

MINUTES OF SPECIAL MEETING OF WICKLOW COUNTY COUNCIL HELD IN THE COUNCIL CHAMBER, COUNTY BUILDINGS, WICKLOW ON WEDNESDAY 28TH OF MARCH 2018, COMMENCING 6.00 P.M.

PRESENT:

COUNCILLOR E.TIMMINS, CATHAOIRLEACH, COUNCILLORS T. ANNESLEY, J. BEHAN, V. BLAKE, S. BOURKE, T. CULLEN, S. CULLEN, P. DORAN, G. DUNNE, P. FITZGERALD, T. FORTUNE, C. FOX, M. KAVANAGH, P. KENNEDY, N. LAWLESS, S. MATTHEWS, M. MCDONALD, G. MCLOUGHLIN, D. MITCHELL, D. NOLAN, O.O'BRIEN, M. O'CONNOR, G. O'NEILL, J. RUTTLE, J. RYAN, J. SNELL, B. THORNHILL, P. VANCE, G. WALSH, J. WHITMORE AND I. WINTERS.

APOLOGIES: CLLR. M. MURPHY.

IN ATTENDANCE:

**MR. F. CURRAN, CHIEF EXECUTIVE
MR. S. QUIRKE, DIRECTOR OF SERVICES
MR. T. MURPHY, DIRECTOR OF SERVICES
MR. D. O'BRIEN, DIRECTOR OF SERVICES
MR. B. GLEESON, HEAD OF FINANCE
MS. L. GALLAGHER, SENIOR EXECUTIVE OFFICER/MEETINGS ADMINISTRATOR
MS. C. FLOOD, SENIOR EXECUTIVE OFFICER
MR. D. KEYES, ADMINISTRATIVE OFFICER
MR. D. FORDE, DISTRICT ADMINISTRATOR
JOHN BRADY, T.D.**

At the outset of the meeting the Cathaoirleach read the content of the meeting's requisition received:-

To call a special meeting of Wicklow County Council on Wednesday the 28th March, 2018 at 2.00p.m. The following Councillors, members of Wicklow County Council hereby request in accordance with standing orders that the Cathaoirleach of Wicklow County Council will call a special meeting of Wicklow County Council to be held at 2.00p.m. on Wednesday the 28th March, 2018 in the Council Chamber of Wicklow County Council to discuss and decide on the following:-

What measures the Council will take with regard to the conduct of the Wicklow County Council meeting on Monday the 12th March, 2018.

In particular discussions of item 5 on the agenda and the controversial decision taken by the Cathaoirleach to disallow a formal proposal made by Cllrs. Brendan Thornhill and Mary Kavanagh from being allowed to be voted on by the elected members of the Wicklow County Council despite this proposal being directly relevant to item 5 of the agenda.

This refusal by the Cathaoirleach not to allow a vote to be taken on Cllr. Thornhill's and Kavanagh's resolution is **WE BELIEVE** in breach of standing orders and outside the authority of the Cathaoirleach.

Given the issues raised by Cllrs. Thornhill and Kavanagh, the motion emanated from serious public concern with regard a statutory process, it is important these issues should now be dealt with by this authority in the interest of natural justice and due process. Nothing to happen on this site until the outcome of this special meeting is concluded.

Signed by: Cllr. Brendan Thornhill, Cllr. Mary Kavanagh, Cllr. Oliver O'Brien, Cllr. John Snell, Cllr. Nicola Lawless, Cllr. Mary McDonald, Cllr. Michael O'Connor, Cllr. Gerry O'Neill, Cllr. Joe Behan, Cllr. Tom Fortune, Cllr. Jennifer Whitmore

The Cathaoirleach referred to the purpose of the meeting and the proposals that were made at the last meeting. He advised that at the time he was informed that to take a vote on the proposal put forward by Cllr. Thornhill and seconded by Cllr. M. Kavanagh was outside of the provisions of S179 of the Planning and Development Act, 2000. He said that subsequently requested written legal advice in relation to this decision and that the legal advice of the Council's Law Agent was received and circulated to the elected members. He asked the Meetings Administrator to read out the legal advice circulated.

Date: 28 March 2018

Re: Special meeting of Wicklow County Council, Wednesday 28th March 2018.

Chief Executive,

I refer to this matter and to the requisition for a special meeting in which is scheduled for today Wednesday the 28th March 2018 at 6pm in the Council Chamber.

I am instructed that when this matter came before the Council meeting on the 12th of March, there was a lengthy debate about the Part 8 proposal concerned. The proposal is as described at Item 5 on the Agenda for that meeting.

I am further instructed that a proposal was put forward by two councillors that the matter be adjourned and that legal advice be sought on the "procurement and proposed demolition planning process". I am also instructed that a proposal was put forward that the Part 8 function be delegated to the Municipal District concerned with the particular proposal. There was also a proposal put forward that the house forming part of the proposal be retained and used for emergency accommodation or other use.

I am further instructed that ultimately there was a proposal to proceed with the matter and that ultimately a vote was taken on the Part 8 proposal before the Members and it was passed by 16 votes in favour, 10 votes against, with 6 of the Council members either being absent or abstaining.

During the course of the discussion the Members were advised as to the options available to them, i.e., to vote against the proposal, to amend the proposal, or to accept the proposal which was before the meeting. I understand that the Meetings Administrator also adverted to the provisions of Section.179 of the Planning and Development Act in that regard.

The special meeting is called to decide:

‘What measures the Council will take with regard to the conduct of the WCC meeting held on Monday the 12th March 2018’ and to deal with the other matters set out in the requisition for the meeting.

You asked for my views which are as follows:

1. With regard to the motion to adjourn and to seek legal advice in relation to the “procurement and the proposed demolition planning process”, I am of the view that bearing in mind the terms of Section.179(4)(b) of the Planning & Development Act 2000, such a resolution is ultra vires, i.e., outside the powers of the Council. That Sub Section states that following consideration of proposed development and the Managers Report on the proposal in question, ‘the proposed development may be carried out as recommended in the Managers Report unless the local authority, by resolution, decides to vary or modify the development, otherwise than as recommended in the Managers Report or decides not to proceed with the development”.

The resolution as submitted by Councillor Thornhill and Councillor Kavanagh, it seems to me is outside those terms. The motion proposed did not specify the length of the proposed adjournment. It also mentioned procurement which does not form part of “proper planning and sustainable development” of the area concerned and which is thus outside the terms of Section179 of the Act. The motion also referred to the “demolishment planning process”. The actual carrying out of the works proposed in the Part 8 follows from the Members consideration of the proposal which was approved at the meeting. The Cathaoirleach declined to take that resolution and in view of the terms of Section. 179 of the Planning & Development Act, I consider that he was correct in that decision ,as to take the motion would very likely have prejudiced the entire process.

2. With regard to the proposal to delegate Part.8 functions to the Municipal District , as I understand it, the intention of that proposal was that this particular matter be delegated to the Bray Municipal District.

Section.131 of the Act provides for delegation of reserved functions to Municipal Districts and Schedule 14a of the Act provides that functions under Section.179 of the Planning & Development Act may be delegated to any particular Municipal District or the Municipal Districts generally.

In this instance however, the particular Part.8 was before Wicklow County Council in accordance with Section.179, and I am of the view that the process would have been invalidated if the Councillors had voted that this particular matter were to be delegated the Municipal District mid way through the process.

The Members may, if they wish, consider the matter of delegating functions to the Municipal Districts and if they pass the appropriate resolution then such functions can in due course be carried out by the Municipal District Members as and when they arise.

In this case the proposal arose at the meeting of the 12th of March when the Part 8 proposal had been advertised, submissions had been received, the Chief Executives Report prepared and circulated and was under discussion by the members of the full Council at the meeting. The Council therefore had seisin or ownership of the matter and nowhere in Section.179 is there a provision equivalent to the delegation power contained at Section.131 of the Local Government Act. In those circumstances I consider that if the members had decided to delegate this particular function to, in this case Bray Municipal District, such a delegation would be ultra vires being outside the terms of Section.179 of the Planning & Development Act.

In those circumstances I consider that the Cathaoirleach acted correctly in not taking that motion .

3. A proposal was submitted that the house proposed to be demolished as part of the proposal be retained as a house and used as emergency accommodation or other use such as Jigsaw Project. The Members were advised that this proposal would amount to a new development and after some discussion this was accepted and no vote was called for..

In overview, the Part.8 was considered by the Members on 12th March and a roll call vote was taken after approximately two hours of discussion and I am instructed that any member, who wished to, made their contribution to the meeting before the vote. The proposal was approved by 16 votes in favour and 10 against the proposal with 2 Members abstaining and 4 Members absent from the meeting. Given the clear terms of Section 179 of the Planning & Development Act which set out the process for a Part 8 it is hard to see how standing orders may have been breached at the meeting .

Cllr. B. Thornhill referred to a legal opinion from Senior Counsel and he asked if it could be read to the Meeting. Cllr. Thornhill circulated letter dated the 19th of March, 2018 from John Whelan, SC, to Mr. David Forde, District Administrator, Bray Municipal District Re: Herbert Road Car Park Extension – Part 8.

The Cathaoirleach advised that the Senior Counsel legal opinion didn't appear to deal with the matter of the Special meeting and that the agenda item is to discuss whether he should have taken the motion proposed by Cllr. B. Thornhill and seconded by Cllr. M. Kavanagh. The Meetings Administrator referred to Standing Order number 12 which sets out that '*in the case of a meeting convened for a special purpose, the business specified in the notification for such meeting shall be transacted and no other business.*'

On the suggestion of the Cathaoirleach it was agreed to adjourn the meeting for 15 minutes to allow Elected Members consider the Law Agent's opinion.

On resumption, the Cathaoirleach advised that he had read the document dated the 19th of March, 2018 addressed to the Bray District Administrator and that these matters had already been dealt with and addressed as part of the Part 8 process and that it was not relevant to the purpose of the Special Meeting.

Cllr. B. Thornhill proposed the following motion which was seconded by Cllr M. Kavanagh and circulated to the elected members.

'That Wicklow County Council will seek an independent legal opinion from a senior counsel with regard to the compliance of the council with the statutory requirements of the planning process in connection with the part 8 proposal, planning reference number 2017/171478, as discussed under Item 5 of the agenda of the Wicklow County Council meeting on Monday 12th of March.

That this opinion will examine the issues of transparency, fair procedures, compliance with statutory provisions and obligations and to include compliance with standing orders in relation to issues pertaining to the procedures adopted in the course of the discussion of Item 5 of the agenda at the said meeting Monday 12th March, 2018'

Referring to the motion being in two parts, the Cathaoirleach asked the Chief Executive to comment.

The Chief Executive advised that the first part of the motion does not relate to the business of the meeting that it related to the Part 8 process and submission received and that it had been dealt with at the last meeting. He advised that at the March 12th meeting Section 179 of the Planning and Development Act, 2000, had been complied with in that the Chief Executive's Report had been put before the Members. The Members had a number of options in relation to this; that is to decide; not to proceed with the development, to vary or modify it or to proceed with it. The

decision was taken to proceed with the development by a margin of 16 votes for, 10 against and 6 either not present or abstaining, and that decision stands. He referred to the urgency of the works in that the construction of the Florentine Centre will commence in July and that extra car parking spaces will be required for the town. He reiterated the key point being that the proposed development had been voted upon and passed.

In relation to the second part of the motion which requests that the opinion examine the *'issues of transparency, fair procedures, compliance with statutory provision and obligations, and to include compliance with standing orders in relation to issues pertaining to the procedures adopted in the course of the discussion of Item 5 on the agenda at the said meeting on Monday the 12th of March, 2018,'* the Meetings Administrator referred to Section 132 of the Local Government Act, 2001 which refers to legal opinions obtained on the performance of a 'reserved function'. The key work being reserved function.

The Cathaoirleach reiterated that he intended conducting the process of the meeting in a proper fashion which he believed he did so the previous week and that he did not want to take a motion that would compromise the process or was not proper to take.

Elected members made the following contributions/expressed the following views:-

- Reference made to the legal opinion of the Council's law agent and view expressed that in the interest of fair play and equality of arms, that an independent legal advice be provided by a Senior Counsel in this matter
- Reference made to the S179 of the Planning and Development Act, 2000 and the options available to the elected members. Query put forward as to when do those 3 options come into play and at what point can the Council no longer do anything other than take the 3 options and decide upon them.? View expressed that there appeared to be no rationale as to why the proposal put forward by Cllr. Thornhill at the meeting was not voted upon

In response and in reference to Cllr. B. Thornhill's proposal, the Chief Executive advised that the answer to this question is dealt with in the legal opinion of the Law Agent which he read to the meeting:

The resolution referred to *'the procurement and proposed demolition planning process'*. He said that the clear view of the Law Agent is that *'bearing in mind the terms of Section 179 (4) (b) of the Planning and Development Act, 2000, such a resolution is ultra vires, it is outside the powers of the Council. That sub section states that 'following consideration of the proposed development and the Manager's Report,' (which is what the elected members were considering at the last meeting), 'and the proposal in question, the proposed development may be carried out as recommended in the Manager's Report unless the Local Authority, by resolution, decides to vary or modify the development, otherwise than is recommended in the Manager's Report or decides not to proceed with the proposed development.'*

The Chief Executive stated that the resolution as submitted by Cllr. B. Thornhill, and seconded by Cllr. Kavanagh is outside the terms of Section 179, the motion did not propose the length of an adjournment and it also mentioned procurement which does not form part of the planning and sustainability of the development of the area concerned set out in Section 179 of the Act. The members were advised the motion also referred to the *'demolishment and planning process'* however, the actual carrying out of the works follows on from the Elected Members's consideration of the proposal which was approved at the meeting of the 12th of March. The Cathaoirleach declined to take the resolution having regard to the terms of S179 of the Planning

and Development Act, 2000 and in his view he was correct as to have taken the motion would have prejudiced the entire process.

In response to Cllr. M. Kavanagh who stated that there was not discussion at the previous meeting as to why the motion proposed by Cllr. B. Thornhill and seconded by her did not proceed to a vote the Cathaoirleach advised that the matter was discussed and reasons were given by both the Chief Executive and the Meetings Administrator.

Elected member(s) put forward the following views:-

- Query as to who instructed the Council's Law Agent to give legal advice
- View expressed that people are worried that the proposal was rushed and that elected members may not have thought through the knocking down of the house. Concern expressed in relation to lack of transparency in relation to discussions around acquiring the property.
- View expressed that the Council is relying on the legal advice of its own employee and that this is not in compliance with fair procedures, call for independent legal advice to be provided reiterated.

Cllr N. Lawless, proposed *"That the executive of Wicklow County Council seeks independent legal advice on the issue of procedures carried out at the meeting of 12th March 2018 as they relate to the issue of St. Paul's in Bray"*. This was seconded by Cllr. M. O Connor and Cllr. M. McDonald.

Elected member(s)

- Called for the residents present at the meeting to be allowed address the meeting
- Expressed the view that a vote should be taken on the resolution before the Council as it is important in the interest of transparency

The Cathaoirleach advised that it is the advice given to him that the resolution cannot be voted upon, he asked the elected members to come up with a resolution seeking a second legal opinion that complies. He advised Cllr. Lawless that he was not sure that the motion proposed complied.

Elected Member(s)

- Mad reference to the business of the meeting *'what measures the Council will take with regard to the conduct of the Wicklow County Council meeting on the 12th of March'*. Full confidence in the Cathaoirleach of Wicklow County Council expressed.
- Expressed the view that the Cathaoirleach acted fair and honourably and full confidence expressed in the Cathaoirleach's integrity as Chairman. However view expressed that the issue is with the advice given to the Cathaoirleach and that a second legal opinion be sought.

Cllr. C. Fox, referred to the legal opinion of Mr. Sweetman which he said advised on how the meeting of the 12th of March, 2018 was conducted and that the Legal Opinion of Mr. Whelan, SC, is on the issues relating to the Part 8 process. He advised that in his view the Part 8 process is complete, he is satisfied as to how the meeting of the 12th of March was conducted and he proposed *'That the Council accept Mr. David Sweetman's legal opinion that the Chairman conducted the meeting of March 12th correctly and in line with the legislation and standing orders'*. This was seconded by Cllr. P. Vance.

Cllr. G. O Neill proposed: *“The Part 8 decision of the 12th March should not proceed ‘till the Bray Municipal District engage with the action group regarding independent legal advice and there should be at least 12 months breathing space”*. This was seconded by Cllr. O. O Brien.

In respect of the motion put forward by Cllr. G. O Neill, the Meetings Administrator referred the elected members to standing order no. 15: *‘A motion to revoke or amend a resolution of the Council can only be made on notice inserted in the Agenda, and such notice shall specify the resolution to be revoked or amended and furnish the terms of the motion to be made; but no such motion shall be allowed to appear on the Agenda to revoke or amend any resolution of Council within six months of the date of the adoption of such resolution except with the written assent of not less than 16 members of the Council. A resolution may not be revoked at the meeting at which it has been adopted. It shall be necessary for adoption of a motion to revoke or amend a resolution of the Council that not less than 16 members [being not less than one-half of the total number of members of the Council] vote in favour and subject to any statutory requirements.’*

The Cathaoileach advised that there were a number of proposals before the meeting and that he proposed proceeding. In relation to the proposal number 1, proposed by Cllr. B. Thornhill and seconded by Cllr. M. Kavanagh, he said he was not sure that he was able to take it having regard to the contributions of the Chief Executive and the Meetings Administrator.

He asked of the elected members could formulate a proposal to seek independent legal advice that would be acceptable to put to the meeting.

Cllr. J. Whitmore advised that she considered there to be some confusion about what the Elected Members can and cannot do when a matter of S 179 comes on the agenda and proposed *“That Wicklow County Council seek independent legal advice on the ability of elected members to propose alternative motions, other than that specified in S.179 during consideration of agenda item relating to same”*. This was seconded by Cllr. T. Cullen.

In response the Chief Executive advised again that Section 179 of the Planning and Development Act, 2000 is straightforward and clear and he repeated the options open to the Elected Members. He advised that the Elected Members could have voted not to proceed with the development or to vary the development, the decision was made to proceed with the development as proposed.

The Meetings Administrator went through the proposals received from the floor at different stages throughout the meeting:-

Proposal 1: Proposed by Cllr. B. Thornhill and seconded by Cllr. M. Kavanagh

Proposal 2: Proposed by Cllr. N. Lawless and seconded by Cllr. M. McDonald and Cllr. O Connor

Proposal 3: Proposed by Cllr. C. Fox and seconded by Cllr. P. Vance

Proposal 4: Proposed by Cllr. G. O Neill and seconded by Cllr. O O Brien

Proposal 5: Proposed by Cllr. J. Whitmore and seconded by Cllr. T. Cullen

Elected Members agreed that proposal number 4 involved revoking a motion and would not be taken.

The meetings Administrator looked for agreement that proposal number 2 was similar if not the same as the first paragraph of proposal number 1 and that proposal number 3 is a direct opposite to the second paragraph of proposal number 1.

Following a discussion on the proposals, Cllr M. O Connor put forward the following proposal, seconded by Cllr. N. Lawless and Cllr. M. McDonald, replacing proposal 2, put forward earlier in the meeting: *'That this Council seeks independent legal advice to consider the procedures of the meeting of the 12th of March, 2018'*

Following a discussion on the proposals, it was suggested by Cllr. I. Winters that Cllr. Whitmore's proposal was more general in nature and could be discussed at the next Council meeting.

The proposal put forward by Cllr. M. O Connor, seconded by Cllr. N. Lawless and Cllr. M. McDonald *'that this Council seeks independent legal advice to consider the procedures of the meeting of the 12th of March, 2018'*, was put to a vote and following a roll call was defeated by a margin of 13 votes for, 16 against and 3 not present viz:

FOR (13)	CLLRS. J. BEHAN, T. CULLEN, T. FORTUNE, M. KAVANAGH, N. LAWLESS, M. MCDONALD, O O BRIEN, M. O CONNOR, G. O NEILL, J. SNELL, B. THORNHILL, J.WHITMORE AND I. WINTERS
AGAINST (16)	CLLRS. T. ANNESLEY, V.BLAKE, S.BOURKE, S. CULLEN, P. DORAN, G. DUNNE, P. FITZGERALD, C. FOX, P. KENNEDY, G. MCLOUGHLIN, D. NOLAN, G. O NEILL, J. RYAN, E. TIMMINS. P. VANCE AND G. WALSH
NOT PRESENT (3)	CLLRS. S. MATTHEWS, D. MITCHELL AND M. MURPHY

The proposal put forward by Cllr. C. Fox, seconded by Cllr. P. Vance *'To accept Mr. David Sweetman's legal opinion that the Chairman conducted the meeting of the 12th of March, correctly and in line with the legislation and standing orders'*, was put to a vote and following a roll call was passed by a margin of 17 votes for, 11 against and 4 not present viz:-

FOR (17)	CLLRS. T. ANNESLEY, V.BLAKE S.BOURKE, S. CULLEN, P. DORAN, G. DUNNE, P. FITZGERALD, C. FOX, P. KENNEDY, G. MCLOUGHLIN, D. NOLAN, G. O NEILL, J. RYAN, E. TIMMINS. P. VANCE, G. WALSH AND I WINTERS
AGAINST (11)	CLLRS. J. BEHAN, T. FORTUNE, M. KAVANAGH, N. LAWLESS, M. MCDONALD, O O BRIEN, M. O CONNOR, G. O NEILL, J. SNELL, B. THORNHILL, AND J.WHITMORE
NOT PRESENT (4)	CLLRS. T. CULLEN S. MATTHEWS, D. MITCHELL AND M. MURPHY

THIS CONCLUDED THE BUSINESS OF THE MEETING

**CLLR. EDWARD TIMMINS
CATHOAIRLEACH
WICKLOW COUNTY COUNCIL**

**MS. LORRAINE GALLAGHER
SENIOR EXECUTIVE OFFICER/
MEETINGS ADMINISTRATOR**