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**MIONTUAIRISCÍ NA CRUINNITHE MHIOSIÚIL DE COMHAIRLE CONTAE
CHIARRAÍ A THIONÓLADH I SEOMRA NA COMHAIRLE, ÁRAS AN
CHONTAE, TRÁ LÍ, AR AN LUAN , 21 FEABHRA 2011**

**MINUTES OF THE ORDINARY MEETING OF KERRY COUNTY COUNCIL
HELD IN THE COUNCIL CHAMBER, ÁRAS AN CHONTAE, TRALEE ON
MONDAY, 21 FEBRUARY, 2011**

PRESENT/I LÁTHAIR

Councillors/Comhairleoirí

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

IN ATTENDANCE/I LÁTHAIR

Mr. J. O'Connor, Deputy County Mgr.	Mr. J.D. Flynn, Director of Corp. Servs.
Mr. O. Ring, Dir. Water & Env. Servs.	Mr. C. O'Sullivan, Dir. of Roads
Mr. J. Breen, Dir. Hsg. & Comm&Ent.	Mr. G. O'Brien, Meetings Administrator
Mr. P. Corkery, Press & Comm.	Ms. Joan McCarthy SEO Planning
Ms. S Broderick SO Corporate Affairs	Ms. L Sheehan ASO Corporate Affairs
Ms. T. Keane, CO Corporate Affairs	

The meeting commenced at 11.15 am

The Mayor Cllr. P. Leahy took the Chair.

Congratulations

At the outset, Cllr. PJ Donovan extended congratulations to St. Mary's GAA Club, Caherciveen on winning the AIB, All Ireland Junior Championship in Croke Park on 11th February 2011.

Cllr. Donovan PROPOSED that Kerry County Council would host a Civic Reception to acknowledge the achievement of the team.

His proposal was SECONDED by Cllr. Paul O'Donoghue.

Mr. Ger O'Brien Meetings Administrator advised Cllr. O'Donovan to write directly to him on this matter and in accordance with the adopted protocol, the CPG would consider as requested at the March meeting.

11.02.21.01 Mayor's Report on the CPG Meeting held on 11th January 2011

Item 1 Agenda for the December Council Meeting

Mr. Ger O'Brien, Meetings Administrator briefed members on the agenda for the February Council meeting.

Item 2 County Development Board Update

Mr. J. Breen, Director of Housing and Community & Enterprise, briefed the meeting on the following issues relevant to the County Development Board:

Meeting of CDB Executive

A meeting of the Executive of the CDB took place this morning. This was the first meeting of the new Executive Committee and considered the following matters in advance of the next CDB meeting on 11th March next:-

Report on Kerry County Development Board

- This is the final report and recommendations from Sean O'Riordán following his recent training day with the Board.

Operational Framework

- The Executive considered Circular LG 11-10 regarding the operation of economic subcommittees of the Board and in particular, the inclusion of private business persons as well as State agencies.
- An updated Operational Structure for the Board under the direction of Ms. Siobhan Griffin was discussed to strengthen the Boards subcommittees and reporting structures.
- The present staffing and resourcing constraints were discussed in the context of the work required of the Board.

Draft Terms of Reference for Executive and Full Board

- Amendments to the Draft Terms of Reference of the Executive and of the full Board were discussed. These changes are designed to strengthen the reporting obligations and will be taken to Full Board for approval.

Review of Priority Actions

- The world has changed dramatically since the schedule of priority actions was adopted in mid-2009 and the Executive is being asked to review and recommend on these actions with a particular focus on economic activity.

Agenda for CDB Meeting

- The Executive are asked to consider and agree the agenda for the next meeting.

Cllr. Patrick Connor Scarteen said that he was very disappointed with the level of attendance at the last meeting of the CDB

Item 3 Update from Chairs of SPCs

Environment and Water Services SPC

Cllr. B. Cronin said that a decision from An Bord Pleanála on the proposed Water Extraction Order for Kenmare water supply was awaited.

No SPC meetings had been held since the last meeting.

Item 4 Draft Training and Development Programme for Elected Members for 2011

- Mr. Ger O'Brien Meetings Administrator briefed the members of the CPG on The Draft Training and Development Programme for Councillors for 2011 which he had circulated. The CPG members endorsed the Draft Training and Development Programme and recommended it to the Full Council.

Item 5 Training for Elected Members on Planning & Development (Amendment) Act 2010

Mr. Ger O'Brien Meetings Administrator referred to a letter dated 27/01/2011 from the Department of the Environment, Heritage & Local Government to the County Manager regarding training for elected members on the Planning & Development (Amendment) Act 2010 and said that as the elected members will be considering the adoption of essential requirements of the Act (e.g. core strategies in development plans) the Department wishes to provide practical training to assist them in the discharge of their statutory roles. A seminar would be held in Cork City Hall (Millennium Hall) on Tuesday 29th March 2011 from 9.30 am to 1.15 pm to facilitate the members from Cork, Kerry, South Tipperary, Waterford & Wexford. Mr. O'Brien said that he would encourage all the members to attend. This seminar is listed on the February 2011 agenda for members to register.

Item 6 Update on Kenmare Water Abstraction Order

Mr. Oliver Ring Director of Environment and Water Services advised that an acknowledgement had been received from An Bord Pleanála in respect of the receipt of Kerry County Council's submission on the proposed Water Extraction Order for the Sheen River, for the provision of a water supply for Kenmare town and that the Bord will revert in due course. To date no further correspondence has been received.

Item 7 Corporate Plan Review

Mr. John Flynn Director of Corporate Services reminded the members of the CPG that a formal review of the Corporate Plan 2009-2014 and resulting report was due to be completed by March 2011.

Item 8 Civic/Mayoral Receptions

Mr. Ger O'Brien Meetings Administrator said that no requests for Civic/Mayoral Receptions had been received.

Item 9 Any Other Business/Aon Ghnó Eile

Re: Special meeting of Kerry County Council held on 11/02/2011
H3G mast site at Buddaghauns, Kilcummin Killarney.

Mr. Ger O'Brien Meetings Administrator advised that following on from the proposal at the Special Council Meeting on 11/02/2011 he had written to H3G to request that they would meet with the Kilcummin Concerned Residents Group and the Elected Members of Kerry County Council to discuss the concerns of the local residents regarding the development. Management of H3G had since come back to him to advise that they would be available for a meeting on Friday 18/02/2011. However, the residents group indicated to Mr. O'Brien that they would not be fully prepared for a meeting on Friday 18/02/2011. Due to the upcoming general election on 25/02/2011, Mr. O'Brien undertook to contact the company to check their availability for the week following. Mr. O'Brien also advised that the company had agreed to suspend works until after the meeting had taken place. He could not confirm if this suspension of works would continue now that the meeting on Friday 18/02/2011 would not be going ahead.

Cllr. Brendan Cronin said that he accepted Mr. O'Brien's update on this matter.

Cllr. Toireasa Ferris referred to Item 3 (Update from Chairs of SPC's) and asked if an update had been received from the Housing SPC regarding the vacant Affordable Houses in Ballyheigue.

Confirmation of Minutes

On the PROPOSAL of Cllr. Paul O'Donoghue, SECONDED by Cllr. Norma Foley it was resolved that the Minutes of the January Meeting of Kerry County Council held on 17th January 2011 be confirmed.

11.02.21.02 Disposal of Plots of Land

(a) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Jim Finucane SECONDED by Cllr. Norma Foley it was agreed to dispose of a plot of land measuring 0.067 Hectares (0.166 Acres), situated in the townland of Ballyduff, in the DED of Knocknagoshel to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(b) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Norma Foley SECONDED by Cllr. Toireasa Ferris it was agreed to dispose of a plot of land measuring 0.436 Hectares (1.077 Acres), situated in the townland of Knockbrack in the DED of Brosna to data in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(c) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Danny Healy Rae SECONDED by Cllr. Patrick Connor Scarteen it was agreed to dispose of a plot of land measuring 0.023 Hectares (0.058 Acres), situated in the townland of Knockbrack in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(d) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Norma Foley SECONDED by Cllr. Tom Fleming it was agreed to dispose of a plot of land measuring 0.066 Hectares (0.162 Acres), situated in the townland of Knockbrack in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(e) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Patrick Connor Scarteen **SECONDED** by Cllr. Jim Finucane it was agreed to dispose of a plot of land measuring 0.147 Hectares (0.363 Acres), situated in the townland of Knockbrack in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(f) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Danny Healy Rae **SECONDED** by Cllr. Robert Beasley it was agreed to dispose of a plot of land measuring 0.835 Hectares (2.063 Acres), situated in the townland of Knockbrack in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(g) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Toireasa Ferris **SECONDED** by Cllr. Jim Finucane it was agreed to dispose of a plot of land measuring 0.095 Hectares (0.234 Acres), situated in the townland of Knockbrack in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(h) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Robert Beasley **SECONDED** by Cllr. Bobby O'Connell it was agreed to dispose of a plot of land measuring 1.409 Hectares (3.481 Acres), situated in the townland of Knockbrack in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(i) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Bobby O'Connell **SECONDED** by Cllr. Norma Foley it was agreed to dispose of a plot of land measuring 0.375 Hectares (0.927 Acres), situated in the townland of Kilmaniheen West in the DED of Brosna to

(Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(j) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Norma Foley SECONDED by Cllr. Patrick Connor Scarteen it was agreed to dispose of a plot of land measuring 0.124 Hectares (0.306 Acres), situated in the townland of Kilmaniheen West in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(k) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Jim Finucane SECONDED by Cllr. Pat Leahy it was agreed to dispose of a plot of land measuring 0.386 Hectares (0.953 Acres), situated in the townland of Kilkinlea Lower in the DED of Abbeyfeale to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(l) Section 183 Limerick County Council

On the PROPOSAL of Cllr. Norma Foley SECONDED by Cllr. PJ Donovan it was agreed to dispose of a plot of land measuring 4.286 Hectares (10.591 Acres), situated in the townland of Kilkinlea Lower in the DED of Abbeyfeale to Limerick County Council in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(m) Section 183 (Name withheld for data protection purposes)

On the PROPOSAL of Cllr. Bobby O'Connell SECONDED by Cllr. Jim Finucane it was agreed to dispose of a plot of land measuring 0.077 Hectares (0.190 Acres), situated in the townland of Kilmaniheen West in the DED of Brosna to (Name & Address withheld for data protection purposes) in accordance with the terms of notice issued 9th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

(n) Section 183 Electricity Supply Board

On the PROPOSAL of Cllr. Jim Finucane SECONDED by Cllr. PJ Donovan it was agreed to dispose of a plot of land measuring .0006 Hectares (.001 acres) approximately, situated in the townland of Gortamullin in the DED of Kenmare to the Electricity Supply Board in accordance with the terms of notice issued 10th February 2011 pursuant to Section 183 of the Local Government Act 2001; Section 211 of the Planning and Development Act, 2000 and Article 206 of the Planning and Development Regulations, 2001.

11.02.21.03 To consider the draft Training and Development Programme for Councillors for 2011

The draft Training and Development Programme for Councillors was approved on the PROPOSAL of Cllr. Jim Finucane SECONDED by Cllr. PJ Donovan.

11.02.21.04 To consider the recommendation in relation to the proposed dedication of the road and roundabouts on the Castleisland By-Pass, in accordance with the Council's policy.

The recommendations made at the Killarney Electoral Area Meeting held on 10th November 2010 in relation to the proposed dedication of the road and roundabouts on the Castleisland by-pass were approved on the PROPOSAL of Cllr. Bobby O'Connell SECONDED by Cllr. Tom Fleming.

11.02.21.06 To consider the making of a submission by Kerry County Council in relation to the proposals for the amalgamation of the V.E.C.'s in the context of the correspondence received from the Department of Education and Skills.

Cllr. Jim Finucane said that a number of resolutions had been adopted by the members concerning this matter. He said that the submission to the Department of Education & Skills should state that the proposed amalgamation of the V.E.C.'s would cause hardship and expense for parents and students in Kerry. Furthermore, Limerick County and City V.E.C.'s were not in favour of the amalgamation and the annual budget of Kerry Education Service was in excess of the €39,000,000 criteria for a stand alone V.E.C..

Cllr. Norma Foley said that it should be made clear to the Department of Education & Skills that the members of Kerry County Council were vociferously opposed to the proposal. She said that Kerry Education Service was giving an outstanding service in the county. It was also creating employment in Kerry, with approximately 1,000 people employed between its administration centre in Tralee and its eight schools spread geographically throughout the county. Cllr. Foley said that she was concerned that if amalgamated with Limerick City and County VEC'S, Kerry would be third in the priority line.

Cllr. Michael Gleeson agreed with and supported the previous speakers and asked if something is working why break it. He said that the V.E.C. had served Kerry magnificently and that the proposal for its amalgamation with Limerick City and County V.E.C.'s made no sense and if it were to go ahead education services in Kerry would suffer as a result. Cllr. Gleeson said that there was no proposal by the Minister for Education & Skills, Mary Coughlan TD to amalgamate the V.E.C. in Donegal, her home county, with a V.E.C. in another county.

Cllr. Robert Beasley supported the sentiments expressed by the previous speakers.

Cllr. Toireasa Ferris said that it should also be pointed out to the Department of Education & Skills that the opposition of the members of Kerry County Council to this proposal was not opposition for opposition sake. She too, asked why the same proposal had not applied to the V.E.C. in Donegal, home county of Minister for Education & Skills. She expressed concern that an education course being run in e.g. Waterville for a small number of students would not be deemed viable and priority would be given to courses in Limerick city where the attendance would be far greater. She said that if the proposal was allowed to go ahead, it would result in job losses at the administrative centre in Tralee and also at local small businesses such as printing works which benefit from the purchase of supplies/services by the Kerry Education Service.

Cllr. Danny Healy Rae supported the previous speakers and PROPOSED that a delegation from the members and management of Kerry County Council along with representatives of Kerry Education Service would request a meeting, to discuss this matter, with the newly appointed Minister for Education & Skills following the formation of the new Government, in the coming weeks. His proposal was SECONDED by Cllr. Tom Fleming.

Cllr. Tom Fleming said that the V.E.C. was providing an excellent service in Kerry and asked that the proposal for its amalgamation with Limerick to be rescinded.

Cllr. Brendan Cronin also supported the sentiments expressed by the previous speakers. He expressed concern that the education service was being targeted and mentioned that from September 2011 the distance from college for a student to qualify for a non adjacent grant, which was double the amount of the adjacent grant, had been extended from 15 to 28 miles

Cllr. Paul O'Donoghue shared the concerns of the previous speakers and commented that when an administrative centre is centralised, the service is centralised. He said that he had served as Chairperson on the Board of Coláiste na Sceilge, in Caherciveen for 10 years. Colaiste na Sceilge had grown out of the amalgamation in 1999 of St John Bosco Secondary School, Scoil Uí Chonaill and Waterville Vocational School and without the help of the V.E.C. it would not have been possible for this project to go ahead. He said that if the proposed amalgamation went ahead, the peripheral areas of the region would loose out.

Cllr. Michael Healy Rae supported the concerns expressed by the members and said -if it is not broken, why fix it. He said that he had met with a deputation from the V.E.C. regarding this matter a few months ago following which Deputy Jackie Healy Rae had made a proposal in the Dáil that the proposed amalgamation would be abandoned. He said that he hoped that the incoming Government would not proceed with the amalgamation of these three V.E.C.'S

The Mayor, Cllr. Pat Leahy supported the sentiments expressed by the previous speakers regarding the proposed amalgamation of the V.E.C.'s

Mr. John Flynn Director of Corporate Services clarified that the issues raised for inclusion in the Council's submission to the Department were as follows:

1. The V.E.C. is providing an excellent service in the county
2. There is no evidence that the amalgamation would result in savings.
3. The area which would be covered by the amalgamated body does not make sense
4. The amalgamation would impact negatively on education in the county.
5. Costs may increase due to meetings being held in Limerick
6. The loss of the administration centre would result in job losses in businesses in the area.

Cllr. Jim Finucane said that this locally managed quality education service is essential to meet the needs of the people of Kerry.

11.02.21.07 Update on H3G Mast Site at Buddaghauns, Kilcummin, Killarney, Co. Kerry

A prepared report and attached copy of Opinion of Senior Counsel, Mr. Garrett Simons SC was circulated at the meeting.

Cllr. Michael Gleeson referred to the Opinion of Senior Counsel and said that as the majority of the members did not have formal legal training, it was unfortunate that the report had not been circulated prior to the meeting to allow the members adequate time to study the legal opinion.

Cllr. Gleeson referred to the view of the Senior Counsel that the use of the adjoining land is exempted development under Class 16 of the Second Schedule (First Part) of the Planning & Development Regulations 2001 and that therefore that "*planning permission is not required for the use of the adjoining lands to provide temporary or occasional access to the development site.*" He said that there had been in excess of 90 truck movements over the track so far

Cllr. Danny Healy Rae said that the access track being used over the farmland in this case, was being used to access a commercial development. If this had been an application for planning permission for a private dwelling for a family member, the identification of a proper access would be pivotal to the grant of planning permission.

He said that H3G should have been required to apply for planning permission on a site which was further away from residential properties.

Cllr. Marie Moloney said that the location of the mast in this case was a huge issue for the residents of Kilcummin. They felt that they have been let down by the elected representatives and by the planning system and that their rights have been taken away.

She said that there were questions which still remained to be answered, e.g. *"How does H3G intend to access the mast for maintenance purposes following construction"*

Cllr. Moloney said that the residents wanted accountability and they wanted it now.

Cllr. Michael Healy Rae commented that if you are paying for legal opinion, you can buy whatever legal opinion you want as there are two sides to every argument. He asked why the report was not circulated to the members with the agenda for the meeting. He said that he was very disappointed with the way in which the matter was being handled by Kerry County Council. The local community in Kilcummin would lose faith in Kerry County Council as a Local Authority and as a Planning Authority. He said that a temporary Court Order should be sought, requiring the use of the track over land to be suspended.

Cllr. Marie Moloney referred to the use of the adjoining lands and said that there was no reference to a breach of the conditions of planning permission in the Opinion of the Senior Counsel and queried whether this issue was ever raised with him.

Cllr. Brendan Cronin said that he had a problem with the report being handed to the 27 members of Kerry County Council on the day of the meeting (today 21/02/11) as he had understood that management of H3G was aware last week that the case was being looked on favourably. He said that a number of years ago he had requested, that the elected members should have recourse to separate legal resources and acknowledged that due to the current economic down turn such an expenditure would not be possible.

Cllr. Cronin referred to page 3 of the Opinion of Senior Counsel, *Butler v Dublin Corporation* and said that the erection of and the subsequent dismantling of the stage and other structures for two concerts was not comparable to the temporary use of the adjoining lands for the construction of a telecommunications mast which is a commercial entity. He said that it would now be appropriate that a copy of the map submitted with the planning application and a copy of the conditions of permission attached by An Bord Pleanála would be forwarded to each of the members of Kerry County Council. He said that he feared that a precedent would be set as a result of the decision regarding the access in this case, which would have a negative impact on Kerry County Council.

Cllr. Paul O'Donoghue said that he was concerned that the legal advice which was received from Mr. Garrett Simons SC on 15/02/2011 was not circulated to the members at that stage. He said that a Senior Counsel can only give an Opinion

based in the facts given. It appeared from the report that the Senior Counsel had been advised that the access over land was temporary. He referred to page 4 (item 12) Mr. Justice Keane stated that : *"the radical controls imposed by the legislation were not intended to changes of use so fleeting in their nature that they could properly be regarded as not material in planning terms"* Cllr. O'Donoghue said that this means that the use was not going to be repeated into the future therefore the residents of Kilcummin had a very valid case as the usage of the track is not temporary. He said that the Opinion of Senior Counsel was based on false premise and he urged Kerry County Council to review the matter as it was of huge concern to the local residents.

Cllr. Tom Fleming said that it was unacceptable that the report and legal opinion was not circulated to the members prior to the meeting. He said that the track had been camouflaged with topsoil in order to comply with the Warning Notice. Management of H3G had announced that works would re-commence at 12.00 today. He proposed that Kerry County Council would seek an injunction requiring that no further works would take place at the site pending the resolution of the matter.

Cllr. Michael Gleeson said that an access to a commercial entity which would need constant upgrading could not be considered to be of a temporary nature.

Cllr. Michael Cahill assured the residents of Kilcummin of his support and reminded the members that this matter had been discussed at a Special Meeting of Kerry County Council on 11/02/2011 when it had been agreed that a meeting with representatives of H3G would be requested to facilitate the residents to discuss the matter further.

Mr. Ger O'Brien, Meetings Administrator said that he had written to the company as requested. Management had advised that they were available for a meeting on Friday 18/02/2011. When contacted, the residents group had indicated to Mr. O'Brien that they would not be fully prepared for a meeting on Friday 18/02/2011. Due to the upcoming general election on 25/02/2011, Mr. O'Brien had reverted to the company to check their availability for the week following. Mr. O'Brien also advised that the company had agreed to suspend works until after the meeting suggested for 18/02/2011 had taken place, they had not given a commitment beyond that date.

Cllr. John Brassil said that geographically, he was removed from this issue. He said that at the Special Meeting of Kerry County Council on 11/02/2011 it had been agreed that the Planning Authority would review the case and Legal Opinion would be sought. He stressed that it would have been preferable if the report and Legal Opinion had been circulated to the members prior to the meeting. He said that it was clear that the Planning Authority was satisfied that legal proceedings were not warranted in this case and the legal Opinion had supported this stance. He acknowledged that the concerns of the residents were genuine but the case had now been reviewed, the Opinion of Senior Counsel had been obtained and in his view any

further course of action would be fraught with danger for Kerry County Council. He said that he did not wish to be divisive but it was necessary to be realistic.

Cllr. Toireasa Ferris said that as someone who had no connection to the area/issue, she shared the concerns of the councillors who have supported the local residents. It appeared that Kerry County Council was setting a very serious precedent going into the future

She said that while she respected the Opinion of Senior Counsel, she did not accept the comparison made with the *Butler v Dublin Corporation* as in this case the access road will be used into the future for maintenance of the mast.

She referred to the receipt of the Legal Opinion by Kerry County Council on 15/02/2011 and said that she would be disgusted if it were true that management of H3G had been made aware of the legal advice prior to it having been forwarded to the members of Kerry County Council

Cllr. Jim Finucane referred to the resumption of work by the company and proposed that H3G would be contacted to advise that their response to the request for a meeting was not acceptable and requesting that work on the site would be discontinued pending the receipt of legal advice by the residents and suggesting that the meeting would take place this week.

Cllr. Brendan Griffin agreed with Cllr. Finucane's proposal.

Mr. Michael McMahon, Director of Planning & Sustainable Development addressed the meeting.

He said that subsequently a Special Meeting of Kerry County Council had been held on 11/02/2011 to discuss the matter. It was discussed at a meeting of the Senior Management Team where a decision was made to seek Legal Opinion. With regard to the comment made by the members "you get what you pay for" Mr. MacMahon said a copy of the brief which was forwarded to Senior Counsel had been circulated to the members today. He said that the earliest date on which he was in a position to prepare the report as circulated was Friday 18/02/2011 and today 21/02/2011 was the earliest date on which it could be circulated to the members. He said if they wished to defer the discussion to allow more time to study the report, that was a decision for them as a Council. Mr. McMahon said that Garrett Simons SC was regarded as an eminent Senior Counsel in the area of Planning Law.

Mr. McMahon said that he was still of the view that there was no breach of planning other than the 85 metres of track which is the subject of a Warning Notice issued by Kerry County Council. He referred the members to paragraph 14 of the Opinion of Senior Counsel (*The matter might be tested this way. If a reasonable man, having been informed that the lands will be used for occasional access to the development site was asked what the use of the adjoining lands is, he is likely to say that the lands are used for agricultural purposes. He is unlikely to say that the lands are now used for "commercial" or some other use*)

With regard to the allegations of the members concerning management of H3G having been informed of the outcome of the request for Legal Opinion before the

information was circulated to the members, Mr. MacMahon said that apart from the members of Kerry County Council only the County Manager, the Law Agent and relevant staff in the Planning Department had seen the document.

Mr. MacMahon said that he had taken a phone call from H3G on Tuesday asking for his views on the matter. As he had had an opportunity since the Special Meeting of 11/02/2011 to examine the situation further he had become familiar with Class 16 of the Second Schedule (First Part) of the Planning & Development Regulations 2001 and he advised H3G of the content of Class 16. He referred the members to the brief which was forwarded to Senior Counsel and pointed out that Kerry County Council did not draw Class 16 to the attention of Senior Counsel.

Cllr. Paul O'Donoghue said that he would respectfully suggest that a lot more detail should be given to Senior Counsel, e.g. this is not a temporary activity and in excess of 90 truck movements have taken place over the track.

Cllr. Marie Moloney said that Senior Counsel 's Opinion should also be sought as to whether or not there was a breach of planning conditions as a road had been constructed and in order for the land to be reinstated the company should be required to remove the trunking.

Cllr. Michael Gleeson said that if the road is deemed to be temporary, how is the commercial property to be accessed into the future.

Mr. McMahon pointed out that at no stage did he say that the road was exempted development. He said that the site of the development was three quarters of a mile from the public road, i.e. 85 metres of access track over which topsoil has been spread in compliance with the Warning Notice issued and the remaining distance was being traversed over land.

Cllr. Brendan Griffin said that the reinstatement of the land to its original condition should include the removal of the trunking.

Cllr. Robert Beasley said that in his opinion, if a road is constructed and topsoil is placed on it, it is still a road.

Mr. John O'Connor, Deputy County Manager addressed the meeting and said that at the Special Meeting held on 11/02/2011, it had been agreed that Kerry County Council would review its position in relation to this matter having regard to the discussion which took place and as a number of technical issues had been raised. It had been decided at a meeting of Senior Management that expert legal advice would be sought. He said that Garrett Simons S.C. was one of the most eminent Senior Counsels in the country with regard to planning matters. Mr. O'Connor emphasised that this was the most unequivocal legal advice which had come into Kerry County Council, from any Senior Counsel.

He referred the members to Paragraph 18 of the Opinion of Senior Counsel and read *“Planning permission is not required for the use of the adjoining lands to provide temporary or occasional access to the development site”*

With regard to the road/track, Mr. O'Connor said that this was a separate matter. A Warning Notice had been served on the developer requiring that the land be reinstated as had been explained by Mr. McMahon. He said that Kerry County Council did not have an enforcement case and would not be taking any further action.

Cllr. Toireasa Ferris said that she did not doubt the legal opinion but it appeared that if somebody wanted to use lands for an activity other than agriculture there were ways of getting around it.

Mr. John O'Connor Deputy County Manager referred to the brief which was forwarded to Mr. Simons and said that Senior Counsel had not been asked to advise on issues generally but with a regard to a particular set of circumstances.

Cllr. Marie Moloney said that Senior Counsel had not been asked to advise with regard to a breach of the conditions of planning permission.

Cllr. Michael Healy Rae said that if the Kilcummin Concerned Residents Group had access to the resources to engage an equally eminent Senior Counsel, they may be advised to seek a High Court Injunction requiring the cessation of the works.

Mr. John O'Connor, Deputy County Manager said that while he did not wish to argue with Cllr. Healy Rae, he did see merit in the Opinion of Senior Counsel. He said that Senior Counsel can give legal advice stating that *“on the one hand and on the other hand”* however this had not been the case on this occasion. Mr. O'Connor pointed out that access to the development was via a private road. The adjoining landowner had agreed to the developer accessing the development through his land.

Cllr. Healy Rae PROPOSED that Kerry County Council would write to the developer requesting that all work would cease to allow the residents adequate time to consider legal advice.

His proposal was SECONDED by Cllr. Pat Leahy.

Mr. John O'Connor, Deputy County Manager said that at this stage it was up to the company to agree to such a request.

11.02.21.08 To agree a date for the holding of a Special Meeting of Kerry County Council, suggested date Monday, 14th March, 2011 to:

(a) Consider the Draft Core Strategy as required by the Planning & Development (Amendment) Act 2010

(b) Consider the 2011 Road Works Programme.

On the PROPOSAL of Cllr. Norma Foley SECONDED by Cllr. Jim Finucane it was agreed that a Special meeting of Kerry County Council would be held on 14th March 2011.

11.02.21.09 To agree revised dates for the following:

(a) An Daingean Electoral Area Meeting - Friday, 11th March, 2011 at 10:30a.m

(b) Tralee Electoral Area Meeting - Monday, 7th March, 2011 at 10:40a.m.

On the PROPOSAL of Cllr. Norma Foley SECONDED by Cllr. Jim Finucane it was agreed that the next meeting of the Tralee Electoral Area Committee would be held on 7th March 2011 at 10.40 am

On the PROPOSAL of Cllr. Brendan Griffin SECONDED by Cllr. Jim Finucane it was agreed that the next meeting of An Daingean Electoral Area Committee would be held on 11th March 2011 at 10.30 am.

On the PROPOSAL of Cllr. Paul O'Donoghue it was agreed that the next meeting of the Killorglin Electoral Area Committee would be deferred until 25th March 2011 due to the upcoming General Election.

11.02.21.10 To consider the following requests for the reception of deputations at the next round of Electoral Area Meetings:

(a) To accept a deputation from the Sneem Fishermans Co-Op with regard to works proposed for Tahilla Pier. Cllr. M. Healy-Rae

On the PROPOSAL of Cllr. Michael Healy Rae SECONDED by Cllr. Paul O'Donoghue, it was agreed that a deputation from Sneem Fishermans Co-Op would be received at a future meeting of the Killorglin Electoral Area Committee.

11.02.21.11 To approve the opening of a tender for Engineering Consultancy Services for the N86 Annascaul to Gortbreagoge Road Improvement Scheme: Closing Date Tuesday 15th February 2011 at 12:00pm.

On the PROPOSAL of Cllr. Paul O'Donoghue SECONDED by Cllr. PJ Donovan it was agreed to approve the opening of a tender for Engineering Consultancy Services for the N86 Annascaul to Gortbreagoge Road Improvement Scheme.

11.02.21.12 Summary of proceedings at the following conferences in accordance with Section 142(5)(f) of the Local Government Act 2001:

Report on behalf of the delegates that attended the Economic Conference for Councillors "The Role of State Institutions and Law Reform in Promoting Irelands Economic Future held on 28 & 29 January 2011.

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

11.02.21.13 Notices of Motion

10. New Minister for Social Protection to revisit the recent cuts on Carers, Disabled and Blind Pensions

Pursuant to notice duly given Cllr. Michael Cahill PROPOSED:

That Kerry County Council call on the new Government and the new Minister for Social Protection to revisit the recent cuts on Carers, Disabled and Blind Pensions as there is already precedence for this i.e. medical cards for the over 70's.

Mr. Ger O'Brien A/SEO Corporate Affairs said that this is a matter for consideration by the members.

Cllr. Norma Foley SECONDED the motion.

18. Safe guard rural co-ordinators and temporary teaching posts.

Pursuant to notice duly given Cllr. Michael Cahill PROPOSED:

That Kerry County Council call on the new Government and the new Minister for Education to safe guard rural co-ordinators and temporary teaching posts.

Mr. Ger O'Brien A/SEO Corporate Affairs said that this is a matter for consideration by the members

Cllr. Norma Foley SECONDED the motion.

22. Legal obligations on the Council with regard to its responsibility to tenants under the Tenancy Agreement and the under grounding of public water mains.

Pursuant to notice duly given Cllr. Michael Cahill & Cllr. Tom Fleming PROPOSED

That Kerry County Council clarify the legal obligations on the Council as regards to the following: (a) Its responsibility to tenants under the Tenancy Agreement (b) The under grounding of public water mains.

The following report issued:

(a) In general, the Council is responsible for repairs to the exterior of the house while the tenant is responsible for the maintenance of the interior. Exceptions to interior work are such items as faulty immersions and leaking tanks. These

are considered as works, if left untreated, which would compromise the structure of the property.

(b) With regard to problems recently encountered during the unprecedented cold spell, we are assessing what needs to be done to ensure that these problems with water supply are not repeated. We are presently considering the cost implications of lowering the depth of some stopcock connections. However, it should be pointed out that the majority of problems in our housing stock occurred in the attic space where the plumbing fittings failed due to the severe weather , causing water damage. As the Council has previously acknowledged, where such incidents did, unfortunately, occur our staff worked round the clock on finding alternative accommodation as necessary and effecting the necessary repairs. In any situations of severe weather, lessons are learned and we are presently looking to implement the learning gained. The provision of good, sound and sensible advice to assist our tenants and all property owners during such cold spells will also be continued.

It was agreed to adjourn the meeting at 1.00pm.

The Mayor, Cllr. Pat Leahy wished success to all the members who were candidates in the forthcoming general election.

The meeting resumed at 2.25 pm

On the PROPOSAL of Cllr. Brendan Cronin SECONDED by Cllr. Norma Foley it was agreed to suspend Standing Orders in order to proceed to Item 14 and to defer the continuation of Item 13 Notices of Motion

11.02.21.14 Correspondence – Conferences and Seminars

(a) On the PROPOSAL of Cllr. Brendan Cronin SECONDED by Cllr. Pat McCarthy it was agreed to authorise the attendance of Cllrs. Bobby O'Connell, Michael Cahill, Robert Beasley, Jim Finucane and Pat Leahy at the 9th National Tourism Conference on theme "Exploring Heritage, adventure and tourism opportunities for Ireland's waterways to be held in the Seven Oaks Hotel, Athy Road, Carlow from 03/03/2011-05/03/2011.

Cllr. Robert Beasley was nominated to report back to the Council on this event.

(b) On the PROPOSAL of Cllr. Norma Foley SECONDED by Cllr. John Brassil it was agreed to authorise the attendance of Cllr. Bobby O'Connell and Cllr. Michael Cahill at the Conference on the theme "Ireland's Energy Opportunity-Cork's Response" to be held in the Inchydoney Hotel, Clonakilty, Cork on the 04/03/2011.

Cllr. Bobby O'Connell was nominated to report back to the Council on this event.

(c) On the PROPOSAL of Cllr. Brendan Cronin SECONDED by Cllr. Pat McCarthy it was agreed to authorise the attendance of Cllrs. Brendan Cronin, Bobby O'Connell,

Michael Cahill and Paul O'Donoghue at the Conference:: A guide to effective Public Relations, Training Seminar to be held in the Falls Hotel, Ennistymon, Co. Clare from 11/03/2011-13/03/2011.

Cllr. Bobby O'Connell was nominated to report back to the Council on this event

(d) On the PROPOSAL of Cllr. Brendan Cronin SECONDED by Cllr. Brendan Griffin it was agreed to authorise the attendance of Cllr. Bobby O'Connell at the Regional Seminars for Councillors Training for Elected Members on the Planning and Development-Amendment – Act 2010 to be held in Cork Millennium Hall, Cork on 29/03/2011.

Cllr. Bobby O'Connell was nominated to report back to the Council on this event.

(e) On the PROPOSAL of Cllr. Pat McCarthy SECONDED by Cllr. Brendan Griffin it was agreed to authorise the attendance of Cllrs. Brendan Cronin, Michael Cahill, Liam Purtill, John Brassil, Pat McCarthy, Jim Finucane, Norma Foley, Robert Beasley and Pat Leahy at the LAMA Spring Seminar 2011 on the theme "Economic Revival A Role for Local Government" to be held in Fairways Hotel, Dundalk, Louth 29/04/2011-30/04/2011.

Cllr. Liam Purtill was nominated to report back to the Council on this event.

(g) On the PROPOSAL of Cllr. Brendan Griffin SECONDED By Cllr. Brendan Cronin it was agreed to approve the attendance of Cllr. Patrick Connor Scarteen on the IPA – Certificate in Irish Government and Politics Course for 2010-2011 Academic year.

11.02.21.15 Votes of Sympathy

The following votes of sympathy were noted.

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Jack O'Connor

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Michael Lenihan

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Denis Cremin.

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Bridget Harrington.

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Jerry Lynch.

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Humphrey O'Leary

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Sonny O'Sullivan.

Cllr. Patrick Connor Scarteen proposed that a vote of sympathy would be extended to the family of the late Mary O'Sullivan.

11.02.21.16 Correspondence General

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

1. Letter dated 18 January 2011 from Comhairle na Mire Gaile regarding the work that the Council does for Bravery Awards.
2. Email dated 13 January 2011 from Clonmel Borough Council regarding a resolution adopted by that authority calling to recognise the unique and vital role of the postal service in Ireland.
3. Email dated 14 January 2011 from Castlebar Town Council regarding a resolution adopted by that authority condemning the recent increases in mortgage rates by our financial institutions.
4. Letter dated 12 January 2011 from the Tánaiste and Minister for Education and Skills regarding the amalgamation of Kerry Education Service with the Limerick Education Service.
5. Letter dated 5 January 2011 from Monaghan Town Council regarding a resolution adopted by that authority calling on the Competition Authority to implement measures that will enhance competition with in the bulk LPG (Liquefied Petroleum Gas) market.
6. Email dated 14 January 2011 from Castlebar Town Council regarding a resolution adopted by that authority calling on the Minister for Education to ensure that protocols are introduced in all primary and secondary schools (Protocols listed on email).
7. Letter dated 17 January 2011 from the OPW regarding the Rossbeigh Spit.
8. Letter dated 21st January 2011 from Fondúireacht an Phiarsaigh regarding the Gradam an Phiarsaigh award presented each year to persons who best exemplifies the ideals of Pearse and who has worked to promote those ideals in education/art/literature/civil liberties/media/community.
9. Email dated 26 January 2011 from North Tipperary County Council regarding a resolution adopted by that authority calling on the Government to recognise the unique and vital role of the postal service in Ireland.

10. Letter dated 26 January 2011 from the Office of the Finance Minister regarding the introduction of fuel vouchers for those struggling to heat their homes.
11. Email dated 23rd December 2010 from Limerick County Council regarding a resolution adopted by that authority regarding planning applications due to expire – that the site assessment and sightlines transfer to any new application on the said site by another applicant who satisfies the need and all other relevant criteria to obtain planning.
12. Email dated 12 January 2011 from South Tipperary County Council regarding a resolution adopted by that authority calling to recognise the unique and vital role of the postal service in Ireland.
13. Email dated 12 January 2011 from South Tipperary County Council regarding a resolution adopted by that authority calling for measures which would result in Ireland reacquiring its sugar beet production quota and re-establishment of the sugar processing industry.
14. Letter dated 28 January 2011 from Tánaiste and Minister for Education and Skills regarding language support teachers in schools.
15. Letter dated 28 January 2011 from Minister for Transport regarding the management of salt supplies.
16. Letter dated 1 February 2011 from Minister for Communications, Energy and Natural Resources regarding the resolution by this council relating to the liberalisation of the postal sector.
17. Letter dated 31 January 2011 from Minister for Transport regarding the introduction of drug testing of drivers on our public roads.
18. Letter dated 01 February 2011 from Department of Social Protection regarding the National Fuel Scheme.
19. Letter dated 01 February 2011 from Department of Social & Family Affairs regarding the resolution by this council relating to the deployment of additional personnel to work within MABS.
20. Letter dated 02 February 2011 from the NRA regarding the N70 from Blackwater Bridge to Caherdaniel
21. Letter dated 08 February 2011 from the Office of the Minister, Department of Finance regarding Kerry County Council's request for legislation leading to an introduction of a crime called "Economic Treason".

22. Letter dated 09 February 2011 from HSE South regarding the Orthodontic Services in Kerry.

23. Letter dated 18 January 2011 from NRA re salt distribution.

11.02.21.17 Any Other Business.

Cllr. Terry O'Brien asked that the members would be requested to refrain from using their mobile phones in the Council Chambers.

Cllr. John Brassil agreed with Cllr. O'Brien and PROPOSED that this issue would be included for discussion at the next meeting of the CPG that the use of mobile phones would be banned in the Council Chambers. He said that mobile phones had rang and been answered during the Civic Reception for (Name withheld for data protection purposes), this was very disrespectful to such an esteemed guest.

Cllr. Brendan Cronin SECONDED Cllr. Brassil's proposal

Cllr. Jim Finucane supported Cllr. Brassil's proposal.

Mr. John Flynn Director of Corporate Services said that when important issues were being debated in the Council Chambers, it was difficult to hear what was being said due to the constant use of mobile phones.

Mr. Ger O'Brien Meetings Administrator undertook to arrange for this issue to be included on the agenda for the next meeting of the CPG.

11.02.21.13 Notices of Motion (Continued)

3. Call on Central Government to make compulsory the installation of carbon monoxide detectors in all homes.

Pursuant to notice duly given Cllr. Norma Foley PROPOSED

That Kerry County Council call on Central Government to make compulsory the installation of carbon monoxide detectors in all homes. Further, that Kerry County Council would ensure that these detectors are provided in all our housing stock if not already done so.

The following report issued:

The Council is careful in complying with Building Regulations Part J in relation to heat producing appliances in our dwellings. The Regulations require that an adequate air supply is provided for combustion to heat producing appliances and that adequate provision is provided for the discharge of the products of combustion of these appliances to the outside air.

Carbon monoxide detectors would provide an added safeguard but are not a requirement of current legislation. The detectors also have a relatively short life of about 5 years. They need to be 'quick tested' weekly and the sensor tested

annually. The sensors are more sophisticated than fire alarms and consequently much more expensive. Expenditure in excess of €300,000 would be required to fit wired detectors in all of our housing stock which would necessitate special capital funding to be made available from the DoEHLG.

Cllr. Foley welcomed the response and said that this highly toxic gas has earned the reputation of a silent killer as it cannot be detected by human senses. She PROPOSED that a letter would be written to the Department of Health & Children and the Department of the Environment, Heritage & Local Government requesting that legislation be enacted requiring the installation of carbon monoxide detectors in Local Authority housing and that special capital funding would be made available from the Department of the Environment Heritage & Local Government for the provision of same.

Cllr. John Brassil SECONDED Cllr. Foley's proposal.

The following Notice of Motion was moved by Cllr. Brendan Griffin on behalf of Cllr. Seamus Cosai Fitzgerald.

4. Road improvement works on the section of road between Annascaul and Lispole.

Pursuant to notice duly given Cllr. Séamus Cosai Fitzgerald PROPOSED

That Kerry County Council request the N.R.A. to start road improvement works on the section of road between Annascaul and Lispole this year as part of their overall improvement works plan for the N86.

The following report issued:

The National Roads Authority has provided funding in 2011 for the improvement of a 4.2Km section of the N86 east of Annascaul village. This funding has been provided on the basis that the improvement works are carried out to the National Standard, including offline works as required, the acquisition of the necessary lands by agreement, Environmental Assessment and the completion of the Part 8 Planning process for this section of the route. This particular section was identified for immediate improvement on the basis of available funding from the NRA, and an initial Environmental Impact Assessment Screening Report, which indicated that the construction of this section would most likely not have any significant effect on the environment. We are currently completing further environmental assessments in accordance with statutory requirements prior to submitting the Part 8 documentation to the Planning Department.

The screening assessment for other sections of the route identified that an EIA is required and therefore we are not in a position to carry out improvements on the remainder of the route until this process is complete.

6. Full list of all plant hire and haulage contractors employed by Kerry County Council.

Pursuant to notice duly given Cllr. Brendan Cronin PROPOSED

That this Council provide the elected members with a full list of all plant hire and haulage contractors employed by Kerry County Council from January 1st 2010 to December 31st 2010 and the full amounts paid to each contractor.

The following report issued:

February 2011

**Mheara agus gach Ball
de Chomhairle Chontae Chiarraí**

Re: N.O.M. No. 6: February 2011 – Cllr. B. Cronin
“That this Council provide the elected members with a full list of all plant hire and haulage contractors employed by Kerry County Council from January 1st 2010 to December 31st 2010 and the full amounts paid to each contractor”.

A Chomhairleoir, a chara,

I attach schedule giving the details of the total payments made and accrued to Contractors in respect of the hire of plant/equipment and haulage services in 2010 across the Council’s services, as requested in the Notice of Motion as set out. The total figure shows a reduction of 13% on the final 2009 figure, reflecting the reduction in Road Grants mainly.

As heretofore, it continues to be the policy of the Council, of course, to endeavour to achieve value-for-money in the hire of plant and equipment and, indeed, in all our services. In achieving best value, the principal factors considered are:-

- 1. Suitability of plant item for the job.***
- 2. Compliance with health and safety standards.***
- 3. Reliability of plant item.***
- 4. Plant Operator skill (where driver is required with machine).***
- 5. Available back-up service.***
- 6. Hire rate.***

Council management, at all levels, continues to give particular attention to the outputs achieved by each machine/plant item hired and its reliability. The overall effectiveness of our works programmes and the achievement of best return on the sizeable level of expenditure incurred require that we carefully assess the continuation, or otherwise, of plant hire on an ongoing basis having regard to the criteria outlined and this is facilitated by the reporting tool of our Financial Management System. On-going achievement of cost effectiveness in this area, as in all other activities, is critically important in these very difficult economic times.

As mentioned on previous occasions, the annual Plant Hire List is formed following public advertisement inviting quotations and using the LA Quotes System. Plant Hire Contractors are selected on the basis of the criteria outlined above, must satisfy the Council on insurances and the safety of their machines and must produce a current C2 Tax Clearance Certificate or other relevant tax clearance certification.

**John O'Connor
Head of Finance**

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121206	Accelerated Drain Cleaning		Dublin 12	10,947.09
78941	Adams Of Tralee Ltd		Mile Height, Tralee	3,993.00
157643	Adare Farm Machinery Ltd		Patrickswell, Co Limerick	2,184.72
155293	AOK Ltd. TA O Keeffe Plant Hire		Abbeyfeale	14,978.31
52623	Ardfert Quarry Products		Tralee	8,662.32
170709	Barraduff Motors Ltd TA Murphy Motors	T/A Murphy Motors	Barraduff, Killarney	5,808.00
179712	Bord na Mona Horticulture LTD		Newbridge, Co Kildare	11,173.11
397236	(Name & Address withheld for data protection purposes)			57,603.00
176409	(Name & Address withheld for data protection purposes)			6,775.93
1443	(Name & Address withheld for data protection purposes)			68,064.52
142759	Browne & Sons Ltd	Nicholas	Ballinskelligs	69,066.00
179365	BTM Drains Of Ire t/a Irish Drain Services Ltd		Farranfore	13,011.80
157233	(Name & Address withheld for data protection purposes)			60,017.03
171519	Castleisland Tool Hire		Barrack Street, Castleisland	5,452.93
179461	Christy O Leary Plant Hire Ltd		Mallow, Co Cork	10,664.00
155167	Clancy Plant Hire Ltd		Knockanure, Listowel	319,507.48
315608	(Name & Address withheld for data protection purposes)			117,615.49
485145	Cliffords Ground Care Ltd		Dunloe Upper, Killarney	12,541.75
176655	(Name withheld for data protection purposes) Con Counihan & Sons		Dunrine, Killarney	2,203.53
176168	T/A Trackcare Engineering	(Name withheld for data protection purposes)	Templeglantine, Co Limerick	47,850.00
176113	Countywide Drain Services Ltd		Dripsey, Co Cork	29,034.40
179348	Crean & McHugh t/a CMP		Ovens, Cork	61,150.00
259745	(Name & Address withheld for data protection purposes)			7,873.68
175658	Cronin & Sons Ltd	Michael	Currow, Farranfore	111,618.13
172279	CTO Environmental Solutions Ltd		Midleton, Cork	2,043.00
173687	(Name & Address withheld for data protection purposes)			16,383.00
455297	Curran Plant Hire	Kevin	Ardkeragh, Waterville	10,017.36

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107175 &			
216268	D & L Tool Hire (Tralee & Dingle)	Clash, Tralee	27,931.97
3544	Dillons Waste Disposal	The Kerries, Tralee	212,517.33
148378	(Name & Address withheld for data protection purposes)		31,673.76
173526	(Name & Address withheld for data protection purposes)		2,539.00
309289	Farran Plant Hire Ltd	Farran, Castleisland	138,605.33
61488	Feale Valley Plant Hire Sales Ltd	Clash Road, Abbeyfeale	156,069.11
173682	(Name & Address withheld for data protection purposes)		9,279.00
179115	Frayden Haulage Ltd	Knocknaskeha, Killarney	2,534.03
179309	G & B Transport Ltd	Lisselton	3,925.00
176210	Gerard Culloty Transport	Tralee	2,146.00
101668 &			
138037	GPT Plant & Tool Hire (Cork)	Cork / Galway	35,577.85
178464	Griffin & Sons Agricultural Contracting Ltd	Cool, Emlaghmore	43,793.93
310467	(Name & Address withheld for data protection purposes)		9,972.53
172129	Healy Plant Hire Ltd Tim	Barraduff, Headford	64,562.75
110025	Healy Rae Plant Hire Ltd	Main Street, Kilgarvan	241,689.35
265502	Higgins Waste & Recycling Services Ltd	The Kerries, Tralee	36,021.49
109666	(Name & Address withheld for data protection purposes)		21,052.35
178389	(Name & Address withheld for data protection purposes)		26,462.62
179500	(Name & Address withheld for data protection purposes)		3,782.96
130292	(Name & Address withheld for data protection purposes)		2,194.56
34273	Kelly Farm Mod Ltd	Ballydesmond, Mallow	10,192.36
	(Name withheld for data protection purposes)		
175456	T/A Chris Sales & Repairs Services	East End, Caherciveen	3,138.72
185393	Kenmare Plant Hire Ltd t/a KPH Construction	Templenoe, Kenmare	4,444.05
	Kenmare Waste Disposal & Glass Recycling		
119984	Ltd	Tuosist, Killarney	46,648.50
491842	Killarney Waste Disposal Ltd	Aughacurreen, Killarney	230,217.94
107133	Kingdom Fast Hire Ltd	John Joe Sheehy Rd, Tralee	57,031.20
173310	Lawrence Cove Ferries Ltd	Bere Island, Cork	9,600.00

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197860	Leanes Tool Hire		Muckcross Road, Killarney	198,435.65
172382	Lixnaw Plant Hire Ltd TA T McCarthy & Sons		Garrynagore, Lixnaw	51,744.01
179254	McAuliffe Scaffolding		Foildarrig, Duagh	3,564.05
125163	McAuliffe Trucking		Fahaduff, Castleisland	18,648.07
239856	(Name & Address withheld for data protection purposes)			302,765.30
117238	(Name & Address withheld for data protection purposes)			17,440.69
30759	Moran Plant Hire	Sean	Dingle	30,082.89
282506	Murphy Plant Hire	Donal	Headford, Killarney	31,047.55
174862	Murphy Tool Hire		Listellick North, Tralee	46,284.61
108188	Nicholson Grass Services		Gortatlea, Tralee	20,021.36
117490	O Connell Plant Hire & Quarry Ltd		Bahags, Caherciveen	4,106.39
174467	(Name & Address withheld for data protection purposes)			21,915.07
173839	(Name & Address withheld for data protection purposes)			6,888.32
174580	O Connor Kerry Haulage Ltd		Clonmore Cottages, Tralee	19,880.30
110583	O Connor Plant Hire	Hugh	Headford, Killarney	90,198.47
206183	O Connors Hardware & Farm Supplies Ltd		Duagh, Listowel	6,957.50
177752	O Driscoll Plant Hire Ltd	Dan & John (Name withheld for data protection purposes)	Tinnies, Valentia	28,376.05
428489	Plant Hire T/A Sandmore Ltd		Camp Cross, Tralee	272,140.67
170061	(Name & Address withheld for data protection purposes)			54,692.00
245332	O Grainne Teo	Michael	Ballyguin, Brandon	13,786.93
174660	O Mahony Machinery Hire Ltd		Lissanore, Castleisland	11,434.73
172477	(Name & Address withheld for data protection purposes)			29,294.35
452848	O Shea (Parcest Ltd)	(Name withheld for data protection purposes)	Glenbeg, Caherdaniel	16,129.79
234870	O Shea Plant Hire	(Name withheld for data protection purposes)	Ventry Road, Tralee	43,553.00
102798	(Name & Address withheld for data protection purposes)			53,070.91
179270	(Name & Address withheld for data protection purposes)			3,688.75

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176561	(Name & Address withheld for data protection purposes)			52,530.00
445522	(Name & Address withheld for data protection purposes)			19,910.20
119942	Q Plant Hire Ltd.		Dooneen, Caherciveen	35,017.83
167356	(Name & Address withheld for data protection purposes)			22,350.00
10870	Quirke & Sons Ltd	Michael F	Rangue, Killorglin	2,716.80
179350	Randles Brothers		Kilgarvan	24,677.00
434808	Randles Ltd	T & A	Kilgarvan	7,937.50
149333	Reidy Plant Hire	Patrick	Ballymacelligott	19,687.73
272140	(Name & Address withheld for data protection purposes)			87,080.32
	(Name withheld for data protection purposes)			
179494	t/a Brushcutters		Barrow, Ardfert	2,287.00
117558	(Name & Address withheld for data protection purposes)			6,798.64
102190	(Name & Address withheld for data protection purposes)			190,753.35
120903	(Name & Address withheld for data protection purposes)			32,222.76
173470	Stack Agri & Plant Hire	Eddie	Moyvane, Listowel	15,930.15
100221	TH Blennerhassett & Sons		Barrakilla, Tralee	9,526.06
179097	Tommy Finucane Haulage		Ballydesmond, Co Cork	120,513.30
33363	Trench Controls Ltd		Naas	15,284.73
179369	Walker Vehicle Rentals Ltd		Dublin 12	16,219.16
	Miscellaneous Payments under (€2,000)			
	(41 Suppliers)			26,687.36
34835	Collector General	Reverse Charge VAT (Approx)		392,000.00
	Total Payments 2010			5,016,120.57

Cllr. Cronin said that he appreciated the above reply and commented that 6 contractors had been paid in excess of €200,000. He said that he was aware that many small contracting businesses had been trying without success to have their names included on the Council's annual Plant Hire List. He said that following his successful request under the Freedom of Information Act to the Ombudsman & Information Commissioner, Ms. Emily O'Reilly, the same option was open to anybody to do likewise.

Cllr. Cronin also said that two of the biggest payments had been made to competitors of Kerry County Council, in the Waste Disposal business and asked for clarification on the type of service for which the payments were made.

Mr. Oliver Ring Director of Environment & Water Services advised that the payments to the waste disposal contractors were in respect of the transfer of waste from the transfer stations to North Kerry landfill and also the transport of recyclable waste collected at the Council's bring banks. Mr. Ring said that Kerry County Council was currently examining more cost effective methods for the transfer of waste.

7. Budget changes to Local Authority tenants purchasing their homes

Pursuant to notice duly given Cllr. Jim Finucane PROPOSED

That Kerry County Council in light of the budget changes to local authority tenants purchasing their homes would process the applications with the new increased allowances as soon as possible.

The following report issued:

It was the original intention of the DoEHLG that this new scheme, which was announced in the national budget in early December, would be commenced from the start of the new year. However the most recent advice we received from the DoEHLG was that the necessary regulations are currently being finalized and that it is expected that they would be completed and notified to local authorities before the end of this month.

We were advised that the intention is that the current arrangements will continue to apply in respect of intending applicants who are local authority tenants for up to 10 years i.e. up to 3% discount per year will continue to be available over a maximum 10 year period. The scheme announced in the Budget will most likely be a separate scheme, focusing on those with over 10 years tenancy with 3% discount per year available up to a maximum discount of 45%. The intention is that this new scheme will only be open to applications received before the end of 2011.

All tenants from whom tenant purchase applications are on hands or continue to be received which fall within this latter category have had their net sale price calculated in accordance with the scheme currently in operation. However they have also been advised of the benefit to them in awaiting the commencement of the new scheme because of the additional discounts which

may apply. As soon as the relevant regulations are notified to us by the DoEHLG we will contact all our tenants who would qualify for the extended discounts giving them the relevant details of the new scheme.

Cllr. Finucane welcomed this reply and said that tenant purchase applications should be processed in accordance with the scheme announced in the Budget as he was aware that there would be savings of between eight and eleven thousand euro for some tenants

Cllr. John Brassil asked if a first time buyers grant was still available to tenants.

Mr. John Breen Director of Housing & Community & Enterprise said that a directive from the Department regarding the scheme which was announced in the Budget was awaited. In the meantime the Council's Housing Department was advising tenants that a new scheme was to be introduced and when the relevant regulations are notified to the Council by the DoEHLG all tenants who would qualify for the extended discounts will be contacted and given the relevant details of the new scheme.

Cllr. Finucane PROPOSED that a letter would be written to the Department of the Environment, Heritage & Local Government from the members of Kerry County Council to advise that the delay with the commencement of the scheme was unacceptable.

9. Funding to carry out phase two of the improvement works on the Dale Road

Pursuant to notice duly given Cllr. Robert Beasley PROPOSED

That Kerry County Council seek immediate funding to carry out phase two of the improvement works on the Dale Road from Ballinclogher Cross to Abbeydorney

The following report issued:

The estimated cost to complete Phase 2 improvement works on the R556, Dale Road from Ballinclogher Cross to Abbeydorney is approximately €3 million. Funding for schemes of this nature is received under the Specific Improvement Grant from the NRA. The total allocation for the County under this allocation this year is €1.86 million. An allocation of €250,000 has been received for improvement works on the Dale Road this year and various improvement options are currently being investigated.

Cllr. Beasley said that the condition of this road had deteriorated considerably and asked that the Council would consider appealing to the NRA for the completion of Phase 2 improvement works on this stretch of road.

The Mayor, Cllr. Pat Leahy supported Cllrs. Beasley's proposal.

11. Encourage community groups to participate in the 2011 Spring Clean Campaign

Pursuant to notice duly given Cllr. John Brassil PROPOSED

That Kerry County Council would contact every community group in the County to encourage them to participate in the 2011 Spring Clean Campaign as the current level of road side littering is very unsightly and needs to be addressed by every community.

The following report issued:

The Community & Enterprise Department holds a Register of Community & Voluntary Groups in the County. The Department will undertake to contact all of the registered groups to highlight the Spring Clean 2011 initiative and to encourage participation.

Cllr. Brassil said that the level of roadside littering throughout the county had increased and asked that Kerry County Council would endeavour to get every local community group in the county involved in keeping their local area litter free. He also expressed concern about the amount of visible litter stuck onto hedges and roadside vegetation due to the lack of hedge cutting.

Cllr. Robert Beasley supported the Notice of Motion.

Cllr. Jim Finucane said that consideration should be given to the introduction of a levy on take away food and drink outlets as containers from such outlets were discarded indiscriminately thereby resulting in increased litter.

Mr. Oliver Ring Director of Environment undertook to refer this matter for discussion at the next meeting of the Environment SPC.

Cllr. John Brassil said that in Ballyheigue, plastic bags are distributed at the school and everybody does a thorough clean up of the area of approximately 100 yards on both sides of their house/property. It is not difficult to organise and everybody is involved.

13. Details involved in the tendering process for Kerry County Council contracts in Kerry.

Pursuant to notice duly given Cllr. Brendan Griffin PROPOSED

That Kerry County Council outline the details involved in the tendering process for Kerry County Council contracts in Kerry, state by whom, where and when tenders are opened, outline what measures Kerry County Council takes to ensure tender prices remain unknown until tenders are opened and if Kerry County Council is satisfied that no abuses of this system have occurred in the past.

The following report issued:

The Council's Tendering arrangements are governed by National Procurement Guidelines and EU Procurement Directives. These are very detailed.

The following is an outline of the Tendering process in Kerry County Council.

- ***Tenders are invited by the various departments usually through the e-tenders website.***

- ***Tenderers are requested to return their tenders to the S.E.O. Corporate Affairs by a specific date and time.***
 - ***The date and time the tender is received is logged in all cases.***
 - ***They are then placed in a locked cabinet until they are opened.***
 - ***All tenders are opened by the S.E.O. Corporate Affairs in the presence of a councillor, having got the approval of the full council to open same.***
 - ***Once the tenders are opened they are collected by the relevant department who then assess the tenders and proceeds to notify the successful tenderer.***
- Kerry County Council is satisfied with the integrity of its tendering process.***

The following Notice of Motion was moved by Cllr. Brendan Griffin on behalf of Cllr. Seamus Cosai Fitzgerald

15. Funding for the road which has fallen into the sea at Dooneen, Baile na nGall.

Pursuant to notice duly given Cllr. Seamus Cosai Fitzgerald PROPOSED

That Kerry County Council make a request to Roinn na Gaeltachta to provide funding for the road which has fallen into the sea at Dooneen, Baile na nGall.

The following report issued:

The road in question forms part of the slipway at Dooneen and following a recent inspection of the site it was noted that there was undermining of the concrete pavement, which resulted in a section of the pavement collapsing. Repair works were carried out from Kerry County Council's own resources. However, additional measures are required to prevent further scouring, in particular rock armour protection on the seaward side.

The Council does not have any funding for such coastal protection works and in recent years some limited funding for such measures has been provided by the OPW, subject to the scheme satisfying qualifying financial criteria and demonstrating value for money. The Council will also make an application to Roinn na Gaeltachta for funding.

16. Continuation of the free travel pass to tourists that are over 66 for the tourist season.

Pursuant to notice duly given Cllr. Norma Foley PROPOSED

That Kerry County Council support calls for the continuation of the free travel pass to tourists that are over 66 for the tourist season. This scheme brought thousands of visitors to Ireland last year and it is imperative that it continues for the 2011 season.

Mr. Ger O'Brien A/SEO Corporate Affairs said that this is a matter for consideration by the members.

Cllr. Foley said that she would like to see the continuation of this scheme.

Cllr. Jim Finucane SECONDED the Notice of Motion.

20. Resolve the issue which has arisen whereby the changing of PPS numbers by the Department particularly for women, can result in those people losing stamp entitlements which they have built up over their working lives when issued with new PPS numbers.

Pursuant to notice duly given Cllr. Brendan Cronin PROPOSED

To call on the Department of Social Protection to immediately resolve the issue which has arisen whereby the changing of PPS numbers by the Department particularly for women, can result in those people losing stamp entitlements which they have built up over their working lives when issued with new PPS numbers. I am requesting that all stamp entitlements put up under old PPS numbers should follow through automatically on the issuing of a new PPS number.

Mr. Ger O'Brien A/SEO Corporate Affairs said that this is a matter for consideration by the members.

Cllr. Robert Beasley SECONDED the Notice of Motion.

21. Recovering finance owed to Kerry County Council in respect of works at Inch and Knightstown.

Pursuant to notice duly given Cllr. Brendan Griffin PROPOSED

That Kerry County Council would state what progress has been made to date in 2011 in recovering finance owed to Kerry County Council in respect of works at Inch and Knightstown and state if the various Departments have agreed to meet with a delegation from Kerry County Council on the matter as per my motion of December 2010

The following report issued:

Kerry County Council received an allocation of €936,400 towards Knightstown Harbour Project from the Department of Community, Equality and Gaeltacht Affairs in late December. A request has been sent to the various Departments to meet a delegation from County Kerry in relation to funding but no response has been received as yet.

Cllr. Griffin asked that a reminder would be issued to the Department of Community, Equality and Gaeltacht Affairs regarding the request for a meeting with a delegation from Kerry County Council

The meeting concluded at 15.30 pm.

Gerard O'Brien
Meetings Administrator

Mayor of Kerry