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MINUTES OF THE ORDINARY MEETING OF KERRY COUNTY COUNCIL HELD IN THE COUNCIL CHAMBER, ÁRAS AN CHONTAE, TRALEE ON MONDAY, 16 NOVEMBER, 2009

MIONTUAIRISCÍ NA CRUINNITHE MHIOSIÚIL DE COMHAIRLE CONTAE CHIARRAÍ A THIONÓLADH I SEOMRA NA COMHAIRLE, ÁRAS AN CHONTAE, TRÁ LÍ, AR AN LUAN, 16 SAMHAIN, 2009

PRESENT/I LÁTHAIR

Councillors/Comhairleoirí

J. Brassil	T. Buckley	M. Cahill
P. Connor-Scarteen	B. Cronin	P.J. Donovan
T. Ferris	J. Finucane	S. Fitzgerald
T. Fleming	N. Foley	M. Gleeson
B. Griffin	D. Healy-Rae	M. Healy-Rae
P. Leahy	P. McCarthy	A. McEllistrim
M. Moloney	B. O'Connell	P. O'Donoghue
M. O'Shea	L. Purtill	J. Sheahan
A.J. Spring		

IN ATTENDANCE/I LÁTHAIR

Mr. T. Curran, County Manager	Mr. J. O'Connor, Head of Finance
Mr. J.D. Flynn, Director of Corp. Servs	Mr. M. McMahon, Director of Planning
Mr. O. Ring, Director of Water Servs	Mr. J. Breen, Dir. Housing & Comm & Ent
Ms. A. Haugh, Director of Env'l Servs	Mr. C. O'Sullivan, Director of Roads
Mr. G. O'Brien, Meetings Adminr.	Mr. P. Corkery, Press & Comm.
Ms. D. Griffin, SO Corporate Affairs	Ms. O. O'Shea, CO Corporate Affairs
Ms. M. Galvin, CO Corporate Affairs	Mr. T. Sheehy, SE Planning
Mr. M. Harkin, Project Leader, I.T.	Ms. J. McCarthy, SEO Planning

The meeting commenced at 10.35 a.m.

Mayor B. O'Connell took the Chair.

Vote of Congratulations

Cllr. M. Gleeson extended a vote of congratulations to the Spa Football Club on their victory in the Munster Intermediate Football Championship Semi-Final.

Vote of Congratulations

Cllr. M. Healy-Rae extended a vote of congratulations to the South Kerry Football Club on their victory in the AIB Senior County Championship.

Vote of Congratulations

Cllr. B. Griffin extended a vote of congratulations to Cllr. Toiréasa Ferris on her recent marriage.

Cllr. M. Gleeson seconded this vote of congratulations.

Vote of Sympathy

Cllr. M. Gleeson extended a vote of sympathy to the relatives of the later Mr. Joe Riordan.

All members wished to be associated with this vote of sympathy.

09.11.16.01 Mayor's Report on CPG Meeting held on 10th November, 2009

Mayor B. O'Connell read the following report into the record of the meeting.

Item 1 Agenda for the November Council Meeting

Mr. G. O'Brien, A/SEO Corporate Affairs, briefed members on the agenda for the November Council meeting.

In relation to Item 5, Proposed Variation No. 2 to the Kerry County Development Plan 2009-2015, Mr. M. McMahon outlined that the proposed variation gives effect to a decision of the elected members at the October Meeting and a detailed report will be presented to the members at the November Council meeting.

Item 2 Corporate Plan 2009-2014

Mr. J.D. Flynn, Director of Corporate Services, referred to the updated Draft Corporate Plan 2009-2014 (Revision 11) which had been circulated to CPG members. The Local Government Act 2001 requires that the Corporate Plan be adopted by Council within six months, in a local election year, from the date of the annual meeting. The Draft Corporate Plan is being presented to the elected members for consideration for adoption at the November 2009 Council meeting.

Item 3 County Development Board Update

Mr. J. Breen, Director of Housing and Community & Enterprise, updated the CPG meeting on the County Development Board and outlined that a CDB meeting is scheduled for 27th November, 2009 and agenda items will include:

- Briefing to new board and role and function of CDB.
- Need to ensure board acts collectively on major issues identified.
- Proposed concentration on Enterprise Development and Employment Supports.
- A request for a commitment from each member body to the Enterprise Development agenda for the next two years.
- Proposal to host an Information Day for recently unemployed people.
- Proposal for the marketing of the county as a Tourism Destination in 2010.
- Correspondence from the DoEHLG regarding the effectiveness or otherwise of Traveller Interagency Strategy.

Item 4 RDS Forest Service Irish Forestry Awards

Mr. C. O'Sullivan, Director of Roads & Transportation, outlined that Kerry County Council has been awarded the prestigious RDS 2009 Bio-Diverse Forestry Woodlands award for Ballyseedy Wood. The announcement was made in Kilkenny Castle on 22nd October, 2009, and the Mayor of Kerry accepted the RDS Silver medal and a perpetual trophy from Minister Tony Killeen, T.D.

The award was made to the Council for its exceptional example of strategic planning and management in the development of Ballyseedy Wood as a sustainable woodland recreational amenity for the people of Tralee and surrounding area. In the 22 year history of the awards, Kerry County Council is the first state body or local authority to achieve this unique honour.

In accepting the award, the Mayor honoured the commitment of the local community who had formed the Ballyseedy Wood Action Group in the early 1990's to purchase this fantastic natural amenity and for having the vision to ensure its preservation for

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future generations. The Mayor also acknowledged the input of Council staff (in particular Donal Mangan, now retired, Kevin Boyle, Una Cosgrove, and the outdoor staff of the Tralee Area Office) as well as the support of (Name withheld for Data Protection purposes) in the Forestry Service, (Name withheld for Data Protection purposes) in the National Parks and Wildlife Service and the Heritage Council.

The President of the RDS complimented the structures put in place by Kerry County Council for the preservation of the woods, which he stated was in accordance with the very best conservation practice. In particular, he exemplified the management of Ballyseedy Woods to all farm managers, particularly in Kerry.

09.11.16.02 Confirmation of Minutes

- (a) On the PROPOSAL of Cllr. J. Finucane, SECONDED by Cllr. N. Foley, it was resolved that the Minutes of the October Ordinary Meeting of Kerry County Council held on 19th October, 2009, be confirmed.
- (b) On the PROPOSAL of Cllr. M. Healy-Rae, SECONDED by Cllr. N. Foley, it was resolved that the Minutes of the Special Meeting of Kerry County Council held on 19th October, 2009, be confirmed.

09.11.16.03 Disposal of Land

On the PROPOSAL of Cllr. B. Cronin, SECONDED by Cllr. M. Gleeson, it was agreed to approve the disposal of a plot of land at Aghadoe, measuring 0.297 acres approximately in total, to (Name & Address withheld for Data Protection purposes), in accordance with the terms of notice issued 3rd November, 2009, pursuant to Section 183 of the Local Government Act 2001, Section 211 of the Planning & Development Act 2000.

09.11.16.04 Kenmare Functional Area Local Area Plan

Mr. M. McMahon said the Kenmare Local Area Plan is now due for review. The Draft Kenmare Functional Area Local Area Plan has been prepared taking cognisance of the National Spatial Strategy and the Regional Planning Guidelines. The draft plan will go on public display from 18th November, 2009, to 31st December, 2009. Following the closing date, submissions will be considered and a report on the submissions received will be prepared by the Manager. It is intended that the Manager's Report on submissions received on the draft plan will be considered at a Special Council Meeting in February, 2010. A meeting will be held with the Electoral Area members prior to the Special Council Meeting. An Open Day will be held in Kenmare where members of the public can meet with staff from the Planning Department regarding the draft plan.

Cllr. M. Healy-Rae acknowledged the amount of work done by Mr. T. Sheehy, SE Planning, and the staff of the Forward Planning Unit in preparing the draft Kenmare Functional Area Local Area Plan. It must be noted that the current economic climate and new Department Guidelines are dictating that lands be dezoned and the zoning of land reverted to agricultural use. With the over-supply of housing it is hard to argue against dezoning of lands, however, people in Kenmare and surrounding villages have concerns and are anxious that land be zoned for light industrial and commercial use. A situation should not occur whereby land is not zoned should businesses wish to locate in Kenmare or Kilgarvan. It appears that areas which had been zoned for light industrial use have been taken out of the draft

plan for the Kenmare and Kilgarvan areas. He said that an individual will be making a submission for land in the Kilgarvan area which was previously zoned residential to be zoned as light industrial and that he would be proposing this rezoning. This is a matter of creating employment in the area. A pre-submission was made regarding zoning land for mixed use near the sewerage treatment plant in Kenmare and he said he would like to see this zoning included in the plan. He again acknowledged the amount of research and on-the-ground work done in the preparation of the draft Kenmare Functional Area Local Area Plan and said opportunities must be provided in the new plan for job creation.

Cllr. P. Connor-Scarteen acknowledged the work done on the preparation of the Kenmare Functional Area Local Area Plan which involved comprehensive research and covers a multitude of planning aspects for the next five years. He suggested that the public consultation process on the draft plan also be advertised in the Kenmare News and the South Kerry Advertiser as they are well read publications in these areas. The economic impact the draft plan may have on individuals or families must also be taken into account. There is sufficient residential zoning and housing in the area and in terms of employment consideration must be given to the provision of industrial zoning.

Cllr. D. Healy-Rae gave recognition to the amount of work done in preparing the draft Kenmare Functional Area Local Area Plan. He expressed concern regarding the impact the rezoning of lands will have on landowners. He asked when did Kerry County Council get direction and what direction was received to undertake a review of the Local Area Plans. He asked why is it necessary to go through this procedure again as it is a lot of work for management and elected members.

Cllr. M. Cahill complimented the staff of the Forward Planning Unit on the work done in producing the Kenmare Functional Area Local Area Plan. Rezoning of lands will be very difficult. He asked if a meeting will be held with the Electoral Area members regarding the Local Area Plan.

Cllr. M. Healy-Rae asked is there any provision for the payment of compensation to a person when their land was zoned and it is subsequently rezoned.

Mr. M. McMahon said with regard to Cllr. D. Healy-Rae's query on the review of the Local Area Plans, the Kenmare Local Area Plan falls for review because legislation provides that a Local Area Plan is in place for six years. The County Development Plan adopted a Settlement Strategy on functional areas for the county and this review process is being driven by the fact that the Kenmare Local Area Plan is now due for review. Local Area Plans will now be reviewed on the basis that when the relevant major town in an area is due for review the settlement areas are also reviewed. With regard to the query regarding compensation for lands that are rezoned, a comprehensive review of the legislation was undertaken and the payment of compensation does not arise when lands are rezoned.

Mr. T. Sheehy said compensation will not be paid as a result of lands being rezoned. Section 10(8) of the Planning and Development Act 2000 states "There shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain so zoned in any subsequent development plan". With regard to zoning of lands as light industrial, submissions can be made during the consultation period and any such submissions will be considered. There is no prohibition on the development of industrial facilities in rural areas whether the land is zoned or not zoned. There are instances where there are

issues which are not strategic at County Development Plan level but may be important at local area level.

Cllr. M. Healy-Rae said where businesses and jobs already exist the Local Area Plan should allow for ordinary lands to be zoned. With regard to compensation, another issue which already arose in Kenmare is that banks who took lands as collateral are panicking that this land will be rezoned as agricultural.

Mr. T. Sheehy said the position with the banks is irrelevant to the proper planning and sustainable development of the area.

Cllr. P. Connor-Scarteen asked that that Open Day to be held in Kenmare during the consultation period would be held at the start of December.

Cllr. D. Healy-Rae asked what direction did Kerry County Council get to dezone lands in County Kerry.

Mr. M. McMahon said a comprehensive reply has been supplied to Cllr. Healy-Rae's notices of motion which will be dealt with later in the meeting.

09.11.16.05 Presentation on the Rollout of Broadband in County Kerry &

09.11.16.06 Proposed Variation No. 2 to the Kerry County Development Plan 2009-2015 – Telecommunication Masts

Mr. G. O'Brien said the presentation on Broadband would be made prior to considering the item on the proposed Variation No. 2 to the Kerry County Development Plan 2009-2015 in relation to telecommunication masts in order to provide the members with additional information on the provision of Broadband in the county.

Mr. J. Breen introduced Mr. M. Harkin, Project Leader, IT Department, to make a presentation to the elected members on the rollout of broadband in County Kerry. He said Mr. Harkin has managed the rollout of broadband in the county and the presentation will cover the rollout of MANs and the National Broadband Scheme.

Mr. M. Harkin made a presentation to the Elected Members on the rollout of broadband in County Kerry which included following:-

- | | |
|-----------------------------------|--------------------------------------|
| - What is Broadband | - NBS – Planning applications |
| - Why do we need Broadband | - 3 – Coverage to date |
| - Regional Problems/Issues | - 3 – Coverage to be achieved |
| - Broadband MANs Programme | - DSL Solutions (Eircom exchanges) |
| - National Broadband Scheme (NBS) | - Wireless ISPs |
| - Broadband Services & Speeds | - Kerry County Council - Initiatives |
| - NBS – Masts Required | |

Cllr. J. Brassil asked how secure wireless broadband is from the point of view of a business operating in the county. He also asked for an explanation of "backhaul".

Mr. M. Harkin said wireless broadband is very secure particularly with encryption technology now available. With regard to "backhaul", Mr. Harkin said from Tralee, Killarney and Listowel there is good quality fibre with backhaul with a high capacity to the rest of the world. When information reaches the MANs in Tralee, Killarney and

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Listowel there are links available at different broadband speeds. If accessing the internet from An Daingean, for instance, the information must first get to Tralee, Killarney or Listowel before a good quality backhaul service is available. A local connection may be slow but once the connection reaches a mast it gets faster. Wireless quality backhaul is as good as fibre.

Cllr. J. Brassil said it appears that unless the number of masts to be erected is accepted it will not be possible to have good broadband service in the county.

Mr. M. Harkin said the technology to provide broadband will not change in any way. The only way to provide wireless broadband is to provide telecommunication masts.

Cllr. J. Sheehan queried the health risks and radiation from telecommunication masts.

Mr. M. Harkin said he had read a number of studies on both sides of this issue. There is little to no health risk involved with masts and they are no more harmful than having a mobile telephone in your pocket every day.

Cllr. M. Cahill thanked Mr. Harkin for his presentation and said it is accepted that broadband is required in Kerry. He asked what percentage of Kerry is now provided with broadband and what is the cost difference between broadband provided via masts and via other options. A presentation has been provided on broadband this morning. An opportunity should also be given to hearing a presentation from people in opposition to telecommunication masts. There are people who would be willing to make a presentation to Council in this regard.

Cllr. T. Fleming thanked Mr. Harkin for his comprehensive presentation and said the delay by Eircom, the main providers of phone services in the country, in the provision of broadband is unacceptable. Eircom have been designated funding to provide broadband through the existing phone networks without health hazards to communities. The delay in the provision of broadband is a dereliction of their duty. He requested that a letter issue to Government requesting Eircom to put a programme in place to expedite the delivery of broadband which is necessary for job creation and the future of the county. Service providers should also be directed to use existing telecommunications infrastructure.

Mayor O'Connell said he would now open the debate on Item 5 on the Agenda, "Proposed Variation No.2 to the Kerry County Development Plan 2009-2015 – Telecommunication Masts".

Mr. M. Harkin said DSL technology is restricted in terms of the distance from the exchange within which the service can be delivered.

Cllr. M. Moloney expressed concern regarding the removal of the 1km rule. She welcomed representatives from a number of areas around the county today who have concerns on these issues. She referred to the Precautionary Principle and the key elements being:

1. Taking anticipatory action to prevent harm in the face of scientific uncertainty.
2. Exploring alternatives, including the alternative of "no action".
3. Considering the full cost of environmental and health impact over time.
4. Increasing public participation in decision making.
5. Shifting the responsibility for providing evidence to the proponents of an activity.

One of the primary foundations of the precautionary principle results from the work of the Rio Conference or "Earth Summit" in 1992. Principle 15 of the Rio Declaration 1992 states:-

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation".

In 1993 the Maastricht Treaty adopted the principle as a fundamental element of the environmental policy. In 2000, the European Commission issued a communication on the precautionary principle in which it adopted a procedure for the application of this concept. A resident of Glenbeigh has researched this issue meticulously and has a lengthy document which finds discrepancies with An Bord Pleanála rulings on appeals. Guidelines are provided for Local Authorities with regard to telecommunications infrastructure. It has been estimated that, in order to complete their respective networks and to meet the national coverage requirement of the licence conditions, operators will, between them, require an approximate total of 600 to 700 base stations. At present there approximately 5,500 base stations have been provided. In 2006 ComReg (Commission for Communications Regulation) advised that 10 of an approximate 4,500 were being monitored. As part of their planning application, operators should be required to furnish a statement of compliance with the International Radiation Protection Association Guidelines. ICNIPR (International Commission on Non-Ionizing Radiation Protection) by their own admission, states that ELF (extremely low frequency) causes cancer/leukaemia. In Kilcummin there will be three masts in a triangle of circa 1km. Planning decisions regarding the installation of base stations and other equipment should be taken at local level. Cllr. Moloney asked that Kerry County Council would apply the Precautionary Principle when ruling on planning applications for telecommunications masts.

Cllr. M. Gleeson said this is a complex issue which is compounded by the current economic times. At the time when the 1km rule was introduced to the County Development Plan a presentation was made to Council and there was an in depth discussion on the issue. That presentation had no hesitation in stating that there was an adverse impact from the existence of these masts which would impact seriously on the health of the people of the county. He said he did some research and some of it was quite alarming. There are times when you must listen to what people say and consider that what happened to one person could happen to another person. The primary responsibility of any public representative is to safeguard the health of the citizens of the area and this is why water and roads are safeguarded. The question as to how best to ensure the safety of the people of a given area must be asked. There is a contradiction between the decisions of An Bord Pleanála and Kerry County Council. He said he is keenly aware of the proposal made by Cllr. Brassil some time ago which made sense. However, the retention of the 1km rule is incumbent on elected members and we cannot impose constant headaches on individuals. People's evidence must be taken as being credible.

Cllr. P. McCarthy requested that a copy of the presentation on Broadband be circulated to elected members as there is a lot of technical information in that presentation. While infrastructure for business cannot be restricted and we must also protect the safety of people. A decision is require on something that will impact positively and negatively on both sides of the argument. He suggested that a presentation be made from both sides on this issue and he PROPOSED that any decision be postponed until such a presentation is made to Council.

Cllr. N. Foley asked if the proposed variation on the County Development Plan will be going to public consultation.

Mr. T. Curran, County Manager, said the report on the proposed variation No. 2 to the Kerry County Development Plan 2009-2015 has been presented to the elected members following a Notice of Motion at the October 2009 Council Meeting requesting a review of the 1km rule. This report is a response to a request from Council. The commencement of any variation on the County Development Plan is an executive function, however, this report is being presented in response to a request from the elected members. He said he wanted members to be clear that to continue with the proposed variation will cost money and he has no intention of spending public money if he considers that should he bring a report to the elected members such report will be rejected.

Cllr. J. Brassil asked what voting percentage would be required on this matter.

Mr. T. Curran, County Manager, said it is not even a question of a vote as the County Manager can proceed with the proposed variation as an executive function. Following the public consultation process the matter is presented to the elected members for decision. At that point a simple majority will be required on a vote. He said he will not waste public money on this process if he considers it will not be supported. A strong case for withdrawing the 1km rule has been made in the report presented to the members. Many businesses are restricted by the non-availability of broadband. He said he accepted the questions being asked about health. There are no conclusive arguments on that. He said it appears that there is far more health risk in person mobile phones than from a mast. The information that I have been provided with is that the further away the masts are the stronger the signal required between them. Experts were invited to make presentations to the Planning SPC and the SPC spent a lot of time discussing this matter. The Planning SPC recommended the removal of the 1km rule and it was rejected by Council.

Cllr. B. Griffin said he welcomed the opportunity to debate this issue as it is a very necessary debate and it is a positive step forward to have this discussion. At the centre of the debate there must be consideration of public health and the residents of the county. This is the central point around which any policy regarding masts should be developed. He welcomed the members of the public that were in attendance at the meeting and thanked them for contacting him regarding this issue. In theory the 1km rule is a positive thing for Kerry, it makes sense and is in place as a safeguard. In practice it is not fulfilling the role it was intended to fulfil. Statistics on An Bord Pleanála overturning Kerry County Council decisions are well known. This reality can be ignored or a better planning policy put in place. He said he cannot understand suggestions that the 1km rule needs to stay and there is no other option available. Some elected members are claiming the rule is there to protect the residents of the county but this is a way for those members to avoid tackling a strong issue regarding masts. He said at the first Electoral Area meeting he attended he asked management to bring forward alternative proposals as the 1km rule needs to be replaced by something better and something which will work. As elected members it is not good enough for us to pass on decisions relating to masts to An Bord Pleanála. The elected members need management to bring forward proposals that will give greater power to Councillors on planning if this is possible. We owe it to the people of the county we represent to make decisions that are in their best interests. In theory the removal of the 1km rule could be a good thing but unless the rule is replaced with a system that is better for the people of the county and a system

which is sustainable it would be negligent of us as elected members to remove this rule. A clear explanation is required from management on how the 1km rule system would work if members had an input and if there were greater consultation with communities. The situation with the mast in Annascaul developed because of the 1km rule. He said he also understood the support for the 1km rule, however, there is huge inconsistency and An Bord Pleanála is at the heart of the problem. He suggested that Kerry County Council address this issue with An Bord Pleanála. The current system is not working and responsibility is being abdicated to An Bord Pleanála. He said he hoped consensus could be reached on this matter.

Cllr. A. McEllistrim asked if the refusal of planning permission for masts is based only on the 1km rule or if Planners conduct an in depth analysis of issues on the planning application. If the 1km rule is the only reason for refusal, she asked that the Planners would consider the applications in depth and give all reasons for the refusal. With regard to the triangle of masts referred to in Kilcummin, she asked if it is possible to have a clause in planning permissions whereby when there is an existing mast that other service providers would use that mast for their infrastructure.

Cllr. D. Healy-Rae said he could not understand why service providers have to locate a mast within 1km of a home in the county as there are several alternative vantage points in areas which could be used. He asked if service providers are making applications for accessible locations to avoid extra costs. It is the duty of the elected members to ensure the health of the people of county is not damaged. He said he has tabled several notices of motion regarding a mast next to the school in Kilgarvan. He said he is confused regarding management's position on this matter. Management have the material contravention vehicle which could be used to deal with planning applications for masts. He asked if each planning application for a mast could be dealt with by way of a material contravention.

Cllr. T. Ferris said there is an inherent contradiction regarding the case for the removal of the 1km rule. On one hand the 1km rule is not working as decisions are being overturned by An Bord Pleanála and on the other development in the county is being circumvented. She agreed with comments from members that the 1km rule is not working. The reason the 1km rule is not working is because An Bord Pleanála is disrespecting the Kerry County Development Plan and this is being allowed by Government. The County Development Plan is one of the few areas where the elected members have power, the people of Kerry requested that this rule be inserted to the County Development Plan and this was done so accordingly. She said the presentation on broadband today was opportune. The overwhelming request in the county is to have the 1km rule in the County Development Plan. The members must ensure the will of the people of the county and elected members is adhered to. The 1km rule is in place to protect the people of the county. The members that were in Council three years ago know that a service provider making a presentation at that time could not say there was no health risk nor explain why the Gardaí living in Garda Stations are given an indemnity. Antennae are going up and people do not know where they are. Oireachtas members need to address this. There seems to be a desire within management to succumb to the wishes of multi-national service providers of these masts. She said she was saying this because when there was a debate to have a development levy imposed on a service provider there was even an attempt to limit that levy to a once-off levy. This is an easy way to get levies from multi-nationals. She said she is emphatic that the 1km rule must be maintained. It is not the fault of the elected members or the people of the county that An Bord Pleanála are disrespecting the County Development Plan rule. When a

planning application is received our planners must determine other reasons as to why planning permission is being refused as well as using the 1km rule. She said she has no doubt that if the proposed variation to the County Development Plan regarding telecommunication masts goes to public consultation the majority of people will be making submissions to retain the rule. She said she will be supporting the retention of the 1km rule. She asked that the members get clarification regarding a mast granted to RTÉ and asked if there was anything in the planning permission to prevent them letting other service providers to use the infrastructure and if so will they have to pay the €14,000 levy.

Cllr. B. Cronin said the 1km rule, the location of masts and the necessity for broadband was given substantial consideration by the members of the Planning SPC when he was Chairman of that SPC. Following debates in the Council Chamber a number of parties were invited to make presentations to the SPC, e.g. mobile phone companies and Department of Telecommunications. Concerned residents from Glenbeigh and others gave detailed presentations to the SPC. The service providers maintained there was no issue regarding health and safety. They argued that the more masts that were provided the less radiation that is emitted and that the larger masts have to generate more radiation. Detailed reports were received from ComReg on updated results from tests that were carried out on emissions from masts in the county. ComReg did not find any major emissions from masts in the county. This issue was debated at length by the Planning SPC and a recommendation was made to Council. The recommendation was rejected by Council, the main issue being health and safety of the general public. He said he has reviewed the document regarding the proposed variation to the County Development Plan regarding telecommunication masts and there is no counter-proposal to the removal of the 1km rule which would protect the health and safety of the public. Management are saying the 1km rule is hindering business and people who want to work from their homes in rural areas. He said he has read detailed documentation regarding providing broadband in Kerry and the elected members must make the right decision on this issue. The spatial effects, environmental effects and EU Habitats Directive implications are discussed in the report presented today. In relation to the risks to human health or the environment the report states "the evidence concerning the health risks associated with telecommunication structures is inconclusive and therefore the variation to the County Development Plan is not considered to have a decisive impact on human health". This is the only comment in the report with regard to human health. If the evidence is inconclusive it means there is doubt. In the absence of sufficient research Local Authorities should introduce their own guidelines on the provision of telecommunication structures. There is a concern that emissions from a mast are not covered by insurance. Maps that were displayed at the Killarney Electoral Area meeting displayed only masts owned by the service provider '3'. He said he has no difficulty with this report going on public display, however, there is a need for a clearly identified statement which protects public health. The triangle of masts in Kilcummin is a great concern. This report states that the Strategic Environmental Assessment shall consider whether or not the proposed variation is likely to have significant effects on the environment, however, significant effects on health should also be included in this report. The elected members must err on the side of health and safety of the general public.

Cllr. S. Fitzgerald said it is important that this issue is debated and acknowledged that there are issues on both sides. He said he supported the retention of the 1km rule as a means of alleviating public health concerns. However, it appears that the 1km rule is not working in the county. An Bord Pleanála has overturned three-

quarters of the planning applications which Kerry County Council refused. The 1km rule is restricting management as can be seen in the reply to the Notice of Motion in October, 2009, which clearly states "This provision is a very crude instrument as it takes any deciding role from the Planners on any application for a mast, once it is clear that the restriction applies to such an application. In such cases the application is not subject to the same scrutiny as other applications and no additional information is sought from the developers as the outcome of the application is inevitable". This happened in Annascaul and it was only after the An Bord Pleanála decision was made that the public made submissions. This process is not working. The public think that if a mast is within the 1km rule there is no need to make a submission as they think An Bord Pleanála will support Kerry County Council. However, An Bord Pleanála are overruling the Kerry County Development Plan. There is an RTÉ mast at Dún Chaoin and other service providers are putting infrastructure on this mast without planning permission. This is not right. Communities should be asked as to what location they think would be acceptable for a mast and which would also be acceptable to the communication company. This issue will continue unless it is dealt with constructively.

Cllr. J. Brassil said it is important to debate the health aspects of this issue, but the facts must also be considered. Every planning application Kerry County Council has refused for telecommunication masts has been overturned by An Bord Pleanála. He said he got information from Clare, Cork and Limerick Local Authorities regarding planning applications for telecommunication masts and of applications that they refused, one out of three were overturned by An Bord Pleanála and the other two were upheld. The Planning Authority of those Local Authorities are making informed decisions, there is input into the process and An Bord Pleanála are having regard to those decisions. There are very few parts of County Kerry which have a house within a 1km radius. Service Providers know their planning application for a mast in Kerry will be refused. They are applying for a mast in the location that suits them most and have little or no consultancy on their application. Service providers do not consider the most suitable location as it is not in their interests to spend money doing proper research. The 1km rule is detrimental to County Kerry. A policy where each application is reviewed on its own merits and communication companies put the necessary care and input into applications is required. The presentation made this morning clearly outlined that there is a huge deficit in the infrastructure for broadband in the county, this must also be given consideration as the people the elected members represent are saying the broadband service in the county is not good enough. Schools in County Kerry need broadband to provide the same opportunities as other schools in the country. People in the Black Valley cannot get mobile phone coverage to contact doctors or ambulances in an emergency. That is a health issue. On one hand the 1km rule is preventing service providers from being granted planning permission and on the other hand there are areas in the county without broadband. Broadband can only be provided through the provision of masts. If masts are to be provided, the best thing to do is have them located in areas where good and proper planning is applied. Good and proper planning is not being applied at present. Every application for a telecommunication mast should be assessed on its merits.

Cllr. J. Finucane said the evidence from the planners is that the 1km rule as it stands is a delaying tactic. If the policy of An Bord Pleanála is to grant planning permission for telecommunication masts then the 1km rule only delays a process and a decision. A process or new guidelines are required from the planners e.g. pre-planning conditions. There is a need for broadband in the county and there are also

health concerns to be addressed. The location of some of these masts will take into account access and costs. This identifies the poor locations for service providers. Kerry County Council should prepare guidelines to be complied with prior to any planning application by any company that wants to provide a telecommunication mast. An Bord Pleanála would then take cognisance of these guidelines. These guidelines should outline the type of locations that will and will not be considered by Kerry County Council. People's concerns must be respected and cognisance must also be taken that this technology is required. A process with structured guidelines, which must be complied with, that would issue to these companies prior to any application being considered is required. If the guidelines are not complied with the application is void.

Cllr. M. Cahill said presentations were made to the Planning SPC, however, this involves only six of the elected members and this is a disadvantage to the other members. He asked that these presentations be made to the full Council. If alternative proposals are to be made regarding the 1km rule communities should be allowed to make an input or at least be present at the meeting for these presentations. He asked is it possible for the concerned communities in Kerry to have a representative on the Planning SPC. With regard to the cost, he asked what is the real difference between providing broadband masts and the alternatives. He said until such time as he is convinced otherwise he will err on the side of caution. Telecommunication masts are a huge issue for any locality in the county. Elected members must be fully briefed on the issue. He asked what percentage of Kerry now has broadband coverage.

Cllr. M. Healy-Rae said it is many years since former Councillor Billy Leen researched this subject and gave a presentation to the elected members and proposed the introduction of the 1km rule. He said he seconded that proposal because he believed in it. He said he has listened to the County Manager's presentation on the need for telecommunication masts to provide broadband in the county, however, he still supports the retention of the 1km rule because there is no other alternative available. He disagreed with Cllr. Brassil's comment that there are few areas in the county that are not close to 1km with a dwelling. There are sites available outside a 1km distance from a dwelling. Communication companies are considering the cheapest option for the location of masts. Many years ago a mast was erected in Killorglin beside a national school. Planning permission is not required to add infrastructure to this mast. He said Cllr. Ferris is correct in saying that nobody is saying it is safe to provide masts. He said until such time as this happens and there is a sensible, proper alternative to the 1km rule he will support the 1km rule. He asked if the 1km rule was the only reason for refusal when the Annascaul case was being considered by planners. All issues should be considered and listed on the refusal. He asked Cllr. Griffin to withdraw his comments regarding elected members hiding behind the 1km rule. He said he has high regard for Cllr. Griffin, but elected members are not hiding behind the 1km rule. He welcomed and thanked people that attended today's meeting and who are active on the ground on this issue. Several meetings have been held in mid-Kerry areas regarding masts. He PROPOSED that the 1km rule be retained in the County Development Plan.

Cllr. D. Healy-Rae SECONDED this proposal.

Cllr. P.J. Donovan said people from around the county who are concerned regarding this issue are attending today's meeting. The 1km rule was introduced for the health and safety of the people. He asked what has changed since the introduction of the

1km rule. There is no guarantee that there is no risk to the people of the county. If the 1km rule is removed there would be no control over the location of the masts. The 1km rule should be retained until evidence is available there is no risk to the health and safety of the public. He acknowledged that broadband is important for businesses and development in the county.

Cllr. P. Connor-Scarteen said there is too much doubt regarding the safety of telecommunication masts. He supported retention of the 1km rule in the County Development Plan. The role of Councillors and planners is being eroded by An Bord Pleanála and changes to this system are required at Government level.

Cllr. N. Foley said if An Bord Pleanála is dismissing the County Development Plan this raises questions regarding the finance and time involved in preparing the plan and the status and significance of Kerry's County Development Plan. The issue with regard to the 1km rule is that reports regarding health and safety issues are "inconclusive". Where there is only 1% of doubt there is an issue for the health and safety of the people of the county and the members should err on the side of caution. The 1km rule is not working properly. She PROPOSED that planners include all reasons for refusal of planning permission when a planning application for a mast is being refused because of the 1km rule. In terms of broadband and better communication, the elected members want this when it is safe, and only when it is safe, for the community at large.

Cllr. A. McEllistrim SECONDED this PROPOSAL.

Cllr. A.J. Spring said as a newly elected member he must make an informed decision on this issue and he cannot do this because he has not been informed sufficiently on this issue. Elected members should receive presentations on this issue and the County Manager should also attend this meeting.

Mr. M. McMahon said this is a very difficult decision for the elected members. Whether or not the proposed variation to the County Development Plan goes to public consultation, the elected members, as well as the Planning Authority in framing the County Development Plan, are obliged to have regard to Government policy. There is a clear Government policy regarding the provision of a modern telecommunication service for the country. This service cannot be provided without the provision of telecommunication masts in certain locations. The Kerry County Development Plan gives vent to Government policy in relation to the telecommunications industry and has strong objectives to promote Government policy regarding provision of telecommunications. The County Development Plan also has conflicting objectives in this regard, i.e. it provides:

- (1) Kerry County Council is supportive of development of telecommunications
- (2) Telecommunication masts will not be permitted within 1km of a dwelling.

There is an immediate dichotomy between those two statements. The County Development Plan includes many of the issues mentioned by the members in terms of mast sharing, clustering masts and submitting evidence. The planners have been criticised often for seeking detailed further information on planning applications and subsequently refusing the planning application. In the normal course of events further information will not be sought unless the Planning Authority is of some mind of granting the permission provided satisfaction of issues by the applicant. When further information does not satisfy the concerns or confirms some of the Planning Authority's concerns this will lead to refusal of the planning application. Generally

further information is not sought if an application is to be refused. The 1km rule instrument in the County Development Plan at present is very crude. It says Kerry County Council will not grant planning permission for a mast if it breaches the 1km rule. People do not engage with the Planning Department on such planning applications and there are very few objections to applications for masts as people know there is very little prospect of the application being granted by Kerry County Council. As a result, the views of the general public do not go on the public file and accordingly are not on the public file when the application goes on appeal to An Bord Pleanála. An Bord Pleanála are charged with assessing the application but unlike the County Manager the board can materially contravene the County Development Plan where Government policy is supported. An Bord Pleanála is supporting Government policy with the provision of telecommunication masts.

A suggestion has been made by Cllr. D. Healy-Rae that in every such case where the 1km rule comes into play that if the Planning Authority wishes to grant permission that a material contravention comes into force. The process of material contravention costs time and money. Before being presented to Council the process will cost at least €1,000 in terms of advertising, etc. A material contravention is generally not presented to Council unless there was a prospect of it being granted. From today's discussions the outcome is uncertain for any material contravention for a mast being presented to the members. Planning applications for masts are not assessed forensically where it is known they will be refused. The Planners' time is devoted to applications that will be granted. Where a planning application for a mast will be refused it is reasonable that further information is not sought in those instances.

If the material contravention proceeds to public consultation, it will be advertised in local papers and submissions invited. The Planning Department will assess the submissions and a report will be presented to the members to decide whether or not the 1km rule should apply in the Kerry County Development Plan.

Cllr. N. Foley asked if the 1km rule remains and is the reason for refusal of a planning application will no other reasons be provided on the refusal.

Mr. M. McMahon, Director of Planning, said if there are issues regarding amenities, etc., which are obvious they are listed on the refusal. Further information would not be sought if the inevitable outcome on the application is a refusal.

Cllr. M. Healy-Rae asked if the Planning Authority could have done more in the case of the application for a mast in Annascaul.

Cllr. D. Healy-Rae said it is unfair to say the cost of material contraventions is prohibitive. The material contravention vehicle is available. The members want to provide for the safety of the people of the county. He asked if the County Manager could insist that applicants for masts have pre-planning meetings similar to that which is demanded of family members who want to build on their own land. Applicants should be asked to show why they are locating within 1km of a dwelling.

Cllr. J. Finucane said a number of elected members have stated that the vast majority of applications are refused. He asked if the Planning Department can produce a set of guidelines that would hold up on an appeal to An Bord Pleanála and if the process that is not working at present can be replaced with guidelines.

Mr. M. McMahon said Section 13.18 of the County Development Plan deals with development control and sets out the considerations that must be undertaken by any

company that wants to erect a mast. These include health and safety aspects in making an application. There are hundreds of planning applications that are submitted in accordance with the County Development Plan that will not provide full information, that is why there is a facility to seek further information.

Mr. T. Curran, County Manager, thanked the elected members for their honest comments on this issue. The reason this item was placed on the agenda was in response to a Notice of Motion passed unanimously at the October, 2009, Council Meeting. He said while he takes on board the Precautionary Principle at the same time the same issues arise regarding personal mobile phones. He said from what he has read personal mobile phones cause more damage yet people continue to use them. The elected members are asking for reports on the health and safety issues with 100% guarantees which he cannot give. He said his role as County Manager is to advise the members and if he is aware of issues that are impeding the development of the county it is incumbent on him to bring the issues to the attention of the members. He expressed disappointment in comments made by Cllr. Ferris that the timing of the broadband presentation was orchestrated perhaps to influence the members. He reminded the members that this presentation was carried over from the October Council meeting and he considered that in terms of an informed debate it was better placed to make the broadband presentation first. He said he would not comment further on the suggestion that management are collaborating with the providers of infrastructure. He said his interests are in the health of the people of the county.

Cllr. J. Brassil said he does not want to waste resources on this issue and PROPOSED that the proposed Variation No. 2 to the Kerry County Development Plan 2009-2015 in relation to telecommunication masts goes to public consultation.

Cllr. N. Foley said she would welcome public consultation on this issue. She said she would be supporting the retention of the 1km rule.

Cllr. T. Ferris said she would welcome an alternative proposal to what is contained in the County Development Plan at present. It appears the consensus is to retain the 1km rule.

County Manager said the members have said they cannot vote for the removal of the 1km rule. He asked if the members are agreeable to receiving a presentation on the issues at a special meeting of this Council.

Cllr. P. McCarthy PROPOSED that a presentation on the issues relating to the provision of telecommunication masts be made to a special Council meeting.

Cllr. P. Connor-Scarteen SECONDED this proposal.

Cllr. M. Healy-Rae said withdrew his proposal that the 1km rule be retained in the County Development Plan until these presentations are made to Council.

09.11.16.07 Incurring of Overdraft Accommodation not exceeding €12.5m for the six months ending 30th June, 2010

Report dated 10th November, 2009, from Mr. J. O'Connor, Head of Finance, seeking approval to the incurring of overdraft borrowings not exceeding €12.5 million during the 6 month period ending 30th June, 2010, was noted.

November Ordinary Meeting 2009

On the PROPOSAL on Cllr. M. Gleeson, SECONDED by Cllr. S. Fitzgerald, it was agreed to approve the incurring of overdraft accommodation not exceeding €12.5 million for the 6 month period ending 30th June, 2010.

09.11.16.08 Kerry County Council Corporate Plan 2009-2014

Report dated 10th November, 2009, from Mr. J.D. Flynn, Director of Corporate Services, regarding the Draft Corporate Plan, 2009-2014 prepared in accordance with Section 134 of the Local Government Act, 2001 was noted. This plan sets out the objectives and key actions that will guide the operations of Kerry County Council for the period 2009-2014 and has been prepared in conjunction with the Corporate Policy Group. The Local Government Act, 2001 requires that within six months of the annual meeting in a local election year the Corporate Plan is brought before the Members for consideration for adoption.

On the PROPOSAL of Cllr. P. O'Donoghue, SECONDED by Cllr. M. Gleeson, it was agreed to adopt the Corporate Plan for 2009-2014.

Industrial Action on 24th November, 2009

Mr. T. Curran, County Manager, said a national one day strike is proposed for the 24th November, 2009. Kerry County Council management are still in discussions with unions regarding emergency cover for essential services. All offices and council facilities will be closed to the public on 24th November, 2009.

09.11.16.09 Holding of the December Ordinary Meeting at River Island Hotel, Castleisland

On the PROPOSAL of Cllr. B. Cronin, SECONDED by Cllr. S. Fitzgerald, it was unanimously agreed to hold the December Ordinary Meeting at River Island Hotel, Castleisland, on Monday, 21st December, 2009.

09.11.16.10 Kerry County Council's Budget 2010 Meeting

On the PROPOSAL of Cllr. J. Finucane, SECONDED by Cllr. P. Connor-Scarteen, it was unanimously agreed that Kerry County Council's Budget 2010 Meeting would be held on Monday, 11th January, 2010, at 10.30 a.m.

09.11.16.11 Summary of Proceedings at Conferences

(a) Annual Non-Profit Summer School

Cllr. T. Fleming said the theme of the Summer School was about the nature and practice of Philanthropy in Ireland and especially regarding other resourcing such as volunteering, public policy and funding, education, etc.

The Summer School debated the value of pursuing Philanthropy as a vital means of funding projects especially with the downturn in the economy and lack of necessary state funding for many organisations. Internationally, particularly in the USA Philanthropy has been a huge success. Due to the financial support of entrepreneur and philanthropist, (Name withheld for Data Protection purposes), Carnegie libraries are dotted throughout the USA, Britain and Ireland. To tap into this potential form of funding from favourable donators in Ireland is essential to gain necessary vital funding for vital projects.

Contributors to the conference included (withheld for Data Protection purposes).

(b) Councillor Co-operation North and South – The Challenges, North South Confederation of Councillors Seminar

It was unanimously agreed to note Cllr. T. Ferris's written report on this item which was circulated.

(c) Douglas Hyde Conference 2009

It was unanimously agreed to note Cllr. J. Sheahan's written report on this item which was circulated.

09.11.16.12 Opening of Tenders

- (a) On the PROPOSAL of Cllr. N. Foley, SECONDED by Cllr. M. Gleeson, it was agreed to approve the opening of tenders for Citrix Technology Rebuild and Support Services – Closing date: 30th October, 2009, at 2.00 p.m.
- (b) On the PROPOSAL of Cllr. P. O'Donoghue, SECONDED by Cllr. P. McCarthy, it was agreed to approve the opening of tenders for National Framework Agreement Tender for the supply of Bitumens – Closing date: 4th December, 2009, at 3.00 p.m.

Reception of Deputations

Residents of Causeway

Cllr. L. Purtill requested that a deputation be received from the residents of Causeway regarding flooding. On the PROPOSAL of Cllr. N. Foley, SECONDED by Cllr. P. McCarthy, it was agreed that this deputation would be received at the next Listowel Electoral Area Meeting.

Residents of Craigue and Knockacrohy

Cllr. T. Buckley requested that a deputation be received from the residents of Craigue and Knockacrohy regarding the condition of roads in the area. On the PROPOSAL of Cllr. T. Buckley, SECONDED by Mayor B. O'Connell, it was agreed that this deputation would be received at the next Listowel Electoral Area Meeting.

Residents of Barraduff

Cllr. D. Healy-Rae requested that a deputation be received from the residents of Barraduff regarding the condition of the road. On the PROPOSAL of Cllr. D. Healy-Rae, SECONDED by Cllr. T. Fleming, it was agreed that this deputation would be received at the next Killarney Electoral Area Meeting.

09.11.16.13 Notices of Motion

1. Fáilte Ireland Tourism Brochure

Cllr. T. Ferris moved this motion on behalf of Cllr. R. Beasley.

Pursuant to Notice duly given, Cllr. R. Beasley PROPOSED:-

“How could Fáilte Ireland bring out a brochure advertising the region from Old Head up to Cork City and as far as Ardfert and exclude the north part of North Kerry?”

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

2. Abbey Island Burial Ground, Derrynane, Caherdaniel

Pursuant to Notice duly given, Cllr. P. O'Donoghue PROPOSED:-

"That Kerry County Council immediately proceeds with the extension to the Abbey Island Burial Ground, Derrynane, Caherdaniel, Co. Kerry at the earliest possible date.

The following report issued:

Agreement to acquire 0.10 hectares (which is located 44m South West of the existing burial ground) from the OPW has been reached by Kerry County Council.

The Part 8 Planning process for the proposed development of a 160 space burial ground was completed in 2008.

The Council wrote in September 2009 and again on 5th November to the OPW to seek confirmation that the land transfer had been completed, and a definitive reply is awaited. It is intended that the development may go ahead when this confirmation has been received, subject to the availability of the necessary funding from the Council's own resources.

An estimated cost to carry out the development works is currently being prepared by the Council's Caherciveen Area Roads Office for consideration in the preparation of Budget 2010.

Cllr. P. O'Donoghue thanked the executive for the report and said this matter has been ongoing for many years. He asked that every effort would be made to identify funding for this Burial Ground and that contact would be maintained with the OPW on this matter.

Mr. O. Ring, Director of Water Services, said further contact was made with the OPW last week and a reply is still awaited from the OPW.

3. County Kerry as a Location for Pre-London Olympics Training

Pursuant to Notice duly given, Cllr. M. Gleeson PROPOSED:-

"That Kerry County Council would engage with the Olympic Council of Ireland and the Irish Diplomatic Services in promoting the County as a proximate and excellent location for many countries to pursue pre-London Olympics (2012) training in a number of disciplines e.g. Rowing, Athletics, Gymnastics and others."

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. M. Gleeson said this proposal is being made because of the state of the economy and any boost to the economy would be welcome. County Kerry has excellent facilities at which athletes could be facilitated and which would be of value to countries participating in the Olympics. The proximity of Ireland to London and access via Kerry Airport would be of enormous value.

Mayor B. O'Connell **SECONDED** this motion.

4. Appointment of Rural Representatives to An Bord Pleanála

Pursuant to Notice duly given, Cllr. M. Healy-Rae PROPOSED:-

"That Kerry County Council calls for the holding of an enquiry into the appointment of rural representatives on An Bord Pleanála as those appointed to represent this category were previously Senior Planning Inspectors with the Board."

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. M. Healy-Rae welcomed representatives from the Rural Dwellers Association to the meeting. He said a discussion was held earlier this morning regarding An Bord Pleanála and the 1km rule. As importantly as that issue, there is a situation where there is a reliance on the independence of An Bord Pleanála when planning decisions are turned down or granted by Kerry County Council. There is a reliance on An Bord Pleanála Inspectors to act in a proper and fair fashion. An Bord Pleanála Inspectors must be completely independent. The IRDA issued a booklet to every elected member regarding this matter. Regarding the appointment of members to An Bord Pleanála, the law states that nominees should have a special interest or expertise. That requirement is clear. Cllr. Healy-Rae referred to briefing document which he circulated at the Council meeting. In the interests of all the elected members who have spent time on planning issues, there is a need to be able to have full confidence in the way An Bord Pleanála is dealing with rural planning issues. He said he is not accusing anybody of any wrong doing but questioning the way things happened. He called for support on this enquiry into the appointment of rural representatives on An Bord Pleanála. He asked that this Notice of Motion be circulated to all Local Authorities.

Cllr. D. Healy-Rae SECONDED this motion.

5. Surcharge on Banks as payment for Monies advanced by the State to Banks

Pursuant to Notice duly given, Cllr. J. Finucane PROPOSED:-

"That Kerry County Council calls on the Minister for Finance to impose a surcharge on the banks comparative to a realistic interest rate as payment for monies advanced by the State to the banks. This income would be used to supplement the budget and to avoid cut backs on essential services."

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. J. Finucane said the State has invested over €12 billion in privately owned banks. The cost of NAMA cannot be clearly confined. The sacrifices that people are expected to pay for the next few years are significant and painful. This is not the first time the banks have been bailed out. The AIB was bailed out previously when a levy was imposed on everybody and that money was never repaid. The state is being asked to pay a significant burden for the greed of a number of people and the failure of corporate governance in this country. The impact on small and medium businesses is significant. Corporate governance at a major level failed. He called for more strenuous penalties on people at board level who made these decisions. He asked that Kerry County Council call on the Minister for Finance and Government to put a mechanism in place where payment of a realistic surcharge is made on a monthly or annual basis.

6. Disposal of Lands to Holy Family National School, Rathmore

Cllr. P. J. Donovan moved this motion on behalf of Cllr. J. Sheahan.

Pursuant to Notice duly given, Cllr. J. Sheahan PROPOSED:-

"That Kerry County Council sign over the lands to Holy Family National School, Rathmore. Talks have gone on for a long period. The Board of Management, teachers and parents would like to proceed with the planned sports facility."

The following report issued:

Kerry County Council acquired 3.25 acres in 1999 and subsequently developed a 2.5 acre extension to the burial ground in Rathmore. It is estimated that, at the recent uptake of approximately 12 spaces per year, there is ample space in the new graveyard to accommodate all burials for at least 100 years.

This acquisition included a section of land, of area 0.7 acres, which is surplus to and at the rear of the newly developed burial ground. This land is immediately behind both the National School and the site of the Rathmore Social Action Housing development. Each of these parties has expressed interest in acquiring at least part of this land, one for use as a sportsfield and the other to build homes for the elderly.

Management of the Council is considering this request against any other needs/uses for the land. It is hoped that a decision on this matter will be made in the coming weeks. Should it be recommended to dispose of the lands, a proposal will be placed on the Agenda of a full Meeting of Kerry County Council for ratification by the Members.

Cllr. M. Gleeson SECONDED this motion.

8. Housing Improvement Grants

Pursuant to Notice duly given, Cllr. M. Cahill PROPOSED:-

"That Kerry County Council immediately address the very serious situation whereby terminally ill patients or patients moving back to the home place from hospital are now the only persons awarded a housing improvement grant."

The following report issued:

The Housing Adaptation Grant Schemes for older people and people with a disability revised capital allocation for 2009 has been fully utilised, the details of which have been set out in the reply to Notice of Motion No 9. Having regard to the continuing very high level of demand under the schemes and in compliance with the guidelines as set out by the Department of Environment, Heritage and Local Government, we must ensure that applications are prioritised on the basis of the medical needs of the applicant. The three levels of medical priority, which was also agreed by Council, are as follows:

Priority 1

Terminally ill or fully/mainly dependant on family or carer; or where alterations/adaptations would facilitate discharge from hospital or alleviate the need for hospitalisation in the future.

Priority 2

Mobile but needs assistance in accessing washing, toilet facilities, bedroom etc; or where without the alterations/adaptations the disabled person's ability to function independently would be hindered.

Priority 3

Independent but requires special facilities to improve the quality of life, e.g. separate bedroom/living space.

All applications are examined at the initial stages and those which are considered most urgent are now being examined by our Housing Investigation Officers to determine overall priority based on the above criteria. Notwithstanding that the revised capital allocation for 2009 has already been fully utilised, the Council is dealing with and will continue to deal sympathetically with genuinely urgent and emergency circumstances as they arise using the above priority criteria. However, we will not be in a position to allocate further grants in respect of the applications currently on hands who may meet the Priority 2 & 3 criteria as set out above until such time as an indication of our allocation for 2010 is notified to us by the Department of Environment, Heritage and Local Government.

Mayor B. O'Connell said Notice of Motion No. 9 also relates to Housing Grant Schemes.

9. Pursuant to Notice duly given, Cllr. T. Fleming PROPOSED:-

"That the Council be furnished with a breakdown of the various Housing Grant Schemes for disabilities and the elderly, including the numbers approved and to be grant aided following completion of work in each category, number of applications deferred and what is the overall state of finance available to the Council to clear the backlog following recent funding made available by the Department of the Environment."

The following report issued:

The Housing Adaptation Grant Schemes for Older People and People with a Disability are funded by an exchequer contribution from the Department of Environment, Heritage and Local Government and a Local Authority contribution. The initial capital allocation for 2009 was €2,883,333 and was made up of an exchequer contribution of €2,226,666 and a Local Authority contribution of €656,667. In recognition of the very high level of demand for the scheme throughout the County, the Council was notified by the Department last month that it was successful in securing a supplementary capital allocation of €663,750 which is made up of an exchequer contribution of €531,000 and a Local Authority contribution of €132,750. However, the total revised allocation has already been fully utilised in targeting essential works based on the guidelines issued by the Department of Environment, Heritage and Local Government. These guidelines advise Local Authorities to prioritise applications based on the medical needs of the applicant (see also reply to Notice of Motion No. 8).

In the two years since the introduction of the Housing Adaptation Grant Schemes for Older People and People with a Disability in November 2007, a total of 602 grants under these schemes have been allocated broken down as follows - 349 grant allocations under the Housing Adaptation/Mobility Aids Grant Schemes and 253 grant allocations under the Housing Aid for Older Persons Grant Scheme.

At the start of November there were 747 applications on hand broken down as follows - 277 applications under the Housing Adaptation/Mobility Aids Grant Schemes and 470 applications under the Housing Aid for Older Persons Grant Scheme.

Having regard to this very high level of demand and the finite resources available, we will continue to assess applications based on the priority criteria as set out in the Departmental guidelines. The Council is dealing with and will continue to deal sympathetically with genuinely urgent and emergency circumstances. However, we won't be in a position to make a decision on the allocation of further grants to any significant degree in respect of these applications on hand until such time as an indication of our allocation for 2010 is notified to us.

Cllr. M. Cahill said it is a critical situation whereby Kerry County Council are now in a position to grant-aid only those who are terminally ill. He said he understands that other Local Authorities have received funding in the recent past. He acknowledged the difficulties being experienced by Kerry County Council since the transfer of the HSE Scheme. He asked the Director of Housing, Community and Enterprise if there is any indication of additional funding being received in this area. Discussions have been held with local development groups in an effort to source funding. He asked is there any way Kerry County Council can raise money or find additional funding in the 2010 budget. This is important for workers as well. It is important that every effort is made to try and find money for these grants. Something must be done to address this problem.

Cllr. T. Fleming said people have huge expectations that Kerry County Council has sufficient of money for housing repairs. The reality is that delays are occurring and grants are being deferred. There are 747 applications on hand at present. People are getting contractors easily now and they need funding from the Council as without funding they cannot proceed with the work. It is a huge task for staff and management to determine which application is the priority. These applicants do not have the money themselves. He asked if anything can be done in the context of Budget 2010. He asked that the Housing Department would deal with as many grant applications as possible between now and Christmas, particularly those applications for small amounts for electrical works.

Cllr. M. Maloney asked that the reply to these Notices of Motion would be circulated to all members.

10. Extradition of Sean Garland

Pursuant to Notice duly given, Cllr. T. Ferris PROPOSED:-

"That this Council calls on the Irish Government not to extradite Sean Garland to the USA."

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. T. Ferris sought the support of elected members for this motion. Two of the three Munster MEPs are supporting this call.

11. Extension of Brandon Pier

Pursuant to Notice duly given, Cllr. B. Griffin PROPOSED:-

"That Kerry County Council would prioritise the extension of Brandon Pier as one of Kerry's vital infrastructural projects and will make every effort to secure funding from the relevant Government Departments to enable this project to move ahead without further unnecessary delay and to help protect the livelihoods of the local people who use the existing inadequate facility."

The following report issued:

The development of improved facilities at Brandon Pier arose out of a feasibility study carried out by Kerry County Council on four Gaeltacht piers in 2000 which was funded by the Department of Community, Rural & Gaeltacht Affairs. This study was on the basis that the Department would fund the capital cost of the works and the Council would only be required to provide a maximum of IR£150,000 (€190k), for each project. The level of investment proposed by DCRGA was €2m. The scheme envisaged for this level of funding would see an extension of 30m added to the pier. Subsequently, the Department advised that the Council would be required to provide 25% of the costs.

To date, no funding has been made available for the project by the Department and the Council is not in a position to provide a funding commitment of €0.5 million, given the current demands for our investment in the Water Services Investment Programme and the lack of any income stream towards harbour projects. The Council had a number of meetings with local groups, most recently in October 2008, and advised them of the position in relation to funding.

Furthermore it is the view of Kerry County Council that the proposal to add 30m to the pier at Brandon for the expenditure of €2m does not represent good value for money as it does nothing significant to address the fundamental problem of Brandon Pier which is the lack of shelter at the pier. The cost of addressing this issue would be much more than the investment originally proposed by the DCRGA. Again, the local group has been made aware of this view.

Cllr. B. Griffin thanked the executive for the report. He welcomed representatives from the Brandon community to the Council Chamber. Local fishermen and users of the pier in Brandon have been calling for an extension to the pier for many years. The existing pier is no longer able to serve the needs of the community. Design work on Brandon Pier was carried out in 2007 at an estimated cost of approximately €2 million, €500,000 of which would be financed by Kerry County Council. No further works have been carried out since then apart from emergency works to the structure which cost €55,000 and which locals feel made little improvement to the state of the pier. A recent underwater survey carried out indicated that there is now significant underwater damage to the pier and rehabilitation works are again required. The pier in Brandon serves the community in two ways: it serves the local indigenous fishing community and the tourist community. Each Spring, Summer and early Autumn there are serious congestion problems in the pier area between local fishing boats, pleasure craft and visiting boats. This is continually posing problems and dangers in the area. The extension of the pier would enable larger boats to remain further out and allow smaller craft to moor closely to the existing pier. This would greatly

enhance the safety of the pier for all users and would add greatly to the local tourist economy as boats which now turn around and leave the area due to a lack of space, would have space to moor. There are a number of sustainable family micro-industries which depend greatly on the pier. These businesses are being affected by the condition of the pier and are losing out on opportunities to sustain and expand their businesses as small to medium boats are unable to access the pier when the tide is low. He called on Kerry County Council to enter into consultation with the local community in order to devise a plan that would be affordable and that would serve the needs of the pier users in Brandon. The Council should see the co-funding of this pier not as expenditure but as investment. He asked that an application be made to the Department of Agriculture, Fisheries and Food and Roinn na Gaeltachta for funding in 2010. He requested that Kerry County Council would meet with representatives of the local community to agree an alternative design for the pier that would be suitable for their needs.

Cllr. S. Fitzgerald supported this motion. He referred to commitments given by Minister Ó Cuív and that funding is now not being made available.

Mr. C. O'Sullivan, Director of Roads and Transportation, said funding of €149,000 was for a feasibility study for four piers on the basis that Kerry County Council would fund it. A submission was made last December to the Department of Agriculture, Fisheries and Food for funding. No announcement has been received of an allocation for those projects, some of which Kerry County Council has spent money on already. Until a definitive response is received regarding grant aid Kerry County Council cannot commit on funding for piers. The Department want Kerry County Council to provide 25% capital funding. Kerry County Council do not have capital funding available at present.

Cllr. B. Griffin said there is huge uncertainty going forward if capital funding is not available. The community would like a meeting to find a revised or affordable option and are prepared to wait until funding is available provided Brandon Pier is listed as a priority. He called for a meeting and a revised design to be considered and costs re-evaluated.

Cllr. M. Healy-Rae supported this motion and said this pier is of great importance to the area. He asked if a decision had been taken that a smaller scale project was to proceed.

Mr. C. O'Sullivan, Director of Roads and Transportation, undertook to clarify the position on the smaller scale project. He said he understands that the option currently costed was for some minor enlargement but even that would not entirely address the difficulties being experienced at the pier. He said a meeting has been held with the local community and the position on funding has been made quite clear, however, he undertook to meet with the local community again. Until a government commitment on funding is received Kerry County Council cannot proceed with this project.

Cllr. M. Healy-Rae asked that when this meeting is held that all members could attend if they wished.

Mr. C. O'Sullivan, Director of Roads and Transportation, said he understands that it is a meeting with the local community, however, elected members will be invited.

12. NRA Funding in 2010 for N70 and R569

Pursuant to Notice duly given, Cllr. P. Connor-Scarteen PROPOSED:-

"That we the Members of Kerry County Council urgently request the Department of Transport and the National Roads Authority to allocate substantial funding in 2010 for road improvements on the Ring of Kerry road (N70) between Blackwater Bridge and Sneem, and the (R569) between Kenmare and Loo Bridge. Such additional funding is badly needed as sections of the roads are in a deplorable state."

The following report issued:

Both of these roads are included in the Roads, Transportation and Safety Department's submission to the National Roads Authority for funding in 2010. The N70 between Blackwater Bridge and Sneem has been submitted under the National Secondary Pavement and Minor Improvement Grant. The R569 between Loo Bridge and Kilgarvan has been submitted under the Regional and Local Road Specific Improvement Grant.

Cllr. P. Connor-Scarteen said this issue has been considered at area level. The roads affected are on the Ring of Kerry Road and some stretches are particularly bad. He expressed dissatisfaction with the reply which states that the N70 between Blackwater Bridge and Sneem has been submitted under National Secondary Pavement and Minor Improvement Grant. He sought clarification on this. He called for further funding to finish works between Kenmare and Loo Bridge.

Cllr. P.J. Donovan SECONDED this motion.

Cllr. M. Healy-Rae supported this motion and said there are atrocious sections of road that need improvement.

Suspension of Standing Orders

The Mayor informed the meeting that as it was 1.30pm it would be necessary to suspend Standing Orders in order to consider the remaining notices of motion and agenda items.

On the PROPOSAL of Cllr. M. Healy-Rae, SECONDED by Mayor B. O'Connell, it was unanimously agreed to suspend Standing Orders to consider the remaining notices of motion and agenda items.

13. Dezoning of lands in Local Area Plans

Pursuant to Notice duly given, Cllr. D. Healy-Rae PROPOSED:-

"That Kerry County Council consult with Central Government following Minister Gormley's direction to Local Authorities to de-zone lands as to what impact this will have on properties taken over as assets by NAMA - will this leave taxpayers exposed again?"

The following report issued:

Minister Gormley or the Department of the Environment, Heritage and Local Government have issued no direction to Local Authorities to de-zone lands.

The following extract from the Planning and Development Regulations 2009 indicates that the population targets issued by the DEHLG are prescribed

for establishing population projections at Regional level. These projections have been divided between Cork and Kerry on the basis of existing population and were incorporated into the Kerry County Development Plan 2009-2015.

6. In accordance with the provisions of 23(2)(j) of the Act, the National and Regional Population Targets prepared by the Department of the Environment, Heritage and Local Government, from time to time, are hereby prescribed for the purposes of establishing projected population trends to inform settlement and housing strategies in addressing the proper planning and sustainable development of the region to which the guidelines relate.

Section 19(2) of the Planning and Development Act 2000 states as follows:

"2) A local area plan shall be consistent with the objectives of the development plan and shall consist of a written statement and a plan or plans indicating the objectives in such detail as may be determined by the planning authority for the proper planning and sustainable development of the area to which it applies....."

In effect, the population projections for the Local Area Plans must be consistent with the population projections for the County Development Plan as adopted. In addition, the sum of the population projections for each individual plan cannot exceed the population projection for the entire County. For this reason, at the start of the Local Area Plan review process, population projections for each of the Local Area Plan, agreed by the Members in adopting the County Development Plan, were presented to the Members and the breakdown of population between each Plan was agreed. On the basis of the population figures agreed, the quantity of land needed was determined. This is the quantity of land which is zoned in each Plan.

In relation to NAMA, the zoning of land is determined by the proper planning and sustainable development of the area and is not determined by either land values or ownership.

Cllr. D. Healy-Rae said he is not happy with dezoning of land especially when funding is being made available to help developers and banks. He asked if land is dezoned in some of areas will the tax payer be exposed. If land was zoned residential and close to getting planning permission with a high value placed on it by developers and banks and if NAMA say they are reducing the value by a percentage the landowner will suffer. Land that was zoned residential which will now be zoned as agricultural will not have value such as it would were it to remain zoned residential. He expressed concern regarding the swiftness with which Local Area Plans are being presented to the elected members for review. He said initially he understood there was a direction from Government to dezone lands but when he raised that issue he was told that the Department of the Environment, Heritage and Local Government have not issued a direction to Local Authorities to dezone land. Lands are being dezoned in Local Area Plans and this is being dictated to the members by management. He said he has documentation which says planning guidelines are expected to be finalised in May, 2010. Many things could happen between now and then to amend these guidelines and asked if Kerry County Council is acting prematurely. Land is going to be dezoned in the Kenmare Plan and it will have an impact on tax payers.

Cllr. M. Cahill asked if Kerry County Council has received legal advice on this matter. He asked if Kerry County Council has determined that in the event of a person buying zoned land at zoned land prices and the land is now being dezoned that Kerry County Council as a Local Authority will not have to pay compensation.

Cllr. B. Cronin sought a point of clarification and asked if it is correct to say that the dezoning of land is a result of some elected members totally ignoring the best planning advice which was given to them and vast tracts of land being zoned as a result.

Cllr. A.J. Spring opposed this Notice of Motion and said it is disingenuous to say Local Authorities should raise issues with NAMA now. The time to raise issues was when submissions were being sought on the NAMA proposal.

Mr. M. McMahon, Director of Planning, said the Planning Acts clearly address this matter. Notwithstanding that it was made quite clear by the executive that too much land was being zoned and it was not possible to service that land, there was vast over-zoning of land as residential in the last round of Local Area Plans. At present the review process is being driven by the fact that the Kenmare Local Area Plan timeframe is expired and the Local Area Plan must be reviewed. Local Area Plans are being reviewed on the basis of the Settlement Strategy in the County Development Plan based on logical functional areas. The Minister for the Environment, Heritage and Local Government has issued guidelines on population figures to be adopted relating to Ireland as a whole and each region. Regional Planning Guidelines have had regard to those population targets for the Cork/Kerry Region and the Kerry County Development Plan has had regard to the divide up of the population between Cork and Kerry. At the last meeting of Council the divide up of that population between all the functional areas was approved.

14. Caherdaniel Sewerage Scheme

Pursuant to Notice duly given, Cllr. P. O'Donoghue PROPOSED:-

"That Kerry County Council advises us of the up to date position in relation to the proposed Caherdaniel Sewerage Scheme."

The following report issued:

A Preliminary Report has been prepared for the Caherdaniel Sewerage Scheme, and submitted to the DEHLG. Other necessary work including site investigation, Part 8 planning and preparation of contract documents has also been progressed, and the acquisition of a site for the wastewater treatment plant site has been agreed. Discussions are ongoing with the Department in regard to the appropriate level of funding grant that the Council would anticipate in order to make the scheme viable.

Caherdaniel Sewerage Scheme has been included as a priority in the Assessment of Needs recently submitted to the Department for inclusion in the Water Services Investment Programme 2010-2012. Further progress on this scheme will be dependant on its inclusion in the final programme to be adopted by the Department.

15. Commercial Rates for 2010

Pursuant to Notice duly given, Cllr. M. Gleeson PROPOSED:-

"That in view of the economic hardship being experienced by many businesses that the Council would determine not to increase the Commercial Rate for the year 2010."

The following report issued:

This matter is appropriate for consideration and determination only at the Council's 2010 Budget Meeting scheduled for January when the detailed expenditure and income as against the need to maintain our core statutory functions for the coming year are being examined.

Cllr. M. Gleeson asked that the genuine plight of the rate payers would be taken into consideration in determining the commercial rate for the year 2010.

16. Bealnadeega Bridge, Headford

Cllr. P.J. Donovan moved this motion on behalf of Cllr. J. Sheahan.

Pursuant to Notice duly given, Cllr. J. Sheahan PROPOSED:-

"That Kerry County Council request the NRA to carry out repairs on the walls of Bealnadeega Bridge, Headford, Killarney on the N72.

The following report issued:

The parapet on this bridge, which has been damaged by a passing vehicle, will be repaired within the next two weeks.

18. Jarveys Protest at Muckross, Killarney

Pursuant to Notice duly given, Cllr. M. Cahill PROPOSED:-

That Kerry County Council immediately request the Jarveys to halt their protest at Muckross and enter into constructive dialogue and let common sense prevail as it is having a negative impact on tourism in Killarney, jobs are now seriously at risk and if the protest continues, it will send out the wrong message to the 800 German tour operators coming to the town in November.

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. M. Cahill expressed concern that Killarney will become a laughing stock because of the issue with the Jarveys. German Tour Operators arrived in Killarney last weekend, recently jobs in Muckross House have been put on protective notice and the Irish Open is to be held in Killarney next year. There has been no direct input into this issue. Commonsense must prevail. The Minister has made it clear that he is not returning on this matter. This system with the use of dung catchers on the horses is being used in many cities. Kerry County Council must help and assist with this problem. A mediator, acceptable to both sides, should be put in place. The dung catchers on the horses should be used on a trial basis. This will do Killarney no good whatsoever. Businesses and the public are not supporting these protests.

Cllr. B. Cronin supported the sentiments expressed by Cllr. Cahill and said this is critical to the livelihood of Killarney. Jobs are at stake in Muckross House. He called on the Jarveys to resolve this issue. The Minister is not going to reverse his decision on this matter. The damage that will be done to tourism will be

irreversible. The National Park is the people's park and is a national tourism asset. He said while he understands the position of the Jarveys on this, the Jarveys must face the reality that the National Park is being denied to the public. He pleaded with the Jarveys to introduce the use of dung catchers on their horses on a trial basis.

19. Christmas Social Welfare Payment

Pursuant to Notice duly given, Cllr. T. Ferris PROPOSED:-

"That this council call on the Minister for Finance Brian Lenihan T.D. and the Minister for Social and Family Affairs Mary Hanafin to restore the Christmas Social Welfare Payment."

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. T. Ferris said the absence of the Christmas Social Welfare payment will have a devastating effect on families. People are finding it difficult to adjust to lower incomes.

Cllr. B. Cronin SECONDED this motion.

20. Listry Bridge

Pursuant to Notice duly given, Cllr. B. Griffin PROPOSED:-

"That Kerry County Council would urgently address road safety issues at Listry Bridge on the R561 due to the dangerous nature of the current traffic management system and the high volume of traffic that use the bridge, which is on the road connecting the Dingle Peninsula to Killarney."

The following report issued:

This matter was previously considered at the Killarney Electoral Area Meeting of the 7th April 2009, at which the following response was provided in relation to road safety at the bridge:

"A safety measures scheme was implemented at this location in 2008 at a cost of €27,924. The road layout that was introduced, which requires approaching vehicles to yield to traffic already on the bridge, is similar to a number of prominent bridges in Kerry which operate safely without having a carriageway width to full standard".

The ideal solution would be to widen the bridge and the estimated cost of this would be in the region of €600,000. In light of current financial constraints, it is most unlikely any funding would be made available for these works.

Cllr. B. Griffin said the road safety issues at this bridge affects many of the people he represents. He acknowledged the work that has been carried out by Kerry County Council at this location. This work is an improvement but there is still a problem in this area. At Caragh Bridge the yield system is much more visible. Similar signage could be used at Listry Bridge. The long term capital funding should be sought for this bridge as it is on the main tourist route between Killarney and Dingle. Listry Bridge should be listed as a roads priority for the county.

Cllr. B. Cronin SECONDED this motion and said huge finance is required with regard to signage and works to expand the bridge. The same system as Caragh Bridge should be put in place at Listry Bridge where drivers must give way to traffic on the bridge. He asked that this would be reviewed again.

Cllr. M. Cahill supported this motion.

21. Kenmare Community Hospital

Pursuant to Notice duly given, Cllr. P. Connor-Scarteen PROPOSED:-

"That Kerry County Council requests the Minister for Health Mary Harney, TD and Professor Drumm of the HSE to allocate funding in 2010 to start the new 40 bedroom Kenmare Community Hospital, which is urgently needed for the community."

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. P. Connor-Scarteen said there is a lot of talk about planning permission for Kenmare Hospital and it's placement on priority lists. A report says it makes more sense to build a new hospital. Kenmare has an increasing population of elderly people and the health and care of the elderly is important. The €7m required to construct a hospital in Kenmare was estimated over two years ago. Construction jobs resulting from the development of Kenmare hospital would provide employment for those unemployed in the vicinity. He requested that a letter issue to Minister Harney and Professor Drumm regarding funding for Kenmare Hospital.

22. Central Locking Systems in Cars

Pursuant to Notice duly given, Cllr. D. Healy-Rae PROPOSED:-

"That we the members of Kerry County Council make the National Road Safety Authority and the car manufacturers aware of the serious detrimental effect central locking systems can have for the safety of car occupants following a crash or other incident causing the car to go on fire – once the electrical system is interrupted the occupants cannot get out as the central locking will not then work - I am advised that people will not survive for more than thirty seconds in this scenario."

Mr. G. O'Brien, Meetings Administrator, said this is a matter for consideration by the Members.

Cllr. D. Healy-Rae said he had previously raised the issue regarding strengthening of vehicles, by having safety frames fitted, in order that the car would endure in a crash. He said he has been informed by a member of the motor industry that when the electrical circuit is damaged the central locking system shuts down and locks the car and the inability of people to exit the car is one of the major factors in causing deaths in a crash.

23. Transfer of responsibility of Regional Roads to the NRA

Pursuant to Notice duly given, the members of the Listowel Electoral Area PROPOSED:-

"That Kerry County Council write to the Minister for Transport to advise him of the strong opposition of the Members of Kerry County Council to the transfer of responsibility of Regional Roads in the County to the National Roads Authority."

The following report issued:

This is a matter for resolution. However, Members are advised that the Department of Transport issued Circular RLR 19/2009 on the 9th October 2009, advising of the role of the NRA, on these new arrangements (copy of which is attached).

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Transport House, Kildare Street, Dublin 2, Ireland.

Príomh-Oifig
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Department of Transport
An Roinn Iompair



9 October 2009

Circular RLR 19/2009

Regional and Local Road Grants

A Chara,

I refer to Circular RLR 18/2009 which notified your authority about the new role of the National Roads Authority in relation to regional and local road grants.

The revised arrangements notified in that Circular will not affect the statutory role of local authorities or the Minister for Transport in any way.

The improvement and maintenance of regional and local roads is the statutory responsibility of road authorities under section 13 of the Roads Act 1993. This statutory position is not affected by the new administrative arrangements and road authorities will continue to exercise those functions as heretofore. The NRA is not being given any new statutory powers similar to those it has in relation to national roads.

Under section 82 of the Roads Act the Minister is empowered to pay grants to road authorities and he uses this power to allocate regional and local road grants to these authorities each year to supplement expenditure from their own resources. This power is also unaffected by the revised arrangements. The Minister will continue to decide on grants policy and on the grant allocations to each individual road authority.

To further inform local authorities about the new arrangements, a copy of the agreement between the Department of Transport and the National Roads Authority is attached.

Mise le meas,



Kieron McCann,
Assistant Principal Officer,
Regional and Local Roads Division,
Tel: 01 888 2284



To each Director of Services for Roads and Town Clerks

cc. City and County Managers

NRA Management of the Regional and Local Roads Investment Programme

Introduction

The Department of Transport (“the Department”) and the National Roads Authority [“the Authority”] have agreed that the Authority will undertake the management of the regional and local roads investment programme.

The purpose of this Memorandum is to identify the legislative background, outline the regional and local roads investment programme, set out the terms of the agreement and clearly identify residual responsibilities.

Legislative Background

By virtue of the Roads Acts 1993 to 2007, road authorities are responsible for the maintenance and construction of regional and local roads (section 13).

The Minister for Transport [“the Minister”] has power to issue directions and guidelines to road authorities (section 15).

The Authority may provide services (including services of staff) to the Minister (section 32, sub-section 2).

The Minister may make grants to road authorities (section 82).

It is clear however that maintenance and improvement of regional and local roads is the responsibility of individual road authorities to be funded from own resources (section 13). State grants supplement these resources.

The establishment and functions of the Authority are described in Part III of the Act. The Authority has a general duty “to secure the provision of a safe and efficient network of national roads” and “has overall responsibility for the planning and supervision of works for the construction and maintenance of national roads” (section 17).

Agreement

The Authority will from 1 September 2009 undertake on behalf of the Minister the management of the regional and local roads investment programme. Section 32(2) of the Roads Act 1993 provides the legal basis for the provision of such services.

Regional and Local Roads Investment Programme

The programme is currently managed by the Regional and Local Roads Division of the Department.

The Department has provided an extensive file of documents which is informative on the philosophy and management of the programme.

Regional and local roads account for 94% of the country’s road network and carry approximately 55% of all road traffic. The National Development Plan (NDP) 2007-2013

envisaged investment of €4.3bn in the regional and local road network over that period. The main focus of this investment is to restore roads that have been identified as deficient in pavement condition surveys and to invest in strategic roads that support the implementation of the National Spatial Strategy and balanced regional development. A number of smaller programmes (safety, signposting of regional roads) are also supported.

The total State funding available for the programme in 2009 is almost €450 million of which about 95% comes from the Local Government Fund and the remainder is provided by the Exchequer. This funding comprises both capital and current expenditure.

In any year the available funding is subdivided into a number of grant categories which are described in the 'Memorandum on Grants for Non-National Roads' published in 2001 by the Department of the Environment and Local Government. This document sets out the conditions applicable to the various categories of regional and local road grants, lists the charges to be accepted against these road grants and provides general advice and guidelines on improvement and maintenance schemes.

An internal Departmental dossier describes the procedures for making grant payments to local authorities.

The regional and local road grants system progresses through an annual cycle starting with the Minister's announcement of allocations in January/February, engagement with road authorities during the year concerning both current projects and proposals for the following year and concluding in December with final grant payments. In all of this process the onus is placed on road authorities to identify and propose priorities.

From time to time circulars / memoranda of a technical/procedural nature as required issue to road authorities.

In addition to management and administration of the programme, the Regional and Local Roads Division deals with PQs, representations and some delegations.

The current staff levels in the Regional and Local Roads Division are:

- 8 Administrative (4 of whom are dedicated to EU audits)
- 4 Technical.

Division of Functions between the Department of Transport and the National Roads Authority

In light of respective statutory responsibilities and also in the context of the broad understanding of the function described above, the following division of responsibilities between the Department and the Authority is agreed:

Department of Transport

1. Communicate Government policies to the Authority
2. The annual Estimates process and determination of the overall investment programme

3. Announcement of annual grant allocations by the Minister
4. Monthly payments to the Authority, on request by it, for onward transmission to the road authorities
5. Issues relating to classification of roads
6. Dealing with all annual reporting requirements including material for Department Annual Report, Annual Output Statement, NDP reporting, Transport 21 reporting, etc.
7. North-South interface including serving the North-South Ministerial Council
8. Preparatory work and attendance at Oireachtas Committees as required
9. Servicing the democratic process including:
 - PQs and Adjournment items
 - Briefs
 - Deputations
 - Speeches
 - Representations
 - Press queries.

National Roads Authority

1. Management of the annual road grant cycle
 - recommend grant allocations to the Minister
 - prepare allocations books and circulars
 - prepare briefing material for Minister's announcement
 - issue programme circulars as required
 - request and assess proposals from road authorities under appropriate grant headings
 - participate in Estimates process
 - make monthly road grant payments to road authorities
 - manage end of year payments
2. Programme / Project Management
 - monitor financial progress
 - determine and implement an inspection and monitoring regime consistent with current practice and resources available
 - issue technical guidelines as necessary from time to time
 - progress specific major schemes through stages in accordance with procedures for management and appraisal of capital programmes
3. Technical Support
 - complete Needs Study to support appraisal and prioritisation
 - prepare and issue design standards and guidelines

- review and approve bridge designs
 - address archaeology (on major projects only)
 - issue environmental guidelines; best practice procedures (on major projects only)
 - contract administration (on major projects only)
 - claims management / support (on major projects only)
 - safety engineering and audits
4. Records and Reporting
- initially maintain Department of Transport records and systems
 - agree format and timing of reports and submit to Department
 - provide material as required to the Department for its reporting purposes (NDP, Annual Output Statement, Annual Report etc.)
5. Strategic
- keep the regional and local roads programme under review in the context of relevant policies, needs, value for money and other relevant considerations
 - implement appropriate recommendations and plans arising from reviews
6. EU Interface and EU Audits
- the Department will, in the context of the regional and local roads programme, retain responsibility for all EU interfaces including current and future EU audits
7. The Authority will not deal with the following:
- County Development Plans / Local Area Plans
 - Planning applications
 - Land acquisition process
 - Response to EU Noise Directives
 - Legislation
 - Archaeology, Environmental Operating Procedures, Contracts Administration, Claim Management, other than on major projects
 - Inspection of the existing network / structures
 - Meeting with political representatives or the public
 - Media communications
 - Research

- Network operations.

General

It is anticipated that, initially at least, management of the regional and local roads programme will observe the systems and procedures currently in place in the Department. Migration to Authority systems, if justified in light of experience and in terms of efficiency, may follow in time.

Respecting section 13 of the Roads Act (responsibility of road authorities for the maintenance and construction of public roads) oversight of road authorities will be limited. Individual road authorities will be answerable for the management of regional and local roads in all contexts including prioritisation and the democratic process.

Any future proposed changes to this Memorandum of Agreement are to be subject to the agreement of the Authority (section 32(2), Roads Act, 1993).

Staffing and Financial Arrangements

The Department will second the two Engineering Inspectors who currently work on the regional and local roads programme to the Authority and will, subject to the approval of the Department of Finance, transfer the salary of these two staff from Subhead A1 of its Vote to the Authority's administrative budget (Subhead B1).

The Department will make available to the Authority the services of its Principal Advisor.

Transitional Arrangements

A transition team comprising representatives from the Department and the Authority will be established as soon as possible.

This team will, in the first instance, develop a plan and programme for transfer of functions described above and complete implementation of this plan by 1 September 2009.

Cllr. T. Buckley said this issue was discussed at the Listowel Electoral Area meeting and it was considered the transfer of responsibility could have a detrimental effect on funding.

Cllr. P. Leahy said the experience with the NRA in the Listowel area has been appalling over the years, particularly with regard to funding for the N69. Handing over responsibility for this funding to the NRA would be detrimental. He appealed for support of the Council on this matter.

24. Bus Stop at Farranfore

Pursuant to Notice duly given, Cllrs. D. Healy-Rae/M. Healy-Rae PROPOSED:-

"To ask Kerry County Council to expedite the provision of a bus stop for Farranfore - this is very urgently needed as traffic is continuously being held up on this National Primary route."

The following report issued:

There are two bus stops in Farranfore, one on either approach through the town, servicing a minimum of 44 daily bus services to Tralee, Limerick/Castleisland and Killarney/Cork/Waterford/Rosslare Harbour. The stops are "request stops" only and therefore the bus only remains stopped

whilst picking up/dropping off passengers. We have been informed by Bus Éireann that only 1 - 3 passengers are collected on each journey.

A bus parking bay has been provided for Killarney bound bus trips. A number of Motions have previously been moved at the Killarney Electoral Area Meetings and the Ordinary Meetings of Council on the provision of a lay-by on the western side of the road for Tralee and Castleisland bound trips, most recently in November 2008. The issue was also considered at the April 2009 Killarney Electoral Area Meeting at which Members were advised that the Council had not succeeded in acquiring the necessary lands by agreement.

Having regard to level of usage, identified by Bus Éireann, and the fact that the stops only operate as request stops, the delays are considered minimal. Traffic delays in Farranfore are primarily attributed to the rail crossing which occurs at least 18 times daily.

Cllr. D. Healy-Rae said this matter has been raised previously. The report says that the traffic is not unduly held up, however, traffic is held up to a great degree in the summer. He express disappointment that no progress has been made in acquiring land for the bus stop as this would allow the bus to move off the road and traffic flow to continue uninterrupted. He said he understands this land is owned by more than one person making it a commonage and a serious attempt should be made at acquiring this land.

Mayor B. O'Connell supported this motion. This is a much travelled route and the bus stopping on the road can be very disruptive to traffic flow on the route.

Cllr. B. Cronin said he has raised this matter previously and tabled Notices of Motion in 2006 and 2007. He PROPOSED that because of the difficulties being experienced in acquiring the land that a CPO be considered. He asked that the Roads Department would carry out a review of the blockage to traffic flow on this route.

09.11.16.14 Correspondence – Conferences and Seminars

- (a) On the PROPOSAL of Cllr. M. Healy-Rae, SECONDED by Cllr. P. Leahy, it was agreed to authorise the attendance of Cllrs. A. McEllistrim, T. Ferris, B. Cronin, P. McCarthy, P. O'Donoghue and J. Brassil at the National Tourism Conference to be held in Ennistymon, Co. Clare, from 26th-28th November, 2009.

Cllr. B. Cronin was nominated to report to Council on this conference.

- (b) On the PROPOSAL of Cllr. M. Healy-Rae, SECONDED by Cllr. P. O'Donoghue, it was agreed to authorise the attendance of Mayor B. O'Connell at the 7th Irish National Radon Forum to be held on 19th November, 2009, in Dublin.

- (c) On the PROPOSAL of Cllr. T. Buckley, SECONDED by Cllr. P. Leahy, it was agreed to authorise the attendance of Mayor B. O'Connell at the Health & Safety Training Seminar held in Carrick-on-Suir, Co. Tipperary, from 30th October - 1st November, 2009.

- (d) On the PROPOSAL of Cllr. P. McCarthy, SECONDED by Cllr. P. Leahy, it was agreed to authorise the attendance of Mayor B. O'Connell at the National

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Economic and Social Forum on the theme "Social Inclusion Forum" held in Dublin on 4th November, 2009.

- (e) On the PROPOSAL of Cllr. P. McCarthy, SECONDED by Cllr. P.J. Donovan, it was agreed to authorise the attendance of Mayor B. O'Connell at the Respond Conference on the theme "Trends and Issues in Housing" held in Dublin on 12th November, 2009.
- (f) On the PROPOSAL of Cllr. M. Maloney, SECONDED by Cllr. P. Connor-Scarteen, it was agreed to authorise the attendance of Mayor B. O'Connell at the 7th National Tourism Conference held in Carlow from 24th-26th September, 2009.

09.11.16.15 Correspondence General

It was agreed to note the following items of correspondence which were circulated.

1.	Letter dated 8 th October, 2009, from the Minister for Transport regarding the Rural Transport Scheme.
2.	Letter dated 14 th October, 2009, from the Department of Social & Family Affairs regarding funding for Family Resource Centres based in Kerry.
3.	Letter dated 26 th October, 2009, from the Minister for Transport regarding the Tralee Northern and Western Ring Roads.
4.	Letter dated 29 th October, 2009, from the Tánaiste and Minister for Enterprise, Trade and Employment regarding Community Employment Schemes.
5.	Letter dated 29 th October, 2009, from the Minister for Foreign Affairs regarding the undocumented Irish in America.
6.	Letter dated 30 th October, 2009, from the Minister for Agriculture, Fisheries & Food regarding the Farm Waste Management Scheme.
7.	Letter dated 30 th October, 2009, from the Department of Social & Family Affairs regarding the National Carers' Strategy.
8.	Letter dated 3 rd November, 2009, from the Department of Social & Family Affairs regarding the social insurance contributions paid by construction workers.
9.	Letter dated 4 th November, 2009, from Councillor Michael Healy-Rae enclosing correspondence from the November Regional Health Forum regarding the provision of a dedicated Stroke Unit at Kerry General Hospital.
10.	Letter dated 5 th November, 2009, from the HSE regarding the provision of a dedicated stroke unit for Kerry General Hospital.
11.	Letter dated 6 th November, 2009, issued by Roads, Transportation & Safety Department regarding the installation of roads studs on the R569 Regional Route between Poulgorm Bridge and Kenmare.
12.	Letter dated 6 th November, 2009, from the Department of Health & Children regarding medical cards and home help for older people.
13.	Letter dated 9 th November, 2009, from the Construction Workers Pension Scheme regarding contributions to the Construction Workers' Pension Scheme.

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14.	Report dated 10 th November, 2009, from Director of Planning enclosing correspondence dated 4 th November, 2009, from the Department of the Environment, Heritage & Local Government regarding the publication of Ireland's draft new Tentative List of potential nominees to the World Heritage List.
15.	Letter dated 13 th October, 2009, from South Tipperary County Council calling on the Government to waive VAT on specialised items of medical equipment where the purchase is being funded through voluntary fundraising.
16.	Letter dated 14 th October, 2009, from Shannon Town Council calling on the Government to set up a separate redress scheme for women detained in Magdalene laundries as demanded by the survivors.
17.	Letter dated 14 th October, 2009, from Kildare County Council regarding the proposed transfer of control over the allocation of all roads funding for Local Authorities away from the Minister for Transport.
18.	Letter dated 20 th October, 2009, from Listowel Town Council calling on the Government to support the Family Resource Centre Programme and, in particular, the thirteen Family Resource Centres based in County Kerry.
19.	Letter dated 21 st October, 2009, from Monaghan Town Council: (a) Calling on the ESB to resume the previous practice of Meter Readers leaving cards for absent householders to enter their meter reading and post same to the ESB. (b) Opposing the threat to the existence of Town Councils as proposed by An Bord Snip Nua (McCarthy Report)
20.	Letter dated 22 nd October, 2009, from Waterford City Council requesting the American Government to stop the extradition proceedings against Seam Garland.

Vote of Sympathy

A vote of sympathy was expressed to the family of the late Jerome Lynch, Killarney.

09.11.16.16 Any Other Business

Flooding in Sneem

Cllr. M. Healy-Rae referred to flooding in Sneem and expressed concern for Christian's shop which will be flooded if works are not carried out. The store house was flooded previously. There is a developer's bond in place in this area and he PROPOSED that this bond be used by Kerry County Council to carry out the necessary works to prevent the constant flooding that is occurring.

Cllr. P. Connor-Scarteen SECONDED this proposal.

The meeting concluded at 2.15 p.m.

Gerard O'Brien

Meetings Administrator

Mayor of Kerry