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**Minutes of Proceedings at Special Meeting of Council Cork County Council held in the Foyer, Floor 2, County Hall, Cork on 23rd October 2020.**

**I LATHAIR**

**Comhairleoir Máire Léanacháin - Uí Foghlú, Méara Chontae**

**Comhairleoiri:** Ó Sé J.P, Ó Múrchú Gearóid, Críod, Ó Cochláin M, Uí Loinsigh, Ó Luasa, Ó Haodha Padraig, Ó Múrchú Gearóid, Ó Héigeartaigh, Ní Heachthigheirn, Uí Thuama, MacUaid, Ní Cheallaigh, Ó Cearbhaill, Ó Muirthile, Uí Chaochlaoich, Ó Colmáin, Ó Murchú Caoimhín, Uí Suilleabháin M, Ó Donnabháin, Ó Coileáin D, Uí Mhurchú Cáit, Ó Conaill, Mac Craith, Uí Daltún, Lombard, Uí Bhuachalla, Barra, Rasmussen, Ó Conchubair A, Ó Flionn, Uí Bhriain, De Róiste.

**PRESENT**

**Councillor Mary Linehan-Foley, County Mayor, presided.**

**Councillor:** O’Shea J.P, Murphy Gerard, Creed, Coughlan M, Lynch, Lucey, Hayes Pat, Murphy Gearóid, Hegarty, Ahern, Twomey, Quaide, Kelly, Carroll, Hurley, Coakley, Coleman, Murphy Kevin, O’Sullivan M, O’Donovan, Collins D, Murphy Katie, O’Connell, McGrath, D’Alton, Lombard, Buckley, Barry, Rasmussen, O’Connor A, O’Flynn, O’Brien, Roche.

Chief Executive; Senior Executive Officer; Mr. Michael Lynch, Director of Services Planning; Mr. Padraig Moore, Senior Planner.

Members agreed to limit the duration of the meeting to 1 hour 55 minutes:

***Proposed by Councillor Cathal Rasmussen***

***Seconded by Councillor Pat Hayes***

**County Mayor, Cllr. Mary Linehan-Foley, outlined the reason for requisition of the Special Meeting as follows:**

To facilitate consideration of Cllr. Alan O’Connor’s Notice of Motion, which was submitted pursuant to Section 11.4.d of the Planning & Development Act 2000, as amended, to Direct the Chief Executive as followsregarding the preparation of the draft development plan:

***Accepting that the most expedient possible phasing out of fossil fuel usage and retirement of existing fossil fuel infrastructure is a necessary response to the threat of global heating, it is therefore directed under S.11(4)(d) of the Planning & Development Act 2000 (Amended), in consistency with the proper planning and sustainable development of the county as per S.11(4)(f) of that Act, and with regard to Ireland’s responsibilities with respect to the 2015 Paris Agreement and to Cork County Council’s status as a signatory of the 2020 Local Authority Climate Action Charter, that a stance of opposition toward:***

1. ***the construction of new fossil fuel energy infrastructure (such as a liquid natural gas terminal in Cork Harbour), and***
2. ***the exploitation of as–yet–undeveloped fossil fuel resources, encompassing any infrastructure which might be constructed within the local authority’s area to facilitate same, be taken in the forthcoming County Development Plan.***

**subject to detailed review against the statutory criteria set out in Section 11(4)(d) and (f), a process which may not be concluded before the Council Meeting at which same is under consideration, and in this context the Chief Executive may be required to provide the Elected Members with advices later in the process and prior to the making of the Draft County Development Plan.**

The Mayor advised Members that a majority vote in favour of the motion would be required for it to pass. A meeting of all Members was called due to the importance of the discussion for the County Development Plan. All Members have a right to attending Council Meetings and the Mayor wants to ensure no member is disenfranchised.

The Chief Executive said that this Special Meeting was convened by the Mayor as there is a legal requirement for the majority of Members to vote in favour in order to pass the motion. There is a legal requirement for the Mayor to facilitate a meeting of Full Council for the matter given the statutory deadlines for this part of the County Development Plan.

The Chief Executive said that the matter to be discussed at this meeting relates to the future economy of Cork and the infrastructure of energy supply. Given that the County Development Plan is for a six-year period, climate change must be considered as part of the process. The county’s strategy regarding energy must be considered. While creating the County Development Plan, Cork County Council must look at current policies and cannot work with proposed future policy documents or white papers. An extensive report by the Director for Planning & Development which has been prepared and circulated to Members in advance of today’s meeting, and National Policies were reviewed as part of the preparation of the report.

Mr. Michael Lynch, Director of Services, Planning & Development, advised that this matter has been given serious consideration in respect of Government policy, energy security and legal precedent.

Mr. Lynch outlined the Chief Executive’s Report in relation to Notice of Motion as follows:

The report has been prepared in response to the Notice of Motion which was submitted pursuant to Section 11(4)(d) of the Planning and Development Act 2000, as amended, to Direct the Chief Executive as regards the preparation of the Draft County Development Plan on a specified matter.

The Notice of Motion, from Cllr Alan O’Connor, states:

Accepting that the most expedient possible phasing out of fossil fuel usage and retirement of existing fossil fuel infrastructure is a necessary response to the threat of global heating, it is therefore directed under S.11(4)(d) of the Planning & Development Act 2000 (Amended), in consistency with the proper planning and sustainable development of the county as per S.11(4)(f) of that Act, and with regard to Ireland’s responsibilities with respect to the 2015 Paris Agreement and to Cork County Council’s status as a signatory of the 2020 Local Authority Climate Action Charter, that a stance of opposition toward:

1. the construction of new fossil fuel energy infrastructure (such as a liquid natural gas terminal in Cork Harbour),

and

1. the exploitation of as-yet-undeveloped fossil fuel resources, encompassing any infrastructure which might be constructed within the local authority’s area to facilitate same,

Be taken in the forthcoming county development plan.

**Legislative Context**

Section 11 of the Planning and Development Act, 2000, as amended deals with the preparation of the Draft Development Plan. Section 11(4) of the Act deals with the preparation of a Chief Executive Report for Members on the submissions received in response to the public consultation process. Section 11 (4)(d) of the Act provides that:

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| (d) Following the consideration of a report under paragraph (c), the members of the planning authority or of the committee, as the case may be, may issue directions to the chief executive regarding the preparation of the draft development plan, and any such directions must take account of the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government, and the manager shall comply with any such directions. |
| (e) Directions under paragraph (d) shall be issued not later than 10 weeks after the submission of a report in accordance with paragraph (c). |
| (f) In issuing directions under paragraph (d), the members shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates. |

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| In accordance with the provisions of Section 11(4)(d), Elected Members, in issuing such directions are restricted to considering the proper planning and sustainable development of the area, and any direction must be:   * strategic in nature, * consistent with the draft core strategy and * take account of the statutory obligations of Cork County Council and * take account of any relevant policies or objectives for the time being of the Government or of any Minister of the Government.   Section 12 (18) of the Act defines statutory obligations as including “in relation to a local authority, the obligation to ensure that the development plan is consistent with—  (a) the national and regional development objectives specified in—  (i) the National Planning Framework, and  (ii) the regional spatial and economic strategy,  and  (b) specific planning policy requirements specified in guidelines under subsection (1) of Section 28.”  The validity of the Direction in the context of these requirements is considered further below. |  |
| **Scope of Direction**  The Direction proposes that the next county development plan takes a stance of opposition toward:   1. the construction of new fossil fuel energy infrastructure (such as a liquid natural gas terminal in Cork Harbour),   and   1. the exploitation of as-yet-undeveloped fossil fuel resources, encompassing any infrastructure which might be constructed within the local authority’s area to facilitate same.   ***Fossil Fuels***  Fossil fuels are a non-renewable energy source found in the Earth’s crust. Coal, oil, natural gas and peat are examples of fossil fuels. Emissions from the process of turning fossil fuels into consumable energy and the burning of the energy are acknowledged as the major source of greenhouse gas emissions which are contributing to global warming and climate change. Accepted and visible impacts of climate change in Ireland include rising temperatures, extreme weather events such as flooding and drought etc.  In Ireland in 2018 fossil fuels accounted for 89% of primary energy use. Oil was the dominant fuel at 49% and transport was the largest end use sector at 42% of energy consumption.  In terms of final energy, which is the energy consumed by the end user, and excludes the energy used to produce the energy itself, fossil fuels accounted for 76.9% of consumption in 2018, down from 81.9% in 2005. Between 2005 and 2018 there have been reductions in the energy share of coal, oil and peat, while use of natural gas has increased.   |  |  |  |  | | --- | --- | --- | --- | | **Fuel** | **Growth %**  **2005-2018** | **Share %**  **2005** | **Share %**  **2018** | | Fossil Fuels | -8.3 | 81.9 | 76.9 | | Coal | -46.2 | 3.8 | 2.1 | | Peat | -27.9 | 2.2 | 1.6 | | Oil | -13.8 | 65.0 | 57.3 | | Natural Gas | 42.3 | 10.9 | 15.8 | | Renewables | 146.4 | 1.5 | 3.8 | | Wastes | ----- | 0.0 | 0.4 | | Combustible fuels (totals) | -5.5 | 83.3 | 80.6 | | Electricity | 11.5 | 16.6 | 18.9 | | *Source SEAI Energy in Ireland 2019* |  |  |  |   ***Fossil Fuel Infrastructure***  Fossil Fuel Infrastructure is a very broad term and could include both small and large scale infrastructure used in the production, distribution or consumption of fossil fuels. It can include large scale infrastructure such a power plants (e, g. Whitegate), gas distribution pipelines, port and port side facilities for the importation of oil (Whiddy Oil Terminal, Whitegate Oil refinery), and facilities for distributing fuel – fuel storage depots, petrol filling stations etc. At the smaller end of the scale fossil fuel infrastructure could include domestic heating boilers.    ***Energy Security***  Energy Security is a significant issue for Ireland and a review of the security of our energy supply for the period 2030-2050 is currently being carried out[[1]](#footnote-1).  Our gas and electricity networks are essential to our energy security and government policy seeks to maintain, and where necessary, facilitate the enhancement of resilience of the gas and electricity networks provided such enhancements are in keeping with Ireland’s overall climate and energy objectives. Once the security review is completed then policies and measures needed to address potential constraints will be actioned[[2]](#footnote-2).  In terms of oil it is considered that there is limited potential for reducing petroleum import dependency in the short to medium term. While nationally we have decided to cease exploration for oil, existing licences are not affected by this and licensees can continue towards exploration and production for both oil and/or gas as per their existing licences. Nationally our objectives regarding oil are to:   * provide a policy and regulatory framework to facilitate the commercial oil companies in their supplying of product to the domestic market. * Facilitate the continued operation of sufficient infrastructure to import and supply oil to the marketplace. * Support renewable and sustainable alternatives to petroleum products, including electric vehicles, biofuels and CNG in transports. * Continue to engage in oil emergency planning. |  |

**Government Policy**

A wide range of government policy documents and legislation have been published over the last decade or so on matters relating to energy and climate change, providing support for a range of action plans and investment programmes aimed at better managing our energy use and mitigating climate impacts.

Key documents include:

* National Energy and Climate Plan 2020
* The Climate Action Plan 2019
* Irelands Transition to a Low Carbon Future 2015-2030 (the White Paper).

Consideration of these documents shows that national policy fully acknowledges that a ‘radical transformation’ of Irelands energy system is required to meet climate objectives and that a detailed plan for a transition to a net zero carbon emissions position by 2050 has been set out. As part of the transition away from fossil fuels, the aim is to increase the share of final energy consumption made up of renewable energy sources and reduce that coming from fossil fuels. However, it will not be possible to eliminate fossil fuels from the energy mix in the period to 2050. In the short to medium-term, the mix of non-renewables will shift away from more carbon-intensive fuels, like peat and coal, to lower-carbon fuels like natural gas. Our reliance on gas as a fuel is likely to continue for some time. Ultimately, government policy seeks to move away from fossil fuels altogether1, but the energy framework is clear that this is not possible in the period to 2050 at least.

**Energy Security**

Energy Security is a significant issue for Ireland and a review of the security of our energy supply for the period 2030-2050 is currently being carried out2.

Our gas and electricity networks are essential to our energy security and government policy seeks to maintain, and where necessary, facilitate the enhancement of resilience of the gas and electricity networks provided such enhancements are in keeping with Ireland’s overall climate and energy objectives. Once the security review is completed then policies and measures needed to address potential constraints will be actioned3.

In terms of oil it is considered that there is limited potential for reducing petroleum import dependency in the short to medium term. While nationally we have decided to cease exploration for oil, existing licences are not affected by this and licensees can continue towards exploration and production for both oil and/or gas as per their existing licences. Nationally our objectives regarding oil are to:

* provide a policy and regulatory framework to facilitate the commercial oil companies in their supplying of product to the domestic market.
* Facilitate the continued operation of sufficient infrastructure to import and supply oil to the marketplace.
* Support renewable and sustainable alternatives to petroleum products, including electric vehicles, biofuels and CNG in transports.
* Continue to engage in oil emergency planning.

**Provisions of Planning & Development Act 2000, as amended**

Section 10 of the Planning and Development Act 2000 as amended prescribes the content of development plans and the purposes for which development objectives may be included in the Plan.

Section 10(2) sets outs 18 purposes for which development objectives must be included in the Plan. The following mandatory objective at Section 10 (2)(b) as substituted by Section 114(a) of the Water Services Act 2007 is relevant to the proposed direction.

*“(b) the provision or facilitation of the provision of infrastructure including —*

1. *transport, energy and communication facilities,*
2. *water supplies and wastewater services (regard having been had to the water services strategic plan for the area made in accordance with the Water Services Act 2007),*
3. *waste recovery and disposal facilities (regard having been had to the waste management plan for the area made in accordance with the Waste Management Act 1996), and*
4. *any ancillary facilities or services;”*

A Planning Authority also has discretion under Section 10(3) to indicate objectives for any of the purposes set out in the First Schedule to the Planning and Development Act, as amended. The First Schedule to the Planning and Development Act is entitled “*Purposes for which Objectives may be indicated in Development Plan*” and lists those purposes under 5 parts entitled as follows;

*Part I Location and Pattern of Development,*

*Part II Control of Areas and Structures,*

*Part III Community Facilities*

*Part IV Environment and Amenities*

*Part V Infrastructure and Transport.*

At this time, I would point to the High Court per Blayney J in *Glencar Exploration v Mayo County Council*4 where it was held that it was *ultra vires* Mayo County Council to include in its development plan a negative development objective which provided for a mining ban. Blayney J considered the provisions for making a development plan in Section 19 of and the Third Schedule to the Local Government (Planning and Development) Act, 1963 and held as follows:

*“These provisions make clear the nature of a development plan. It is a plan consisting of a written statement and plan indicating the development objectives for the area of the planning authority. And since development is defined as meaning "the carrying out of any works on, in, or under land . . ." development objectives must be seen in that context. So, they must be objectives which have as their aim the carrying out of works on, in, or under land, which means that they must be positive in character. …..*

*What has to be considered here is whether or not the contested provision can properly be described as being a development objective. If it can be, then it may be included in the development plan; otherwise it may not. When this test is applied to the mining ban, I am satisfied that the result must be a finding that the County Council did not have power to include it in the development plan. It is not a development objective. As I stated earlier such an objective must be positive in character. The mining ban is not. It is entirely negative. Its purpose is to prevent development not to have it as an objective. It would have totally prevented any further exploration in a substantial part of the county. For these reasons I am satisfied that it was* ultra vires *the County Council.”*

It is considered the matters under consideration in *Glencar* equally applies to development plans made under the current Planning and Development Act, as the same definition of development is contained in the Planning and Development Act as was in the said 1963 Act and as the word “*prohibiting*” was also used in the Third Schedule to the 1963 Act which set out discretionary purposes for development objectives.

The decision of the High Court as regards Glencar has never been overruled and so remains the law and has the effect of preventing development plans including negative development objectives.

**Conclusion**

It is considered that national energy policy does not support a stance of opposing the construction of new fossil fuel infrastructure or opposing the exploration for oil or gas covered by existing exploration licences. In fact, National policy states that our ability to reinforce our gas and oil infrastructure as required is essential to our future energy security. Opposing the construction of new fossil fuel infrastructure could potentially pose a significant risk to the security of our energy supply with disastrous impacts on the economy and society.

It is further considered that there are adequate safeguards in place in relation to the various consent processes associated with large scale infrastructure projects and planning applications to ensure proposals are adequately assessed in terms of their environmental impact, thus negating the need for a position of opposition to such infrastructure.

On the basis of the tests set out in Section 11(4)(d) of the Act it is considered that the Direction does not constitute a Valid Direction as it would fail to take appropriate account of government policy as expressed in the National Energy and Climate Plan 2020.

Furthermore, including a negative development objective in terms of the proposed direction in the Cork County Development Plan is *ultra vires* Cork County Council.

**Chief Executive’s Recommendation.**

Ireland remains very reliant on fossil fuel energy for basic requirements like electricity, heat and transport. Cork County contains many strategic infrastructure assets which form part of the vital energy infrastructure for the county and the country including Whiddy Oil Terminal which stores a significant part of the State’s oil reserves, the Whitegate Oil Refinery which supplies 40% of the states petroleum needs, the power stations at Whitegate which produce electricity, gas pipelines, port infrastructure etc. It is considered essential that these facilities have the ability to adapt or upgrade their infrastructure as necessary, and in accordance with statutory consent procedures, to ensure the resilience of the energy supply into the future.

National policy has set out a roadmap for reducing reliance on fossil fuels, expanding renewable energy infrastructure and transitioning to a low carbon position by 2050. However fossil fuels will remain a vital part of the energy mix well into the future and access to fossil fuels remains vital to

overall energy security. Adopting a position of opposition to the future development of that infrastructure would therefore be contrary to national policy and could potentially impact on the security of energy supply with significant negative consequence for society and the economy, both locally and nationally.

It is also considered that a Direction such as that proposed would be entirely negative and would lead to the prohibition on the construction of new fossil fuel energy infrastructure, could not be a development objective of the Draft Development Plan as development objectives which have as their aim the carrying out of works on, in, or under land, which means that they must be positive in character. Therefore, including a negative development objective in terms of the proposed direction in the Cork County Development Plan is ultra vires Cork County Council.

Accordingly, it is recommended that the Elected Members resolve not to proceed with the Direction.

The Development Plan Review will address the issue of climate change, energy infrastructure and the transition to a net zero emissions position by 2050, in line with national policy. Members will have an opportunity to consider the detail of the policies and objectives proposed to be included in the Draft Plan in Q1 2021 prior to publication of the Draft Plan in April 2021.

**During this discussion the Members made the following points:**

* Relevant Government policies and objectives need to be taken into account.
* Ireland is committed to the Paris Agreement which is referred to in many Government documents.
* Cork County Council also signed up to the Climate Action Charter.
* Findings by the European Union are deemed to be conservative.
* There is a Climate emergency worldwide.
* Ireland must reach zero emissions by 2050 - scientific studies show that this goal will be reached by limiting temperatures increase and exploitation of new fossil fuel reserves must cease in order to achieve this objective.
* The development objective must be positive however there is scope to include two negative objectives in the plan.
* Members do not want to open up the County Development Plan to Ministerial Review.
* There are contradictions within Government policies and objectives.
* There is a risk of global catastrophic climate change and increasing annual temperatures by even 1.5 degrees would lead to food shortages. Climate change is a human rights issue.
* There is no credible case for the exploitation of new fossil fuels and any energy policy in favour of decarbonisation is preferred.
* Cork County Council must act within current laws and policies and to go beyond this is *ultra vires* and could leave Cork County Council at risk of legal action.
* Change must come at national level and if changes are made, the County Development Plan can be amended as needed.
* 52% of supply comes from natural gas which is being used as a ‘bridging fuel’
* If we continue as we are, we will be 70% over the 2050 target when the time comes.
* Wind energy does not have the capability to produce the demand currently on electricity – we need to fill the gap until wind energy can make up the difference.
* A move to solar and offshore wind farms is needed.
* There is a disproportionate and detrimental effect on lower income families of increased fuel costs.
* There is a requirement to reduce carbon footprint and people want transition to elimination of fossil fuels however they need provision.
* Society needs to make adjustments however there are grave concerns regarding the capacity of green energy.
* Emphasis should be on incentivising the reduction of fossil fuels.
* Future green energy infrastructure is needed to remove reliance on fossil fuels
* Functioning economy needs fossil fuels
* County Cork has a national role in meeting energy needs of the Country.

Councillor Alan O’Connor proposed, seconded by Councillor Liam Quaide, the following proposal:

*“Accepting that the most expedient possible phasing out of fossil fuel usage and retirement of existing fossil fuel infrastructure is a necessary response to the threat of global heating, it is therefore directed under S.11(4)(d) of the Planning & Development Act 2000 (Amended), in consistency with the proper planning and sustainable development of the county as per S.11(4)(f) of that Act, and with regard to Ireland’s responsibilities with respect to the 2015 Paris Agreement and to Cork County Council’s status as a signatory of the 2020 Local Authority Climate Action Charter, that a stance of opposition toward:*

1. *the construction of new fossil fuel energy infrastructure (such as a liquid natural gas terminal in Cork Harbour), and*
2. *the exploitation of as–yet–undeveloped fossil fuel resources, encompassing any infrastructure which might be constructed within the local authority’s area to facilitate same, be taken in the forthcoming County Development Plan.”*

**The Mayor called for a vote to be taken which resulted as follows:**

**FOR: Councillors:** O’Connell, D’Alton, O’Connor A, Coughlan M, Twomey, Quaide **[6]**

**AGAINST:** **Councillors:** Coleman, Murphy Kevin, O’Sullivan M, O’Donovan, Collins D, Murphy Katie, McGrath, Lombard, Buckley, Barry, Rasmussen, O’Flynn, O’Brien, Roche, O’Shea J.P, Murphy Gerard, Creed, Looney, Lynch, Lucey, Hayes Pat, Murphy Gearóid, Linehan-Foley, Hegarty, Ahern, Kelly, Carroll, Hurley, Coakley. **[29]**

**ABSTAINED:** **[0]**

The Senior Executive Officer declared the results as follows **6** **FOR**, **29** **AGAINST**, **0** **ABSTAINED.**

***The Mayor declared the proposed motion defeated.***

**~ This concluded the business of the Meeting ~**

1. National Energy and Climate Plan 2020, page 48. [↑](#footnote-ref-1)
2. National Energy and Climate Plan 2020, page 49 [↑](#footnote-ref-2)