

Minutes of Special Meeting of Kilkenny County Council Meeting held on Saturday, 26th July, 2014 at 11.00 a.m.

Chair: Cllr. Pat. Millea

Cllrs: M.H. Cavanagh, M. Shortall, J. Brennan, P. Fitzpatrick, M. McCarthy, B. Gardner, D. Kennedy, A. McGuinness, M. Doran, D. Fitzgerald, K. Funchion, J. Malone, P. McKee, M. Noonan, E. Aylward, T. Breathnach, F. Doherty, P. Dunphy, M. O'Neill, P. O'Neill, P. Cleere

Officials: J. Mulholland, P. O'Neill, J. McCormack, M. Prendiville, S. Walton, K. Hanley, M. Mullally and A.M Walsh.

Apologies: Cllrs. M. Doyle, G. Frisby.

Also Present: John Harte, Legal Agent.

Cllr. P. Millea advised the meeting that he had received a request from the Kilkenny Chamber of Commerce to make a presentation to the Members in advance of having a discussion on the Notice of Motion listed on the Agenda, subject to the agreement of the Council. A copy of the request has already been circulated. It was:

Proposed by: Cllr. M.H. Cavanagh

Seconded by: Cllr. M. Doran

And Agreed

“that the Chamber of Commerce make a presentation and that they would be allowed 10 minutes”.

Cllr. Millea welcomed Mr. John Hurley, Mr. Paschal Bergin and Mr. Adrian Shanahan and invited them to proceed.

Mr. Hurley, C.E.O., addressed the meeting on behalf of the Chamber of Commerce. In his presentation he stated that everyone has the best interest of Kilkenny at heart. He referred to the decisions on the CAS Project which have been taken over the years by the Elected Members. These decisions were not taken lightly and they were made unanimously. He outlined the benefits of the project in increased safety for all road users, particularly pedestrians and cyclists, potential for increase in job creation. There are many benefits for the business people of Kilkenny. He stated that Kilkenny is a progressive County and this project will open up that area of the City for future development.

He stated that Greensbridge is not fit for purpose and referred to opportunities under Smarter Travel. The Chamber of Commerce are concerned about the financial implications for the Council due to the disruption and also for the future prosperity for the City and County in relation to future developments and job creation if the protests continue.

Cllr. P. Millea thanked Mr. Hurley for his presentation. Queries were raised by Cllrs. P. McKee, J. Malone, B. Gardner, M. Shortall, M. Doran, K. Funchion and M.H. Cavanagh.

Members thanked the Chamber of Commerce for their presentation and the issues raised by Members are as follows:

- Opening up of Dean Street for future business.
- Bus parking for that part of the City.
- Does Chamber represent all businesses?
- If Tesco come – do they help or take away from small businesses.
- Anti CAS Group have been lobbying for a number of weeks, Pro CAS have only commenced in the last few days.
- Rural people want the bridge.

Members of the Chamber responded to the Elected Members and stated that they did not see the need up to the last week to start lobbying for the bridge as the Members have over the last few years made decisions for the construction of a bridge without any objection from members of the public.

Cllr. P. Millea thanked the Chamber of Commerce for their responses to Members' queries. It was:

Proposed by: Cllr. M. McCarthy
Seconded by: Cllr. D. Fitzgerald

“that the meeting adjourn to consider the legal advice received”.

It was then:

Proposed by: Cllr. D. Kennedy
Seconded by: Cllr. M. Noonan

“that the meeting continue”.

As there was no agreement, Cllr. P. Millea continued with the meeting and he read the Notice of Motion which is now before the meeting for consideration:

“That Kilkenny County Council would hold a Special Briefing Meeting at an agreed date for Members to review the Central Access Scheme for the City of Kilkenny taking into account all relevant new information related to the project and interrelated plans and projects: EU, National and local for the Brewery Site, HGV management within the City, heritage, urban mobility and smarter travel, costs to date, projected costs and financing, and to give due consideration to public opinion on and possible alternatives to the project.”

Mr. P. O'Neill advised that the Notice of Motion is now before the Elected Members for consideration and it is open to any Member to contribute to the discussion on it.

Cllr. M. Noonan requested the Notice of Motion to be taken now.

Cllr. M.H. Cavanagh requested that Mr. J. Harte be given an opportunity first to read the legal advice given to the Executive at the public meeting.

Mr. John Harte proceeded to give the legal advice which had been given to each Elected Member before the meeting. He advised on the legality of a Review of the Central Access Scheme and advised that there is no legal status for a Review.

He outlined, in detail, Section 138, 139 and 140 of the Local Government Act 2001. He outlined what powers the Elected Members had if they wish to halt the Central Access Scheme. In summary he advised that:

- The Council has no specific powers to review the Central Access Scheme.
- A Review has no legal standing or legal consequence.
- The Council has no statutory power to mandate the Executive to halt works on the Central Access Scheme at the meeting of the 26th July, 2014.

Cllr. M. Noonan, as Proposer of the Motion, stated his disappointment and frustration on receiving this legal advice prior to the meeting. There are limitations on the Motion and the content of the Notice may have been dramatically changed if they had this advice earlier. He stated that the people at the bridge are passionate about their City and they should be met and their views listened to. The public marches and signatories should be recognised that there is an issue with the bridge. He stated that people are willing to participate but the public consultation process is not working. A new way to involve the public and get their views must be devised. He further stated that the bridge will radically change the landscape of the City, will have an impact on the residential areas, impact on Vicar Street and Cathedral view. He called for a Review to be initiated within a limited timeframe and the process should rebuild relationships with all those concerned.

Cllr. K. Funchion, who was seconding the Motion, stated her disappointment on the delay in giving the Members legal advice on the Notice of Motion. She called for an independent Review by an external agency and that this is supported by a number of Members. She requested that the work is stopped while the Review is undertaken and she further stated that a Section 140 Motion is being explored.

Contributions were also received from Cllrs. M. Doran, M.H. Cavanagh, A. McGuinness, B. Gardner and the matters raised were as follows:

- Favour a Review of Scheme to alleviate fears of the public and the other traffic issues.

- Financial implications for the Council if works are ceased. Do the Council have legal powers to suspend the contract.
- Consequences for Council if Motion is passed.
- What powers do Elected Members have?
- Legal Advice – Motion does not stand up.
- Legal Advice was given to the Executive not to the Elected Members.
- What are the Council's plans for the adjoining sites?
- Clarify date of Tender and date of issue of Letter of Intent.

Mr. Mulholland and Mr. Walton responded to a number of queries. They advised that the Development Plans were approved by both Councils in April/May, 2014 which includes this project. The Notice of Motion calls for a review and does not call for the work to be ceased. The review could be carried out by the Audit Committee if Members are agreeable. Time is not available to set up an independent review. All the relevant notices, e.g. Notices of Treat and Notices of Entry, in relation to the C.P.O. have been served. All relevant notices were published in the papers, decision was made by An Bord Pleanála. Tenders were received on 14/3/2014, Letter of Intent was issued to the preferred bidder on 16/4/2014 and Letter of Acceptance issued 10/6/2014.

In relation to the Diageo site, this is a very important part of the City. There is no statutory basis for the framework plans for this site. There will be a lot of discussion with the Elected Members before a final plan is made for the site. The transfer of the property is due to be completed shortly.

Mr. John Harte advised that the decision of An Bord Pleanála stands. This can only be amended by the High Court if a judicial review was lodged. The time period for this has lapsed. The Local Authority has no power to change the Bord's decision. The High Court can only change any of this decision.

He restated that the Council does not have the power to stop work or direct the Executive to stop the work once it has started. There can be discussions to exchange information and give views on the project but these do not have any legal standing at this stage. There are no specific powers in the Acts to order a Review by an outside body.

Cllr. Noonan stated that the Notice of Motion does not call for work to cease. He asked that in a gesture of good will that work would be ceased while a Review took place. It is not the intention of the Review to place additional cost on the Council.

At this stage, Cllr. Millea stated that he was adjourning the meeting for ten minutes to allow the Members to consider all the information received. It was:

Proposed by: Cllr. John Brennan

Seconded by: Cllr. P. Dunphy

And agreed by all “to adjourn the meeting for ten minutes”.

Meeting resumed at 12.55 p.m.

Cllr. Noonan advised that the wording of the Motion still stood and he was agreeable to the Chairman of the Audit Committee to carry out the Review.

Mr. Mulholland clarified that he had contacted the Chairman of the Audit Committee and he had agreed to take on the Review of the governance issues and the procedures undertaken. It was a matter for the Members to agree a date to consider the Report from the Chairman of the Audit Committee.

Mr. O’Neill suggested an early date of the first week in September for this meeting.

Cllr. M.H. Cavanagh proposed, Monday 1st September, 2014, at 3.00 p.m. and this was agreed by all.

Cllr. Noonan thanked the Chairman, the Executive and Mr. Harte and all the party groups for their discussions and for their time to listen to the various groups.

Cllr. Breathnach acknowledged everyone’s contribution to the debate and emphasised the importance of public consultation.

Cllr. Millea thanked the Executive and the staff and Mr. Harte for their attendance at the meeting and this concluded the business of the meeting.