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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 22nd May, 2020.**

**I LATHAIR**

**Comhairleoir Ian Ó Dubhghaill, Méara Chontae**

Comhairleoiri Ó Muineacháin B, Ó Dubhghaill, Ó Sé J.P, Ó Múrchú Gearóid, Críod, Ní Mhuineacháin G, Ó Luanaigh, Ó Cochláin M, Uí Loinsigh, Ó Luasa, Ó Haodha Padraig, Ó Múrchú Gearóid, Ó Cinnéide, Ó Madaoin, Ó Sé T, Léineacháin Ui Foghlú, Ó Coileáin N, Ó Héighthigheirn, Ní Heachthigheirn, Uí Thuama, MacUaid, Ní Cheallaigh, Ó Cearbhaill, Uí Chaochlaoich, Ó Haodha Pól, Uí Chochláin G, Ó Colmáin, Ó Murchú Caoimhín, Uí Shuilleabháin M, Ó Donnabháin, Ó Coileáin D, Ó Murchú P.G, Uí Mhurchú Cáit, Mac Craith, Uí Daltún, Uí Bhuachalla, Daltún Ó Suilleabháin, NÍ Cheallacháin, Barra, Sheppard, Rasmussen, Ó Conchubair A, MacCarthaigh N, Ó Flionn, Uí Bhriain, Ó Laoghaire, Dawson, De Róiste.

**PRESENT**

 **Councillor Ian Doyle, County Mayor, presided.**

Councillor Moynihan B, Doyle, O’Shea J.P, Murphy Gerard, Creed, Moynihan G, Looney, Coughlan M, Lynch, Lucey, Hayes Pat, Murphy Gearóid, Kennedy, Madden, O’Shea T, Linehan-Foley, Collins N, Hegarty, Ahern, Twomey, McCarthy S, Quaide, Kelly, Carroll, Coakley, Hayes, Coughlan G, Coleman, Murphy Kevin, O’Sullivan M, O’Donovan S, Collins D, Murphy P.G, Murphy Katie, McGrath, D’Alton, Buckley, Dalton-O’Sullivan, O’Callaghan, Barry, Sheppard, Rasmussen, O’Connor A, McCarthy N, O’Flynn, O’Brien, O’Leary, Dawson, Roche.

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

1. **Draft Ministerial Direction in the Matter of Section 31 of the Planning & Development Act 2000 (as amended) - Variation No 2 of the Cork County Development Plan 2014;**

County Mayor Cllr Ian Doyle outlined the reason for requisition of meeting as follows:

Facilitate discussion such that the Chief Executive's Report can be prepared in accordance with legislative requirements and accurately summarise the views and recommendations (if any) made by the Elected Members of the Planning Authority regarding the Draft Ministerial Direction in the Matter of Section 31 of the Planning & Development Act 2000 (as amended) and which relates to Variation No 2 of the Cork County Development Plan 2014, and at said Special Meeting of Council and pursuant to Section 132 of the Local Government Act 2001 as amended , the Chief Executive would be in a position to advise and assist the Elected Members of Council on this particular matter in the performance of their functions.

Ms. Mairead Lucey, Senior Executive Officer, Corporate Services outlined the statement of reasons for the draft direction to the Planning Authority given by the Minister for Housing and Urban Development as follows:

1. Variation No.2 has not been made in a manner consistent with the recommendations of the Office of the Planning Regulator Under Section 31AM.
2. The Cork County Development Plan 2014 as varied by Variation No.2 purports to identify a preferred location for a retail outlet centre to serve the Cork metropolitan area in advance of the preparation of a joint retail strategy as required under the Guidelines on Retail Planning published by the Minister in April 2012 under Section 28 of the Act and is inconsistent with the Guidelines on Spatial Planning and National Roads published by the Minister in January 2012 under Section 28 of the Act, and therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

The Chief Executive updated the Elected Members regarding his position on the Draft Ministerial Direction on Cork County Development Plan 2014 Variation No.2 (Retail Outlet Centres) as follows:

* On 21st February 2020, the Office of the Planning Regulator (OPR) issued notice to the Minister with a Draft Direction and Recommendation pursuant to Section 31AM(8) of the 2000 Act as amended
* On 5th March 2020, the Minister issued a Notice to Council consequent on the above referenced Recommendation being made by the OPR, forming opinion and intention to make a Direction pursuant to Section 31(3) of the 2000 Act as amended
* On 19th March 2020, Council published notice of the Draft Direction, inviting written submissions. **The submission period remains active.**
* On 20th March 2020, Council notified the Elected Members of the express provision under Section 31(10) of the Planning and Development Act, 2000, as amended that Members:
1. may make a submission to the Office of the Planning Regulator at any time up to the expiry of the public display and
2. Where so submitted, shall send a copy of it to the Minister.

The Special Meeting will facilitate Elected Members in seeking to obtain the advice and assistance of the Chief Executive on this matter, as provided for under Section 132 of the Local Government Act 2001 as amended.

He referred to his position as set out in the Chief Executive’s Report and during the detailed discussions that have taken place in the Council Chamber during the course of the prescribed process surrounding the making of Variation No.2.

He reminded the Elected Members of the fact the Members voted strongly in favour of the making of Variation No2 in accordance with the Chief Executive’s Report dated 20th December 2019 as follows:

* 42 Votes In Favour,
* 4 Votes Against and
* 1 Abstention.

He set out the Executive’s position very clearly in correspondence that issued directly to the Office of the Planning Regulator, dated 30th January 2020, pursuant to Section 31AM(6) of the Planning and Development Act 2000 as amended, following Council’s resolution to make Variation No2.

He confirmed that, having given detailed and serious consideration to both the OPR notice to the Minister with a Draft Direction and Recommendation pursuant to Section 31AM(8) of the 2000 Act as amended; and the Ministers Notice to Council consequent on the above referenced Recommendation being made by the OPR, forming opinion and intention to make a Direction pursuant to Section 31(3) of the 2000 Act as amended, he remained fully satisfied that the making of Variation No2:

1. Satisfies all statutory requirements,
2. Is in the interests of the proper planning and sustainable development of the area and
3. Is not premature pending the making of an updated Joint Retail Strategy by Cork County Council and Cork City Council

More particularly he said he was very strongly of the view that:

1. The decision of the OPR to recommend to the Minister the issuing of a Draft Directive is fundamentally flawed. Furthermore the draft direction itself and the considerations set out therein are not in accordance with the provisions of the Planning and Development Act 2000 as amended, in particular section 31AM(8) under which the notice and draft direction were purported to be issued.

It should be noted that section 31AM(8)(a) to (c) are cumulative requirements to be met prior to a recommendation or draft direction being issued by the OPR.

1. The planning merits that gave rise to the making by the Members of Variation No2 remain valid and he remained satisfied that Proposed Variations No1 and No2 of the County Development Plan, 2014 when read together are in compliance with the Retail Planning Guidelines for Planning Authorities (2012).

More particularly Variation No1 and Variation No2 when taken together are in compliance with Section 3 and Section 4.11.4 of the Retail Planning Guidelines and in fact significant portions of the Guidelines text and provisions have been incorporated directly into said Variations.

Furthermore it is considered the Study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area, which included the Cork City Council Administrative Area, informing the Variation provides a strong evidence-based framework at a strategic level for consideration of any future policy proposals within Metropolitan Cork for Retail Outlet Centres.

The Study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area as well as Variation No2 (when finalised) will be used to inform the preparation of any future Joint Retail Strategy which could in turn inform the Development Plan Review process.

1. He said Members were aware that Cork County Council entered into this process in a collaborative manner with our Cork City Council colleagues with the clear intention of developing an evidence-based, plan-led approach to providing clear policy guidance for consideration of a retail outlet centre in Metropolitan Cork. All relevant studies/strategies were taken into consideration in the preparation of the Study and the proposed Variation.

The provisions of the Draft Regional Spatial and Economic Strategy for the Southern Region and the Draft Cork Metropolitan Area Transport Strategy do not in any way alter the outcome of the Study or the wording of the proposed Variation.

Having reviewed same since their respective adoption and finalisation, he remained satisfied Variation No2 is not inconsistent with either the Regional Spatial & Economic Strategy or the Cork Metropolitan Area Transport Strategy and stated that there are ample safeguards in Variation No2 when taken with Variation No1, including clear requirements regarding the Retail Planning Guidelines, the Spatial Planning and National Roads Guidelines, the Joint Retail Strategy and the need to protect the national road network.

1. The Retail Planning Guidelines for Planning Authorities were issued in 2012 under Section 28 of the Planning & Development Act 2000 as amended, and on foot of which the Joint Metropolitan Retail Strategy was prepared and adopted by Cork County Council and Cork City Council.

It is an established fact in law that the general status of Guidelines under Section 28 of the 2000 Act is that there is a requirement for a planning authority to have regard to same. It is clear that throughout the process, in addition to seeking to advance the evidence based plan led approach on a joint basis with Cork City Council, every effort was made to have regard to the Retail Planning Guidelines for Planning Authorities.

While Section 28(1C) of the Principal Act, which was inserted in 2010, requires Specific Planning Policy Requirements (SPPRs) be applied by Planning Authorities, he was satisfied that the Retail Planning Guidelines for Planning Authorities are not SPPRs and that Council has a general discretion, grounded in its reserved functions, in the making of the Variation to form an opinion, having had regard to Guidelines and Government Policy.

It is conceivable that the effect of the OPRs Recommendation to Issue a Direction would be to remove Council’s discretion to make policy for and on behalf of the communities that Cork County Council serves and would have the effect of turning a general requirement to have regard to Section 28 Ministerial Guidance into an absolute requirement to comply. In his view the erroneous interpretation by the OPR which was reflected in the Recommendation to the Minister, would have far-reaching consequences, and indeed consequences not properly understood or intended when Ministerial Guidelines were prepared, such that it would inhibit the democratic mandate of Council to make policy for Cork County Council.

He pointed out that Section 28 Guidelines are not restricted to Retail Planning Guidelines for Planning Authorities and provide general guidance for Planning Authorities on a range of matters. The OPR’s flawed interpretation of Council’s obligations to comply with, rather than have regard to Guidelines, could have the effect of restricting Council’s rights to form Policy on a range of matters.

1. In direct contrast to the Planning Authorities requirement to simply have regard to Section 28 Guidelines, there is an absolute legislative obligation on the OPR to take into account other relevant policy and objectives of the Planning Authority under Section 31S of the Planning & Development Act 2000, as amended. While the OPR Notice contains a pre forma citation of Section 31S, there is no evidence of the OPR actually taking wider policy objectives of the, Planning Authority into account and he made particular reference to Councils stated considerations of economic development / tourism development matters such as synergies between retail outlets and tourism facilities as required under 31S(a) nor the National Planning Framework in respect of which the Cork Local Authorities made a Joint Submission – Cork 2050 – as required under Section 31S(c).

The Chief Executive concluded that in the strongest terms his view was that Variation No2, and the evidence based Study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area which informed same, when taken with the previously adopted Variation No1, provide a planning justification for the need for a retail outlet centre and that the most appropriate location in Metropolitan Cork for such a centre is within the N25 sub catchment.

He said that the Elected Members of Cork County Council may wish to resolve to submit the attached Report (Appendix A) along with his Summary Advices, as outlined above, to the Office of the Planning Regulator and copy said submission to the Minister in accordance with the opportunity afforded under Section 31(10) of the Planning and Development Act, 2000, as amended.

Such Resolution of Council, did not in his view, preclude the Elected Members from making individual submissions to the OPR and copying same to the Minister.

During this discussion the Members made the following points:

* Members expressed concern over democratic deficit and confirmed the strong desire to protect local democracy
* Members outlined the importance of the expertise of Elected Members and Planning department in working on the County Development Plan & Planning Process
* Said that the Office of the Planning Regulator had over-reached in its role and had intervened in a local planning matter.
* Expressed the right of Elected Members to perform ‘reserved functions’ and to set policy for Cork County
* Emphasised the huge positive impact for Cork County & Munster from an economic & tourism point of view of the proposed Retail Outlet Centre
* Advised that the National Planning Framework intended to encourage these types of developments into the regions outside of Dublin
* Concerns were also raised regarding sustainability of a proposed Retail Outlet Centre because of increased car use
* Members described the proposed Retail Outlet Centre as a golden opportunity for development of the East Cork Area
* Some members emphasised the need to have the support of TII & NDA
* Assured that the “Greening” of transport options will be developed sufficiently
* Members outlined the additional carbon footprint and a disadvantage to local businesses
* Said it was essential that the constitutional rights of Elected Members were protected.

The Chief Executive commented that Cork County Council and Cork City Council had both had input into the Terms Of Reference for a Joint Study on Retail Outlet Centres but that Cork City Council had subsequently withdrawn from the process of the Joint Retail Strategy.

Mr. Michael Lynch, Director of Services Planning outlined to the Members of the following:

* Compiled a report of various tourist attractions
* Tourism revenue generated by overseas tourism
* The average spend by domestic tourist

He then outlined as follows:

* Informed Members of the next step 31A(8) 4 week preparation to 24th June
* OPR shall recommend with or without amendments
* OPR can appoint an inspector no later than 3 weeks after CE Report
* Must consider CE Report and Elected Members submissions
* OPR 31A(9) can recommend that Minister issue a directive or inspector
* No time limit for Minister direction

Councillor Gillian Coughlan proposed, seconded by Councillor Seamus McGrath the following proposal:

***“***That this Council resolves to make a submission to the Office of the Planning Regulator, said submission being the Summary Advices of the Chief Executive to Council dated 22nd May 2020 together with the accompanying Chief Executive’s Advisory Note Report to the Council, and which is required by legislation to be copied to the Minister and, further resolves that said submission should be the basis upon which the Chief Executive would accurately summarise the views and recommendation of the Elected Members in the Planning Authority and which will be recorded in the Chief Executive’s Report"

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

**FOR:** Councillors: Coughlan G, Coleman, Murphy Kevin, O’Sullivan M, O’Donovan, Collins D, Murphy P.G, Murphy Katie, McGrath, Buckley, Dalton O’Sullivan, O’Callaghan, Barry, Sheppard, Rasmussen, O’Flynn, O’Brien, O’Leary, Dawson, Roche, Moynihan B, Doyle, O’Shea J.P, Murphy Gerard, Moynihan G, Looney, Coughlan M, Lynch, Lucey, Hayes Pat, Murphy Gearóid, Kennedy, O’Shea T, Linehan-Foley, Collins N, Hegarty, Ahern, Twomey, McCarthy S, Kelly, Carroll, Coakley, Hayes Paul

**[43]**

**AGAINST:** Councillors: D’Alton, O’Connor A, Quaide

**[3]**

**ABSTAINED:**

**[0]**

The Senior Executive Officer declared the results as follows **43** **FOR**, **3** **AGAINST**, **0** **ABSTAINED.**

1. **Provision by the Chief Executive of an update to the Elected Member of Council on the Blackwater Catchment Freshwater Pearl Mussel High Court proceedings.**

# Mr. Michael Lynch, Director of Services, Planning outlined the background as follows:

Members will be aware the Munster Blackwater (main channel) was included in a list of habitats of the freshwater pearl mussel in S.I. 296/2009 European Union Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (“the 2009 Regulations”).

Sections 11.2.13 to 11.2.16 inclusive of the Cork County Development Plan 2014 specifically refer to the sensitive water catchments along the Blackwater and identified a conflict of strategic priorities including matters such as the identification of Mallow as a Hub Town under NSS and Regional Planning Guidelines and the conservation status of the freshwater pearl mussel at a portion of the river that is downstream of Mallow.

Furthermore the parent department, Dept Culture Heritage and the Gaeltacht, having considered the matter recognised the level of protections afforded the freshwater pearl mussel were disproportionate and sought to address same by way of the commencement of S.I. 2018/355 European Union Environmental Objectives (Freshwater Pearl Mussel) (Amendment) Regulations 2018. The 2018 regulation had the effect that the Munster Blackwater (main channel) was removed from the list of habitats of the freshwater pearl mussel.

However Council was formally notified on 21st February 2020, by way of submission from a solicitor acting on behalf of Mr Peter Sweetman, that in 2018 Mr Sweetman issued proceedings against various State parties in relation to the 2018 Regulation that included a copy of a High Court Order made by Mr Justice Meenan on the 5 December 2019 (attached).

The case being Sweetman v. The Minister for Culture Heritage and the Gaeltacht, Ireland and the Attorney General*.*

It should be notedCork County Council was not Joined in or a Notice Party in the Case.

The outcome of the Case is such that the 2018 Regulation was quashed and matters revert to the 2009 Regulations. This means that the Munster Blackwater (main channel) is again included on the list of habitats of the freshwater pearl mussel.

On receipt of correspondence from Mr Sweetman’s solicitor arrangements were made for Councils legal team to review the position. Having concluded the review of the correspondence and the Courts Service website our legal team confirmed the following:

* Cork County Council was not named as a Respondent or a Notice Party to the proceedings.
* The case did not progress to a full hearing and Judgment. There was an exchange of Affidavits and the case was continuously listed on various dates “For Mention” only. It was eventually struck out on the 6th February 2020.
* The Court Order states “And on hearing for the Applicant and the Respondents and it appearing that agreement has been reached by consent the Court makes order in the terms of the agreed draft Order received by the Court this day”. This means that the various State respondents simply agreed with Mr Sweetman to the quashing of the 2018 Regulation.
* Council has not yet received formal written communication from any of the State respondents in respect of the making of this Order.
* Council has engaged in discussions with DCHG & DHPLG on this strategic matter.

Council’s legal team prepared a formal response to Mr Sweetman’s solicitor which issued on 12th March 2020.

Having considered the foregoing details and advices of Council’s legal team it was determined the Planning Authority would proceed as follows:

1. Notify SMT (for the purposes of operational reporting and Part 8 procedures), the Senior Planner for North Cork and the Council Ecologist regarding the confirmed up-to-date position as regards the High Court Case and outcome of same - that the 2018 Regulation was quashed and matters revert to the 2009 Regulations.

Confirming that this has the effect that the Munster Blackwater (main channel) is again included on the list of habitats of the freshwater pearl mussel.

Accordingly ecological assessment of planning applications, proposed projects and Part 8s must have regard to this change in circumstances with immediate effect.

1. Notify the Senior Planner Planning Policy Unit regarding the confirmed up-to-date position as regards the High Court Case and outcome of same - that the 2018 Regulation was quashed and matters revert to the 2009 Regulations.

Confirm that this has the effect that the Munster Blackwater (main channel) is again included on the list of habitats of the freshwater pearl mussel.

From a planning policy perspective the matter will be taken into account in the upcoming County Development Plan 2014 Review Process – effectively regularising matters.

1. Correspondence would issue to the parent Department, Dept of Culture Heritage and the Gaeltacht.

Extension of time until 1.30pm:

***Proposed by Councillor Kay Dawson***

***Seconded by Councillor Seamus McGrath***

During this discussion the Members made the following points:

* Members said North Cork was in a crisis situation due to development issues and the decision to quash the 2018 Regulations must be reversed
* Members expressed the need to get economy and construction back up and running
* Highlighted the negative effect of agricultural and other pollution
* Members stated that ruling was detrimental for development in North Cork
* Acknowledged the negative impact for the towns & villages of the Duhallow area of this decision
* Identified the huge regional development impact
* Raised concerns that it will impact on the County Development Plan and will limit development across the area
* Acknowledged housing issues in North Cork and people waiting on Council list for housing
* Asked if there was any alternative which would be less intrusive and allow for some development
* Members suggested phone/zoom call with Minister for Culture, Heritage & Gaeltacht and Minister for Agriculture Food & Marine
* Said that Cork County Council should aim to achieve high standards in wastewater treatment plants and improved infrastructure
* Members outlined that cohesive action was needed in order to move the economy of the area forward
* Members acknowledged that biodiversity needs to be considered and said that a balance can be struck

The Chief Executive informed Members that there had not been a court hearing but that the matter has been dealt with by way of a court order. Cork County Council had written to the Secretary General of the Department of Culture, Heritage and the Gaeltacht asking for confirmation of steps being taken to address matters given the original 2018 Regulations were quashed by order of the High Court and bearing in mind that the original rationale for making the 2018 Regulations remain relevant, and that this has not been responded to by the Department to date.

Proposed by Cllr Gerard Murphy and seconded by Cllr Ian Doyle:

Council to write to Minister Josepha Madigan, Minister for Culture, Heritage and the Gaeltacht and Minister Michael Creed, Minister for Agriculture Food and the Marine requesting that a Cork County Council deputation would meet with both Ministers remotely or otherwise to discuss reverting to the S.I 2018/355 European Union Environmental Objectives (Freshwater Pearl Mussel)(Amendment) Regulations 2018.”

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