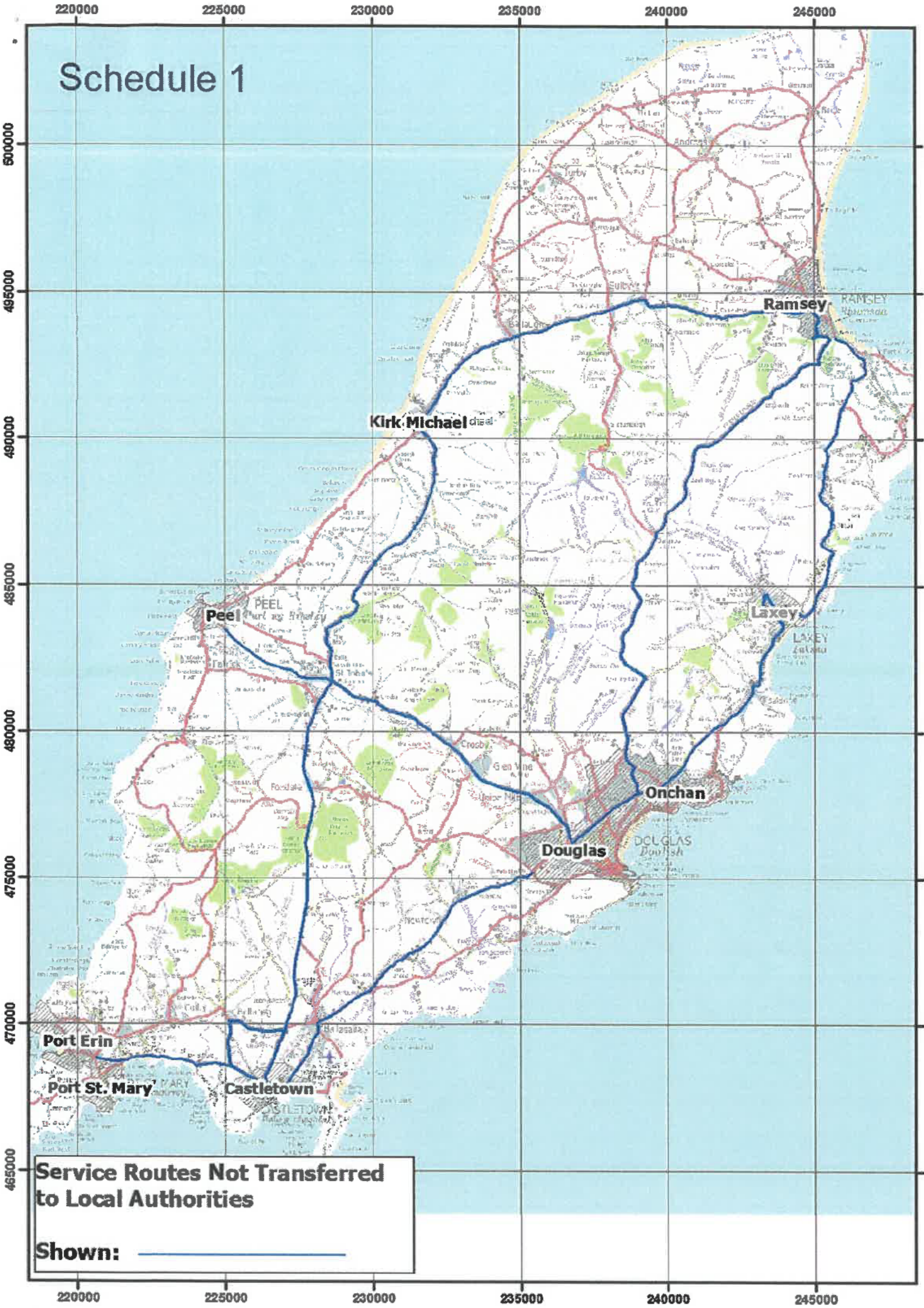
(ii) references to a highway shall be construed as references to a highway or a road to which the public has access.

2. The provisions referred to in subsection (1) are —

(a) sections 47, 48, 49, 50, 51, 58, 60, 61, 62, 63, 64, 71 and 72; and

(b) so far as they apply to the provisions specified in paragraph (a), sections 83, 104, 105, 106, 108, 109, 110, 111, 115 and 116.

3. A local authority shall not without the consent of the Department exercise the powers conferred by the provisions specified in subsection (2)(a) in relation to any highway which is a highway maintainable at the public expense; but no objection shall be taken, otherwise than by or with the consent of the Department, in any proceedings arising out of the exercise or purported exercise of such powers on the ground that such consent was not obtained.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