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**MIONTUAIRISCÍ NA CRUINNITHE SPEISIALTA PLEANÁLA DE COMHAIRLE
CONTAE CHIARRAÍ A THIONÓLADH I SEOMRA NA COMHAIRLE, ÁRAS AN
CHONTAE, TRÁ LÍ, AR AN LUAN 10 BEALTAINÉ 2010.**

**MINUTES OF THE SPECIAL PLANNING MEETING OF KERRY COUNTY
COUNCIL HELD IN THE COUNCIL CHAMBER, ÁRAS AN CHONTAE,
TRALEE ON MONDAY 10TH MAY 2010.**

PRESENT/I LÁTHAIR

Councillors/Comhairleoirí

R. Beasley
M Cahill
P.J. Donovan
T. Fleming
B. Griffin
P. Leahy
T. O'Brien
M. O'Shea
A.J. Spring

J. Brassil
P. Connor-Scarteen
T. Ferris
N. Foley
D. Healy-Rae
P. McCarthy
B. O'Connell
L. Purtill

T. Buckley
B. Cronin
J. Finucane
M. Gleeson
M. Healy-Rae
A. McEllistrim
P. O'Donoghue
J. Sheahan

ABSENT

Councillors/Comhairleoirí

S. Fitzgerald M. Moloney

IN ATTENDANCE/I LÁTHAIR

Mr. T. Curran, Co. Manager
Mr. J.D. Flynn, Dir. Of Corp. Services
Mr. C. O'Sullivan, Dir. Of Roads
Mr. J. J. Daly, County Solicitor
Mr. P. Stack, SE Planning
Mr. D. O'Malley, Sen. Exec. Planner
Ms. M. Enright, Sen. Exec. Planner
Ms. A. Moriarty, Tech. Planning
Mr. D. Ginty, Exec. Planner
Mr. L. Brosnan, AO Planning
Ms. B. Reidy, S.S.O. Corp. Affairs

Mr. M. McMahon, Dir of Planning
Ms. A. McAllen, A/Head of Finance
Mr. O. Ring, Dir. Of Water Services
Mr. J. Breen, Dir. Of Hsg., Comm. & Ent.
Mr. G. O'Brien, Mtgs. Administrator
Ms. J. McCarthy, SEO Planning
Mr. E. Fleming, Executive Planner
Mr. E. Kelleher, Asst. Planner
Ms. A.M. Costelloe, Asst. Planner
Mr. P. Corkery, Press & Comm. Off.
Ms. O. O'Shea, C.O. Corporate Affairs

The meeting commenced at 10.35am.

The Mayor, Cllr. B. O'Connell took the Chair.

10.05.10.01 Opening of Tenders

- (a) On the PROPOSAL of Cllr. P. McCarthy, SECONDED by Cllr. M. Gleeson it was unanimously agreed to approve the opening of tenders for a Flood Relief Pre-Feasibility Study for the Kenmare Catchment Area, Co. Kerry – Closing date: Tuesday 27th April 2010 at 12 noon.
- (b) On the PROPOSAL of Cllr. J. Finucane, SECONDED by Cllr. M. Cahill it was unanimously agreed to approve the opening of tenders for the construction of a Single Rural Cottage at Shannera Lower, Kilgobnet – Closing date: Wednesday 5th May 2010 at 4pm.
- (c) On the PROPOSAL of Cllr. M. Cahill, SECONDED by Cllr. P. McCarthy it was unanimously agreed to approve the opening of tenders for the construction of a Single Rural Cottage at Garrahadoo, Killorglin – Closing date: Wednesday 5th May 2010 at 4pm.

Members' Duties under Ethics Legislation

Mayor B. O'Connell informed members that he wished to remind them of their duties under Part 15 (Ethics Framework) of the Local Government Act 2001 and the Code of Conduct for Councillors. He then read the following statement into the record of the meeting.

“Councillors should be aware that the onus for complying with the requirement of the Act and the Code of Conduct lies with each individual Councillor. Under the beneficial interest provision and should that provision apply, a Councillor must

- (1) Disclose the nature of his/her interest or the fact of a connected persons interest at the meeting and before discussion or consideration of the matter commences and
- (2) Withdraw from the meeting for so long as the matter is being discussed or considered, and accordingly, he/she shall take no part in the discussion or consideration of the matter and shall refrain from voting in relation to it.”

In conclusion the Mayor reminded members that there can be no interaction with members of the public during the meeting.

10.05.10.02 Manager's Report on submissions or observations received in relation to the Killorglin Functional Area Draft Local Area Plan 2010 – 2016.

Cllr. M. Cahill said the Killorglin Local Area Plan had been very difficult for a number of reasons. He moved a Notice of Motion at the March meeting calling on the Council to cease dezoning land. He added that the maps for Killorglin on the Kerry County Council website do not fully reflect the town and in that context the process was flawed and would have to be reconvened. Different maps were circulated to members for the Special Planning Meeting in early February. People would have made submissions on the Plan if they knew what was involved. He then gave a map printed off the Kerry County Council website in relation to the Killorglin Functional Area Draft Local Area Plan to Mr. P. Stack and Mr. M. McMahon and he added that there is a difference in the map on the website to that circulated to members.

Cllr. M. Healy-Rae said in light of the discrepancies in the maps and the fact that there is no satisfactory agreement with the members for the Killorglin Electoral Area it would be prudent to postpone the meeting to allow the Killorglin councillors further time to reach agreement on the various submissions received.

Mr. M. McMahon, Director of Planning, said that he had no prior notice of the map presented by Cllr. Cahill. The statutory process for the review of local area plans is set out in the Planning and Development Act and that process must be followed. There is a requirement on the Planning Department to do some initial prior consultation and that was carried out. The Draft Plan was then presented to Council and subsequently put on public display. A hard copy of the Draft Plan was put on display at various offices around the county and this is the document that the Planning Department worked with at all times. From an initial viewing of the map presented by Cllr. Cahill it appears there is just one icon missing from the map but the land zoning is the same. He pointed out that the Draft Plan is also available on the Internet.

Cllr. P.J. Donovan said at the Killorglin Area Meeting members felt that they were misled when they dealt with the two previous Local Area Plans. At the Area Meeting last week members requested that legal opinion on the dezoning of land would be emailed to them on Friday last but members did not receive the legal opinion.

Cllr. M. Healy-Rae said that at the Killorglin Area Meeting Cllr. Paul O'Donoghue gave a strong legal view point of the procedure adopted in reviewing this Plan and he was not satisfied with the way land was being dezoned. If it transpires that there is a problem with the dezoning of land in Killorglin members will be calling for a review of the Castleisland and Kenmare Local Area Plans. He called on Management to make a clear statement on why land is being dezoned. People who purchased land during the economic boom paid substantial stamp

duty and capital gains tax. Many of them have used the lands as security with the Banks and he believed the dezoning of these lands is not correct. In the past he asked about the legality of dezoning land and if landowners affected could claim compensation. He asked why Kerry County Council is dezoning land when Cork County Council is not doing so. What is the legislation governing the dezoning. Would it not be more appropriate to be dezoning land in 2016. If this process is wrong it must be stopped immediately and the two previous plans adopted must be revisited.

Cllr. M. Gleeson said he had a Mayoral obligation in Killarney at noon and he would have to leave the meeting early for this reason. Many of the points raised by previous speakers are valid. At the Killarney Electoral Area Meeting councillors had a protracted debate and proceeded as best they could in relation to the Castleisland Local Area Plan. This was not an easy decision to make. When the Castleisland Local Area Plan was being considered members unanimously agreed on certain procedures and it would be appropriate that these minutes would be made available to members prior to any decisions being taken. Mr. M. McMahon, Director of Planning and Mr. Daly, County Solicitor have a role to play in clarifying this issue for members.

Cllr. D. Healy-Rae said that he was vehemently opposed to the dezoning of land in Currow. At the time he questioned the need to dezone land and also the legality of it. He also submitted a notice of motion asking what authorisation has Kerry County Council to proceed with the dezoning. At that time he was given verbal assurances that these guidelines came directly from the Minister or the Department of the Environment. However, he was not given a copy of the guidelines. He called on Management to produce the documentation issued by the Department authorising the dezoning of land and also the timeframe permitted for the dezoning. He believed that as a result of the dezoning of land the cost of housing will increase due to the reduction in the amount of zoned land available. The market will dictate how many houses will be constructed. He pointed out that councillors did not grant planning permission in the past and Kerry County Council granted permission on land that was not zoned. All these landowners paid capital gains tax on the value of the land at the time of purchase. When the Currow and Knocknagoshel Local Area Plans were being made members were advised that land had to be dezoned and he resented this.

Cllr. J. Brassil said that the Council is now reviewing plans that were made five years ago. Land is now being zoned in accordance with population trends and projected growth which appears to be the correct way to proceed. He could not understand the legal debate being put forward by members. Councillors must cater for the needs of the county for the next 5 years and in doing that far greater headroom was allowed than prescribed by the Department. When the local area plans for Castleisland and Kenmare were being made land was dezoned in accordance with need. On a point of principal members must establish, as a Council, whether plans will be based on population growth or on demand of

landowners. There are 350,000 unoccupied houses in the country and members are debating whether they should continue to zone land on demand. At the December Council meeting members agreed that each area would keep within their quantum of land to be zoned. If this did not happen it would have repercussions for other areas. This process was reasonably successful for the first two local area plans but there now appears to be a problem. He agreed with the suggestion made by Cllr. M. Healy-Rae, as there was not agreement amongst the members from the Killorglin Electoral Area on the submissions received in relation to the Killorglin Functional Area Local Area Plan they should be given a further opportunity to resolve any outstanding issues. Before any progress is made members must decide if they will adhere to the agreement made in October, which was proposed by Cllr. J. Finucane, or do members want to revert to the old system where land was zoned on demand. He agreed with the sentiments expressed by Cllr. Cahill in relation to the map on the Internet and said it did not appear to be the same as the one on public display and this is unfair. He asked that all existing completed housing estates would in future be shown on maps as 'Residential Existing'. In conclusion he said it was a poor practice to send out maps without showing existing estates as 'Residential Existing'.

Cllr. T. Ferris said that every five years local area plans are reviewed and this process is not just about the de-zoning of land. Members cannot take personal circumstances into account but must focus on proper planning and development. She expressed concern at the question of the liability of Kerry County Council and of individual members if land is de-zoned. However, she was reasonably satisfied that this situation would not arise. She did not believe there should be a question of personal liability; however, she requested legal clarification on this issue as she did not want members exposing the ratepayers of the county to possible claims in the future. She requested that members be given an opportunity to debate planning control at some time during the meeting as she was concerned at some decisions emanating from the Planning Department.

Cllr. M. Cahill said that he was not seeking to have additional lands zoned just the same amount as in the previous Killorglin Local Area Plan. He submitted the following Notice of Motion for the March Council meeting:

"That Kerry County Council immediately cease the practice of de-zoning land in towns and villages throughout the county as it is having a devastating effect on the livelihoods of families who borrowed on the strength of their lands being re-zoned to invest in their businesses, farms, children's education etc, and equally so, on those who invested in re-zoned lands."

Cllr. Cahill expressed his concern at the implications for members and for the Council if land is de-zoned.

Cllr. P. O'Donoghue said that members are being asked to engage in a process which could have major implications for them. Members were advised that they had no discretion and that they had to dezone land and they agreed to do this in good faith. Early in 2000 the process of making local area plans began and a lot of thought and effort went into the making of these plans. This involved some very late nights debating various zonings. Management prepared the plans, Electoral Area Meetings were held and eventually plans were made and land was zoned. This created a valid expectation amongst landowners as their land was zoned. Many landowners did not ask to have their land zoned but they subsequently borrowed on the strength of it. Others purchased land because it was zoned. It could be argued that they had five years to develop the land but in the interim the market collapsed and many developers went out of business. He was concerned that the practice of de zoning land would drive many remaining developers over the edge. He could accept this if it was an imperative but he asked what difference would de zoning land make? It is implied that because land must be de zoned now members adopted bad local area plans five years ago. He believed that members were correct in the plans they made then and they are right in the stance being taken now. Management gave the impression that there is a legal imperative on members to dezone land. He subsequently enquired into this and established that there is a major difference between the wishes of the Minister and what is an imperative. The Department of the Environment would like members to have regard to the Regional Planning Guidelines but these have not yet been adopted. They are out on public display and submissions have been invited. The closing date for receipt of submissions is the 12th May. When these Guidelines have been adopted they will be in force for the period 2016 -2022. He said it was premature to be de zoning land in reviewing the current plans. He asked the Director of the Regional Authority if they had anything to do with the de zoning of land and he advised him that the Regional Planning Guidelines are not yet in force. At the recent Killorglin Area Meeting members were informed that a letter was received from the Department advising them of the need to dezone land in line with population figures. He understood, however, that this was not provided for in legislation but the legislation would be enacted next year. He asked if members were obliged to dezone land in Killorglin as he believed members had discretion on this issue. Management have allowed 2½ times headroom in the local area plans but members did not agree to this. At the Killorglin Electoral Area meeting last week members requested that legal opinion on this process would be emailed to them on Friday last but this was not received. He was strongly of the view that there is discretion on this issue but members have been given a different impression. He was concerned that if members continue to dezone land they will drive landowners/developers to bankruptcy. The existing Killorglin Local Area Plan is in place and he could see no good reason to dezone land.

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Cllr. A. McEllistrim said that when members considered the Castleisland Functional Area Local Area Plan she asked if legislation was in place that dictated that members were obliged to dezone land. This was critical in relation to the de zoning of land in Knocknagoshel where land was zoned for just two years. If members have discretion on this issue she feels she was misled and she wanted legal clarification on whether members are obliged to dezone land or not.

Cllr. B. Cronin said this is a very difficult debate. There are legal implications and huge financial implications for landowners and it is very difficult to know how to proceed. At the December Council meeting members took a decision on how to proceed. Castleisland was the first local area plan to be made and while it was difficult members came to an agreement on it. This agreement was upheld in the making of the Kenmare Functional Area Local Area Plan where 600 acres were de zoned. In doing this members tried to ensure that proper planning and development was adhered to. He pointed out that members proposed the zoning of some land when the local area plans were first made against the strong advice of the Executive. Mr. T. Sheehy filmed the drive from Beaufort to a portion of land 1½ miles away where the landowner wanted his land zoned. Members also insisted on zoning land in Abbeydorney near Kyria Lyson Abbey. It is as a result of actions such as these that members find themselves in this predicament. Members have a duty of responsibility to listen to advice given to them and to make reasonable decisions. He had absolute sympathy for those caught up in this dilemma. He asked if the agreement reached on the quantum of land to be zoned for each local area plan will be adhered to or is it being abandoned. He asked Management if they were certain that the course of action being taken in the de zoning of land is correct. He requested that the County Solicitor would provide a letter to each councillor confirming that they will not have any personal liability as a result of the de zoning of land.

Cllr. T. O'Brien said that some councillors took tough decisions in the past. If the Killorglin Area councillors did not reach agreement will it fall to the remainder of the members to take the tough decisions in accordance with proper planning and development as advised to members by Mr. T. Sheehy. When the Tralee Environs Plan was being considered members met with Mr. Sheehy and came to an agreement prior to the full Council meeting. He agreed that it is now up to the Killorglin Area Councillors to resolve the outstanding issues. He expressed his amazement that this is the third local area plan to be reviewed and it is only now this issue is being raised. He asked Management to clarify this issue.

Cllr. T. Fleming concurred with the sentiments expressed by Cllr. P. O'Donoghue and said that a recent newspaper article said that the Minister for the Environment was giving local authorities 12 months to come into line with Planning Guidelines. He accepted that the Regional Authority members are well informed and the advice given by them is contrary to what members are being asked to do at present. In relation to Killorglin and the general Mid-Kerry area

some dezoning was done with regard to holiday homes and he accepted that there is an over supply of holiday homes in that area. He was aware that some people invested in the area with well thought out proposals and they had expended a lot of money in developing these proposals. Some developers got positive comments at their pre-planning meetings and he believed that some of this land had good potential. This area is close to the Airport and it has not reached its full tourism potential. It is an area of good employment also. He was of the view that the dezoning of land would have negative implications for this area in the long term and the current economic downturn will not last forever. The dezoning of land is a backward step as many parts of the county have not reached their full economic potential.

Cllr. N. Foley said that many differing views were put forward on the dezoning of land and she was acutely aware that decisions taken at the meeting would have huge implications for families. There appears to be two issues involved (1) the veracity of the maps on the Kerry County Council Website – whether the Council could be open to legal challenge as some landowners may have made submissions had they viewed the correct map (2) the basis on which members can move forward with the Killorglin Local Area Plan ie. are members legally required to dezone land or not. At the outset members require clarification on where they stand legally and in relation to the map referred to by Cllr. Cahill.

Cllr. J. Finucane said that aspects of this debate relate to a national issue. He submitted a Notice of Motion regarding the repossession of houses and the way private individuals are being dealt with by Banks. This is a very important issue and should be considered in detail. Many of these landowners borrowed to purchase this land. The important issue is that the State is subsidising the Banks and many Board members on the various Banks were not asked to resign and indeed many gave themselves huge bonuses. There is a reluctance, on the part of the State to bring people to justice for fraud. Now people with substantial borrowings are in a precarious position. It is important not to forget the 400,000 people who are unemployed in the country and those whose houses have been repossessed. He asked if it was a matter of timing and are members simply delaying good governance. Members need clarification on the legality of the dezoning of land to allow them to continue to consider the Killorglin Local Area Plan.

Mr. M. McMahon read the following report into the record of the meeting:

“The Planning & Development Act 2000(as amended) includes a number of provisions whereby the Minister for the Environment, Heritage & Local Government can give directions to the Planning Authority in relation to various planning matters. The Planning Authority is obliged to have regard to such directions.

REGIONAL PLANNING GUIDELINES

On the 25th March 2009 the Minister signed the Planning & Development (Regional Planning Guidelines) Regulations 2009 [S.I. 100 of 2009]. Article 6 of the Regulations provides that:-

“National Regional Population Targets prepared by the Department of the Environment, Heritage & 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”.

On the 1st October 2009, Circular letter SP 4/09 was issued to Each City/County Manager and Regional Authority Director dealing with the review of the Regional Planning Guidelines and in particular Population Targets for Gateways and Hubs. The Circular went on to set out the following population targets for the Southwest Region.

2010	2016	2022
667,500	737,100	795,000

When the population targets were apportioned between Cork and Kerry based on the ratio of existing population it resulted in target populations for Kerry as follows

2010	2016	2022
149,847	165,471	174,378

It went on to specify also population targets for Gateways and Hub Towns with the relevant figures for the Tralee/Killarney Hub as follows:

2010	2016	2022
39,700	44,700	49,400

LOCAL AREA PLAN

Legislation provides that Local Area Plans have a life of six years. In relation to the review of Local Area Plans a work programme was drawn up based on the adopted Plans and on that basis Draft Local Area Plans for the Castleisland Functional Area, Kenmare Functional Area and the Killorglin Functional Area were drawn up in that order.

The Draft Castleisland Functional Area Local Area Plan was published on the 22nd July 2009. In a detailed submission on the Draft Plan, the Department of the Environment, Heritage & Local Government point out that:-

- (a) The Plan should have greater clarity in relation to core strategies with regard to settlements, housing and transportation and demonstrate the positioning of these policies within the hierarchy of planning guidance afforded by the Regional Planning Guidelines and the County Development Plan and their inter-relationship/inter-dependency. This information should be accompanied by appropriate maps/diagrams.
- (b) The Plan should also provide greater clarity as stipulated in the 'Development Plan Guidelines' in relation to:
 - (i) the breakdown of the quantum of land zoned residential in each settlement and be clearly tabulated and referenced with regard to the Settlement Strategy in the County Development Plan.
 - (ii) the breakdown of the quantum in terms of provision for housing in both urban and rural areas.

In response to that submission the Manager, in his report to Council, which was considered at a Special Meeting on the 12th October 2009, set out a revised text to be incorporated into Section 1 (Introduction) to the Plan, which outlined the hierarchy of the Plans (accompanied by a Diagram of same). Two tables were also included which set out how the population growth targets, as between the Region, the County, the Tralee/Killarney Hub and the balance of the County were calculated and also setting out how the County figures would be distributed between the Functional Areas, in accordance with the Settlement Strategy adopted in the County Development Plan 2009-2016. (copy attached)

Following considerable debate and discussion it was unanimously agreed by the Members that the population targets and distribution between functional areas as set out by the Manager would be adopted and that the zoning of land for residential purposes within each Plan area would have to be resolved within these parameters.

FURTHER CLARIFICATION

In a further letter to the Chairman of each Regional and Planning Authority dated the 4th February 2010, the Minister for the Environment, Mr. John Gormley TD and the Minister for Housing and Local Services, Mr. Michael Finneran TD outlined the need to ensure 'that Spatial Planning at National, Regional and Local levels is integrated, complimentary and achievable'. It sets out a methodology as to how to estimate future housing land requirements.

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In dealing with any existing over-provision of zoned land, it set out three options;

- (i) change the land use zoning to one more suited to future requirements,
- (ii) phase the development for future strategic purposes beyond the Plan period.
- (iii) discontinue the zoning.

Any option or combination of options selected must result in the Plan being consistent with Regional and County Plans.

All these options have been considered in drafting the Killorglin Functional Area Local Area Plan. In this regard we see no merit in phasing as it would not have any strategic purpose because;

- (1) the population targets on which the Plan is based are extremely optimistic having regard to current economic conditions.
- (2) a 'headroom' of 2.5 has been built into the land zoned residential. In other words if the population targets were met there would still be one and a half times the amount of land zoned for residential development in the Plan remaining undeveloped at the end of the Plan period.

The Planning Authority is therefore satisfied that more than sufficient land has been zoned for residential purposes in the Killorglin Local Area Plan and the other Plans adopted to date."

Mr. McMahon stated that doubts were raised by Cllr. Cahill regarding a map for the Killorglin Functional Area Local Area Plan. Since the commencement of the meeting staff in his Department printed the map from the website and it is exactly the same as the one used in the Plan. The position Kerry County Council finds itself in relation to the zoning of land many other local authorities are also facing into. Some local authorities do not have to do anything because they did not over zone land when they made local area plans five years ago. Donegal County Council recently completed the review of the Letterkenny Local Area Plan and they dezoned land. Wexford are reviewing the Gorey Local Area Plan and a substantial amount of land is being dezoned. At present Clare County Council are reviewing the Ennis Local Area Plan following direction from the Minister. He advised members that in his view compensation would not apply if land is dezoned. Mr. McMahon informed the meeting that Section 10(8) of the Planning and Development Act 2000 reads as follows: "*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*".

Mr. J.J. Daly, County Solicitor informed members that Section 28 of the Planning and Development Act 2000 states that ‘the Minister may at any time issue guidelines to planning authorities regarding any of their functions under this Act and the planning authority shall have regard to those guidelines in the performance of their functions’. He also referred to Section 10(8) of the Planning and Development Act 2000 which states that just because land is zoned in a local area plan it may not continue to be zoned in subsequent plans. Any claim to the contrary would be defended by Kerry County Council.

Cllr. M. Healy-Rae asked Mr. McMahon if a Ministerial directive was issued to local authorities on this issue and was correspondence received stating that it is an aspiration rather than a guideline. He asked was the council obliged to dezone land in Kenmare. Cork County Council is not engaging in this process. Was it correct to say that Kerry County Council did not have to engage in this process. He asked if the 2004 zoning map for Killorglin agreed by members could be adopted as he understood members were informed they did not have a choice in the de zoning of land.

Cllr. T. Ferris said that the Killorglin Local Area Plan is due to expire in July 2010 and if a new plan is not adopted by then what would the consequences be.

Cllr. P. O’Donoghue said that Mr. Daly stated that no compensation would arise and he accepted that this is true provided correct procedures were adopted. He suggested that correct procedures were not followed as the Regional Planning Guidelines have not yet been adopted. In view of this the actions of Kerry County Council are premature and could expose the ratepayers of the county to claims for compensation.

Cllr. A.J. Spring said that members agreed to zone land in accordance with population. However this could have dire economic consequences for landowners and the implications will be felt for generations. The alternative is to phase the zoning of land for a period of time after the current plan. This would create a different value on these lands and allow the owners to negotiate with banks.¹

Cllr. D. Healy-Rae referred to comments by previous speakers and said that all decisions taken in the zoning of land was by majority vote. Some land was de zoned in the Kenmare and Castleisland Local Area Plans but additional land was included in these plans by Management for zoning.

Cllr. M. Cahill said that members understand they must adopt a local area plan for Killorglin. He asked if members would be within their rights to put the 2004 Plan out on public display as amended. If this is in order he would propose it.

¹ Refer to pages 5-7 of Minutes of the June Ordinary meeting held on 21 June, 2010

Mr. T. Curran, County Manager said he was not in a blame game situation. He was saddened that councillors were accusing him of misleading or blackmailing them. At no time did he set out to mislead or blackmail councillors and he was very disappointed at these accusations. He respects the democratic process and his role is to advise members and it is then up to them to make a determination. On occasion he was disappointed with decisions taken but he accepted the democratic process. Following the making of the first round of local area plans there was six times more land zoned in Kerry than was required. He accepted that Kerry County Council granted permission on unzoned land in the past because there were no local area plans in place. In an effort to resolve this issue the Planning Department set out, with the co-operation of members in 2004, to draw up local area plans for the county. Unfortunately too much land was zoned. Plans are presently being reviewed because it is a legal requirement. He was not sure of the implications of not making the Killorglin Local Area Plan. He referred to queries from members regarding the dezoning of land and said that members must recognise that national population targets have been compiled by the Department and they are contained in the Draft Regional Planning Guidelines and these are prescribed by the Department. It is his duty to remind members of their statutory responsibility. The population statistics for the region are cast in stone and the figures have been disseminated between Cork and Kerry. At the request of the Department the Planning Department presented the first of the local area plans with a strategy for the zoning of land. The rationale and sustainable framework was worked within the regional targets. He would be disappointed to think that members misinterpreted his advice and intentions. He was not sure of the implications of the Planning Bill but Minister Gormley has indicated that there will be no discretion. He felt it would be wrong to leave the local area plans as they are. When the Planning Bill is passed all plans would have to be reviewed at a considerable cost to Council. Regardless this is still the correct thing to do and he would not be doing his job properly if he did not advise members on this course of action.

Mr. Curran said that some members maintain that the dezoning of land should not have been pursued until the Minister signed the necessary legislation making it national policy. There were three options open to Council (1) change the existing zoning from residential (2) change the zoning where strategic even though six times the land required is already zoned and this is pointless and (3) introduce phasing based on the Department letter. If this strategy was adopted headroom of just 0.5 would be permitted while the draft plan presented allows headroom of 2½. He believed that the plan presented is fair and reasonable and it allows headroom of 2½ based on very ambitious population targets. He believed that the dezoning of land will not increase the cost of land as 2½ times more land is zoned than is required. If he did not explain this process properly to members he would apologise for that. The economy changed two or three years ago and members must do what is right for the county. He always gives the best advice he can and what he is proposing is the correct course of action. In the

zoning of so much land an expectation has been created and this is not right. In Kerry almost six times the land required was zoned in previous plans while in Cork just 1.76 times more land than is required has been zoned. Kerry was one of the first local authorities to commence the review of the local area plans. Cllr. O'Donoghue asked if the process undertaken was legal. The process is as follows: Draft Plans are prepared and the Plan with all zonings is put on public display. Submissions are then invited and the Manager prepares a report which is considered by members. Any amendments are put on public display and submissions are invited on them. The Manager's Report on submissions received is then presented to members and the Plan is made. He was satisfied that the correct procedure has been followed. It is now up to members in relation to the Killorglin Functional Area Local Area Plan to propose whatever amendments they consider appropriate. These amendments will then be put out for public consultation. The procedure adopted is above board and in accordance with legislation.

Cllr. J. Finucane PROPOSED a 20 minutes adjournment of the meeting in the light of the advice given by the County Manager.

Cllr. B. Cronin asked could the County Solicitor provide members with a letter of indemnity.

Mr. J.J. Daly, County Solicitor said that he could not do this as it is up to the Court to decide on any case taken but any case will be vehemently defended by the Council.

Cllr. P. O'Donoghue said that members were asked to have regard to the Regional Planning Guidelines but they have not yet been adopted.

Cllr. T. Ferris expressed concern that if the current Killorglin Local Area Plan expires no land will be zoned in this area.

Mr. T. Curran, County Manager, confirmed that the Regional Planning Guidelines have not yet been adopted but said that the population statistics are set in stone irrespective of the Planning Guidelines.

Cllr. P. O'Donoghue again said that the Regional Guidelines have not been adopted.

Mr. T. Curran, County Manager referred members to Section 6 of the Planning and Development (Regional Planning Guidelines) Regulations 2009 which states: *"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*

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development of the region to which the guidelines relate". The Planning Guidelines cannot interfere in any way with the population figures prepared by the Department. The breakdown of the population figures for the region between Cork and Kerry has been agreed and the population targets agreed are reasonable.

Cllr. P. O'Donoghue said he was concerned that this course of action would be exposing the rate payers of the county.

Cllr. M. O'Shea referred to the population targets and the high density zoning already agreed for many local area plans and said this now presents an opportunity to lower the density to three or four houses per acre and this would constitute proper planning.

Mr. T. Curran, County Manager said the Planning Department is doing all it can to justify the amount of land zoned and he again stated that headroom of 2½ has been allowed.

Cllr. M. Healy-Rae suggested that the meeting should be adjourned for 1 hour to allow the Killorglin councillors to consider the submissions further.

Mr. Curran, County Manager said he had a problem with that unless members can accept the fundamental issue of the amount of zoned land for each settlement as set out in the Matrix in the Castleisland Functional Area Local Area Plan. If that is agreed and reaffirmed then it is possible to proceed.

Cllr. J. Finucane said there was a debate on procedures adopted and clarification has been received from Management. He suggested that a 20 minutes recess would be in order to allow the members from the Killorglin Electoral Area to reach agreement.

Cllr. B. Cronin supported this suggestion.

The meeting adjourned at 12.10pm.

The meeting resumed at 12.45pm.

The Mayor asked the planning officials if they were satisfied that the map for the Killorglin Local Area Plan on the Internet was correct.

Cllr. M. Cahill said that he was not convinced of this as he felt that one line was omitted.

Cllr. J. Brassil said that when the individual downloaded the map a line was missing.

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Mr. P. Stack confirmed that when the map was printed by staff in his Department from the Internet that line was not missing.

Cllr. J. Finucane PROPOSED that members would accept the process outlined by the Manager and PROPOSED that the Plan would revert to the Killorglin Area members for a decision.

Cllr. R. Beasley SECONDED this proposal.

Cllr. B. Cronin said in light of the statement from the Manager it appears that the population targets are set in stone.

Cllr. M. Healy-Rae accepted that if it was the broad wishes of members the meeting could be adjourned provided it would adjourn for 1 hour only and that the Plan would be dealt with that day.

Cllr. J. Brassil suggested that the Killorglin members could meet to consider the Killorglin Local Area Plan further that day and that the full Council meeting could be reconvened following the conclusion of the May Ordinary meeting the following Monday.

This was unanimously agreed.

Cllr. D. Healy-Rae asked if Management took into account the land zoned by Management where there is no hope that permission will be granted as the land is not serviced. He asked if all these lands were excluded from the plan.

Cllr. P. O'Donoghue said that he maintained his position. He respectfully disagreed with Management on it. He felt that the procedure undertaken is flawed and that the 2004 Killorglin Plan should be adopted with whatever amendments have already been agreed. He PROPOSED that this course of action be taken.

Cllr. M. Healy-Rae asked if Cllr. O'Donoghue's proposal is agreed where does that leave the Castleisland and Kenmare Local Area Plans which were already made.

Cllr. P. McCarthy said that if the plan is not made before the 2004 Plan expires all land could be dezoned.

Mr. T. Curran said that he was not sure on this issue. However, if there was no decision in six weeks clarification would be sought from the Department.

Mr. G. O'Brien informed the meeting that a vote would then be taken on the proposal by Cllr. J. Finucane.

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On the PROPOSAL of Cllr. J. Finucane, SECONDED by Cllr. R. Beasley that this Council accepts the process and procedure that has been undertaken to-date in respect of the review of the local area plans and agrees to send back the Killorglin Functional Area Draft Local Area Plan to the members of the Killorglin Electoral Area to be agreed within this framework.

A vote was taken on this proposal which resulted as follows:

For: Cllrs. Beasley, Brassil, Buckley, Connor-Scarteen, Cronin, Ferris, Finucane, Griffin, Leahy, McCarthy, O'Brien, Purtill, Spring, O'Connell **(14)**

Against: Cllrs. Cahill, Donovan, Fleming, Foley, D. Healy-Rae, M. Healy-Rae, McEllistrim, O'Donoghue, O'Shea, Sheahan **(10)**

Not Voting: None **(0)**

Absent: Cllrs. Fitzgerald, Gleeson, Moloney **(3)**

The Mayor declared the resolution CARRIED.

The meeting concluded at 12.55pm.

Gerard O'Brien

Meetings Administrator

Mayor of Kerry