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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 LUAIN 12 EANAIR 2015.**

**MINUTES OF THE SPECIAL PLANNING MEETING OF KERRY COUNTY  
COUNCIL HELD IN THE COUNCIL CHAMBER, ÁRAS AN CHONTAE,  
TRALEE ON MONDAY 12<sup>TH</sup> JANUARY 2015.**

**PRESENT/I LÁTHAIR**

**Councillors/Comhairleoirí**

R. Beasley	J. Brassil	M. Cahill
P. Connor-Scarteen	B. Cronin	J.J. Culloty
P. Daly	T. Ferris	J. Finucane
S. Fitzgerald	J. F. Flynn	N. Foley
M. Gleeson	D. Grady	D. Healy-Rae
J. Healy-Rae	N. Kelleher	M. Kennelly
S. Locke	P. McCarthy	T. McEllistrim
J. Moloney	N. Moriarty	D. Nolan
T. O'Brien	B. O'Connell	M. O'Shea
L. Purtill	D. Quigg	J. Sheahan
G. Spring	A. Thornton	

**IN ATTENDANCE/I LÁTHAIR**

Ms. M. Murrell Chief Executive	Mr. J.D. Flynn, Dir. of Corp. Servs.
Mr. M. McMahon, D. Job Creation/Sust. E.D.	Mr. C. O'Sullivan, Dir. Op., Health & S.
Mr. O. Ring, Director IW Operations	Ms. A. McAllen, Head of Finance
Mr. J. Breen, Dir. Sust. Comm./Q of L	Mr. P. Stack, SE Planning
Mr. G. O'Brien, Meetings Administrator	Mr. D. O'Malley, Sen. Exec. Planner
Mr. D. Burke, Assistant Planner	Ms. C. Fisher, Biodiversity Officer
Mr. E. Kelleher, Assistant Planner	Mr. L. Brosnan, AO Planning
Mr. P. Corkery, Press & Comm. Off.	Ms. B. Reidy, SSO Corporate Affairs
Ms. A. O'Sullivan, A.S.O. Planning	Ms. N. O'Connor, A.S.O. Planning
Ms. O. O'Shea, C.O. Corp. Affairs	

The meeting commenced at 10.35 am.

The Cathaoirleach, Cllr. J. Brassil took the Chair.

### **Members Duties under Ethics Legislation**

The Cathaoirleach said he wanted to remind members 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 councillors. 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 Cathaoirleach informed members that there could be no interaction with members of the public during the meeting.

#### **15.01.12.01 Consideration of the Chief Executive’s Report and Recommendations on submissions received on the proposed Material Amendments to the Draft Kerry County Development Plan 2015 – 2021**

Mr. M. McMahon informed the meeting that this is the final stage in the review of the County Development Plan, a process that commenced almost two years ago. All members received the Chief Executive’s Report and Recommendations on the submissions received on the proposed Material Amendments to the Draft Kerry County Development Plan 2015 – 2021. In accordance with the Planning & Development Acts Members have a period of 6 no. weeks to consider this Report. The Members, having considered the report and the amendments can make the Plan with or without the proposed amendments except where they decide to accept the amendments they may do so subject to any modifications to the amendments as they consider appropriate. A further modification can be made:-

- (a) where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site,
- (b) shall not be made where it relates to:-
  - (i) any increase in the area of land zoned for any purpose, or
  - (ii) an addition to, or deletion from, the Record of Protected Structures.

Because of the right of appeal to the Circuit Court against a recommendation to include a Right of Way in the Development Plan (21 day period) the Development Plan would not be adopted at that meeting. It is likely that the making of the Plan will be listed as an item on the Agenda for the February Ordinary Meeting of the Council.

Mr. McMahon then called on Mr. P. Stack to brief members on the Chief Executive's Report.

Mr. Stack informed Members that the Report is in 3 Parts (1) Submissions from Statutory Bodies, (2) General Submissions and (3) Rights of Way. Mr. Stack referred members to Page 6 of the Report for Written Submission No. S-1 from the Department of the Environment, Community and Local Government and he briefed them on it as follows:

**Written Submission No. S-1**

**Department of the Environment,  
Community & Local Government**

In general, the Department notes that the documentation provided is presented clearly and the Council is to be commended on this.

The Department welcomes the engagement by the Council with the NRA, in particular, with regard to the 'exceptional circumstances' on the lightly trafficked sections of the national secondary routes. However, it is considered that further discussion between the NRA and Kerry County Council is required to analyse the secondary roads including different sections of the routes, in order to come to an evidence-based decision on where the exceptional circumstances shall apply, in regard to the disputed routes (N69, N70, N72 Tralee-Killorglin and N86) which have different characteristics, appear to serve differing roles and pass through different types of terrain.

The Council should then bring forward a Variation of the Development Plan to reflect the agreed position in line with the Spatial Planning and National Roads Guidelines.

In the interim period the draft Plan wording in this section should reflect this required consultative approach with the NRA, the need for full and proper consideration of the issues, taking on board the advice of the NRA, and the provision of an evidence-based approach for the exceptional circumstances, in line with the criteria, to apply to the different sections of the national secondary roads, as appropriate.

The DoECLG comments on specific material alterations are as follows:-

**MA7-9 (Renewable Energy);** It is stated that while the issue raised is considered reasonable, no evidence is provided to demonstrate that all existing unimplemented windfarm permissions remain viable into the future. In the absence of such evidence either a reduction in the percentage approach

proposed or criteria based approach should be considered in relation to the granting of permission for wind farms into the future in these particular areas.

**MA8-2 (Fracking);** The County Council's policy approach regarding Fracking/Unconventional Gas Exploration and Extraction (UGEE) as set out in the amendments is considered to be premature pending the determination of EPA research into this topic and the formulation of Government policy in this area which is anticipated during the lifetime of the proposed Plan. The Council should consider the removal or appropriately amend the proposed policy on Fracking/Unconventional Gas Exploration and Extraction (UGEE), to more accurately reflect the current situation.

### **Chief Executives Response**

- In relation to the issue regarding the 'exceptional circumstances' on the lightly trafficked sections of the national secondary routes it is intended to engage further with the National Roads Authority and the Department of Environment, Community and Local Government regarding this in the future which may result in a variation to the County Development Plan. It is recommended to include a statement in Section 1.8 of the County Development Plan reflecting this.
- In relation to **MA7-9**; there are presently 114 wind turbines erected in the combined Tralee and Listowel Municipal Areas. There is "live" planning permission for an additional 133. Of these, there are 7 turbines permitted in Strategic areas and 20 in Open to Consideration area. The remaining 105 are permitted in areas no longer zoned for wind development following the adoption of the Renewable Energy Strategy.
- 120 (90%) of the 133 turbines would have to be erected prior to permission being granted in areas Open to Consideration. However it cannot be determined by the Planning Authority how many of these turbines will or can be erected. Given these figures, it is considered that it is unreasonable to include this objective as it is beyond both the developers and the Planning Authorities control to ensure that these developments will go ahead due to the influence of external factors including grid connections and network issues and the possible expiration of the permission. It is therefore considered prudent to omit this policy and objective.
- In relation to **MA8-2**; In view of the submission from the Minister it is recommended that the amendment be omitted.

### **Chief Executives Recommendation**

It is recommended to include the following text in section 1.8 of the Plan

**Spatial Planning and National Roads – Guidelines for Planning Authorities**

It is intended to engage further with the National Roads Authority and the Department of Environment, Community and Local Government regarding this in the future which may result in a variation to the County Development Plan.

It is recommended to omit MA7-9 from section 7.6.3 of the Development Plan.

It is recommended to omit MA8-2 from section 8.2 of the Development Plan.

Mr. Stack then referred members to Written Submission Nos. G-11 to G-20 on Pages 28 – 32 of the Report which also relate to Wind Energy. He briefed the meeting on these submissions as follows:

<b>Written Submission No.</b>	<b>G-11</b>	<b>Irish Wind Energy Association</b>
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The submission outlines Irish Wind Energy Associations (“IWEA”) role as Ireland’s leading renewable energy representative body and as such has an active interest in the potential for sustainable energy. It states that the IWEA is committed to promoting the use of wind energy in Ireland and beyond as an economically viable and environmentally sound alternative to thermal or nuclear generation and promotes awareness and understanding of wind power as the primary renewable energy resource.

The IWEA has concerns regarding the impact the new proposed changes will have on Kerry County Council’s ability to contribute towards the national renewable energy targets.

The IWEA wishes to remind Kerry County Council of Ireland’s need to support renewable energy which also stems from it’s EU commitments, namely EU Directive 2009/28/EC on the Promotion of Renewable Energy Sources Failure to meet these targets could result in EU sanctions.

The expansion of the Irish wind industry will be an extremely positive economic development for Kerry County Council and will result in greater grid security and stability, job creation, Local Authority rates and development contributions, lower energy prices and will bring about a reduction of Green House Gas emissions.

The IWEA comments on material alteration **MA7-9** are as follows –

- The IWEA would strongly ask to remove the amendment to Section 7.6.3 Renewable Energy.
- It is not reasonable to state 90% of the permitted turbines should be constructed prior to permitted further development; it may be unfeasible or unviable for many of these wind farms to proceed.

- It is wholly unreasonable to include this objective as it is beyond the developers control and indeed beyond the Planning Authorities control to ensure that 90% of these permitted developments will go ahead and it is strongly urged that the Planning Authority removes this addition to the objective.

In addition, a number of concerns are raised by IWEA regarding the Renewable Energy Strategy, the 8<sup>th</sup> variation to the County Development Plan 2009-2015.

### **Chief Executives Response**

In relation to MA7-9 see the response and recommendation in submission G-1.

The issues raised by IWEA regarding the Renewable Energy Strategy and the 8<sup>th</sup> variation to the County Development Plan 2009-2015 cannot be considered as they do not relate to proposed amendments on display.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

### **Written Submission No's. G-12 to G-18 (Names withheld for data protection purposes. A paper copy of the Minutes is available on request)**

The same submission was received from each of the above names. These submissions relate to renewable energy.

- These submissions are from landowners in the Ballylongford area of North Kerry.
- These submissions are opposed to the proposed material alteration. They have no objections to turbines in this region and indeed would welcome further development of wind farms in the area. These wind farms provide a source of income to farm families and individuals residing in the area.

This income is in turn spent in the local areas which further provide employment and benefit to the region.

- These lands are located in an area "Open to Consideration for wind energy development" in the Kerry County Council Renewable Energy Policy 2012. This designation means that any planning application for development in the future, it would be up to the planning authority to decide on any application on a case-by-case basis. This is considered fair.

- Should the Council agree to the insertion of the proposed material alteration, which prohibits any new planning applications or developments until 90% of all granted turbines are constructed, then it sterilises land from a wind energy perspective.
- It is stated that many permitted wind farms in Kerry at the moment may never be constructed due to the fact that no grid connection is available for these turbines. Ultimately it will be Eirgrid that will determine if these turbines are connected and constructed. This process could take another five years to determine.
- It is requested that the proposed amendments to paragraph 7.6.3 of the Draft County Development Plan 2015-2021 and to the amendments proposed to objective EP- 11 be removed.

### **Chief Executives Response**

In relation to MA7-9 see the Response and Recommendation in submission S-1.

**Written Submission No. G-19 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission relates to windfarm development in the Flemingstown, Annascaul area. It states that this area is an area of natural beauty. The valley and its slopes can be seen quite clearly from Annascaul pass, the N86 and surrounding hills, industrial turbines will have a negative impact on the area in general, affecting tourism in a bad way.

### **Chief Executives Response**

This does not relate to an amendment/material alteration to the Draft Plan and therefore cannot be considered.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

**Written Submission No. G-20 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission comments on section 7.6.3 of the Draft Plan relating to renewable energy. The comments on material alteration **MA7-9** are as follows:

- Allowing wind farms to be built in the area designated as Strategic in the 8<sup>th</sup> Variation will have a most serious negative effect on the existing tourism product and prospective tourism development, and quality of life in that part of the county.

- It is stated that this clause does not go far enough and should be restated to not allow any further wind farm applications within the entire county.
- It is submitted that County Kerry has already over contributed to the National Wind energy policy and MA7-9 needs to be amended to impose a total blanket ban on new windfarm applications, not only to protect the tourism potential of the entire county, but also to preserve the quality of life in rural Kerry.
- It is submitted that the analysis on North Kerry as contained in the Landscape Character Assessment as prepared as part of the 8th Variation are incorrect and consequently it is stated that the 8th Variation is founded on an incorrect LCA and needs to be officially withdrawn, together with the LCA, including the wind farm zonings contained therein.

### **Chief Executives Response**

In relation to **MA7-9** see the response and recommendation in submission S-1.

In relation to the Landscape Character Assessment and the 8<sup>th</sup> variation to the CDP 2009-15 these were not material alterations to the Draft Plan and therefore cannot be considered.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

The Cathaoirleach said the Chief Executive made three recommendations in relation to Submission S-1, the first of which was that there would be further engagement with the NRA and the DoECLG in relation to roads as set out in the blue text on Page 8 of the Chief Executive's Report. He asked members if they were in agreement with that recommendation.

Mr. McMahon said this recommendation does not mean an amendment to the Draft Plan as members already agreed to include roads where there was no agreement with the NRA. The Council already agreed 'exceptional circumstances' with the NRA but there was no agreement in relation to the N69, N86 and the N70 from Tralee to Killorglin. Where there was no agreement members agreed their own 'exceptional circumstances' in the Draft Plan. He had tried to arrange a meeting between Kerry County Council, the NRA and the Department of Environment, Community and Local Government and he was hopeful this meeting would take place shortly.

Cllr. D. Healy-Rae said members requested this meeting almost two years ago but unfortunately it did not take place. He was concerned for his constituents and the prospect of a variation to the County Development Plan at a future date is not



acceptable where farmer's sons and daughter's planning applications are delayed because of objections from the NRA.

On the PROPOSAL of Cllr. N. Kelleher, SECONDED by Cllr. M. Gleeson it was agreed that the additional text in blue on Page 8 of the Chief Executive's Report be adopted and included in the County Development Plan.

The Cathaoirleach referred members to the recommendation which reads as follows: "It is recommended to omit MA8-2 from section 8.2 of the Development Plan" and said this relates to fracking.

Cllr. M. Gleeson said he proposed that fracking would be prohibited in the Plan at an earlier meeting and it was unanimously agreed. Given the lack of knowledge on fracking and its possible implications for the environment, which maybe very serious, he thought it prudent to include this prohibition in the Plan. Members cannot impose fracking on the residents of the county and if the Government force the issue so be it. Where fracking has been carried out the impact has been serious and he would not support the inclusion of fracking in the Plan. He PROPOSED that fracking would be prohibited in the Plan.

Cllr. T. Ferris SECONDED this proposal and said fracking is a topical issue for years. As the Government has failed to deal with it they cannot fault Kerry County Council for including a prohibition on fracking pending the issue of guidelines by the Government.

Cllr. N. Foley supported this proposal and said members have one opportunity to state categorically they are opposed to fracking. This proposal was unanimously endorsed by Council and she supported its continued inclusion in the Plan.

Mr. G. O'Brien informed the meeting a vote would then be taken on Cllr. Gleeson's proposal as follows which was seconded by Cllr. Ferris:

*"That this Council having considered the Chief Executive's Report and Recommendations on submissions received in relation to the proposed material amendments to the Draft Kerry County Development Plan 2015 – 2021 hereby resolves that Amendment MA8-2 be included in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Connor-Scarteen, Cronin, Culloty, Daly, Ferris, Finucane, Flynn, Foley, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kelleher, Kennelly, Locke, P. McCarthy, McEllistrim, Moloney, Moriarty, Nolan, O'Brien, Quigg, Sheahan, Spring, Thornton, Brassil **(27)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. Cahill, Fitzgerald, D. McCarthy, O'Connell, O'Shea, Purtill  
**(6)**

The Cathaoirleach declared the proposal CARRIED.

The Cathaoirleach then referred members to the final recommendation which reads as follows:

"It is recommended to omit MA7-9 from section 7.6.3 of the Development Plan" and he said this relates to the wind farm policy."

Cllr. J. Moloney said in response to the Department of the Environment he PROPOSED that Objective EP11 be modified as follows: "Not to permit the development of windfarms in areas designated 'open to consideration' in the Tralee and Listowel Municipal Districts until 80% of the turbines with permissions in those areas, on the date of adoption of the Plan, have either been erected or the relevant permission has expired or a combination of both and the cumulative affect of all permitted turbines in the vicinity of the proposal has been fully assessed and monitored."

Cllr. T. Ferris SECONDED this proposal and said this is one section of the Plan where there can be no doubt there was public consultation on. She referred to the Chief Executive's response to Written Submission No. G-20 from (Name withheld for data protection purposes. A paper copy of the Minutes is available on request) which states "In relation to the Landscape Character Assessment and the 8<sup>th</sup> variation to the CDP 2009 -15 these were not material alterations to the Draft Plan and therefore cannot be considered". At a previous meeting she proposed that any negative reference in the Plan to the scenic value of North Kerry would be removed and at that time Management indicated that the Landscape Character Assessment was not part of the County Development Plan. If that is the case why does this response not say that, however if the Landscape Character Assessment does form part of the County Development Plan she PROPOSED that this amendment be included.

Cllr. J. Healy-Rae asked if Cllr. Moloney's proposal in relation to the Tralee and Listowel Municipal Districts would affect the rest of the county.

Mr. McMahon informed members that the amendment that went on public display, i.e. MA7-9 reads as follows: "*Due to the fact that planning permission for 402 turbines has been granted and 216 of them remain to be constructed, the majority of which are located in the Municipal areas of Tralee and Listowel the most densely populated rural area in western Europe, planning for*

*windfarms in areas open to consideration in the Tralee and Listowel Municipal Areas will only be considered when the areas designated as Strategic have been developed to their capacity and the effect of such development can be fully quantified or when existing turbines in the areas zoned as strategic are considered obsolete, and have been replaced due to technological advancements by modern turbines producing multiple outputs of energy in comparison to existing turbines.”* Mr. McMahon said the following objective is proposed in relation to Renewable Energy *“It is an objective of the Council: Not to permit the development of windfarms in areas open to consideration in the Tralee and Listowel Municipal Areas until 90% of turbines already granted permission have been constructed and the full impact of their presence can be assessed.”* Mr. McMahon said he wished to clarify in relation to the Landscape Character Assessment, it informs the Renewable Energy Strategy and does not form part of the County Development Plan. It is in effect a research document.

In light of this clarification Cllr. Ferris PROPOSED that management change the response to Submission No. G-20 as the response given appears to indicate that the Landscape Character Assessment forms part of the County Development Plan.

Mr. McMahon accepted this proposal.

The Cathaoirleach said it is proposed that amendment No. MA12-1 that went on display be retained in the Plan but modified in accordance with Cllr. Moloney’s proposal to modify Objective EP11.

Mr. McMahon said there was a separate amendment in relation to the landscape in North Kerry which reads as follows: *“It is considered that while the landscapes of South and West Kerry are universally considered as being among the most scenic landscapes in the Country from a tourist perspective, the landscape of the remainder of the County has also got significant tourism potential and needs to be protected from inappropriate developments which might detract from the landscape”.*

Mr. G. O’Brien said a vote would be taken on the following proposal by Cllr. J. Moloney which was seconded by Cllr. T. Ferris:

*“That this Council having considered the Chief Executive’s Report and Recommendations on submissions received in relation to the proposed material amendments to the Draft Kerry County Development Plan 2015 – 2021 hereby resolves that Objective EP11 be modified as follows: Not to permit the development of windfarms in areas designated ‘open to consideration’ in the Tralee and Listowel Municipal Districts until 80% of the turbines with permissions in those areas, on the date of adoption of the Plan, have either been erected or the relevant permission has expired or a combination of both and the cumulative affect of all permitted turbines in the vicinity of the proposal has been fully assessed and monitored.”*

The vote resulted as follows:

**For:** Cllrs. Beasley, Connor-Scarteen, Cronin, Culloty, Daly, Ferris, Finucane, Fitzgerald, Flynn, Foley, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kelleher, Kennelly, Locke, P. McCarthy, McEllistrim, Moloney, Moriarty, Nolan, O'Brien, Purtill, Quigg, Sheahan, Spring, Thornton, Brassil **(29)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. Cahill, D. McCarthy, O'Connell, O'Shea **(4)**  
The Cathaoirleach declared the proposal CARRIED.

The Cathaoirleach said in the past 12 months there was significant awareness of wind farm development and its impact on tourism and while members would have liked to review the Renewable Energy Strategy they were not permitted to do so by the Department. He asked that a letter would issue to the Department requesting that the new guidelines on the RES would issue as soon as possible. The Council is now far more aware of the need to have a policy in place and other issues also need to be addressed.

Cllr. T. Ferris said Cllr. Beasley suggested that a new Landscape Character Assessment could be compiled by the SPC and any wrongs could be made right at that time.

The Cathaoirleach supported this suggestion.

Mr. Stack then referred members to Pages 8 and 9 of the Chief Executive's Report for Written Submission No. S-2 from the Southern & Eastern Regional Assembly. He briefed them on it as follows:

#### **Written Submission No. S-2      Southern & Eastern Regional Assembly**

It is considered that the Local Authority has adequately addressed the majority of all recommendations provided under the SWRA submission.

It notes that Amendment **MA7-1** has included an objective to encourage an increase in non-car based transport within the County. However no specific targets have been provided as per Objective RTS 01 of the RPGs. It is recommended that the Draft Plan includes an objective that reflects the targets. It states that it would be beneficial to present the existing non car work related modal share within the Tralee/Killarney Hub, other main towns and rural areas if possible. This would provide a baseline from which progress towards the targets

identified under objective RTS 01 of the RPGs could be monitored. This would allow the direction and rate of change to be determined.

### **Chief Executives Response**

In relation to the above:- Objective RTS 01 of the RPGs states that *“It is an objective to encourage a 55% level of non car based transport within the Cork Gateway, Hubs and other main towns and a 20% level of non car based travel for journeys within rural areas of the region.”*

A 55% level of non car based transport is generally not being achieved within the county, including the Hub and main towns. This is being assessed by looking at car based transport. If <45% of commuters travel by car, then this would equate to >55% non car based transport. Only 8 EDs would exceed the 55% level of non car based transport. Tralee Urban is the only ED within the Hub area that exceeds 55% with the other 7 EDs in the western and southern parts of the county.

The Draft Kerry County Development Plan 2015-2021 supports the principles of sustainable transport, including the Government’s “Smarter Travel” policy. There are objectives contained within the Draft Plan (as amended) that:

- Support sustainable travel in the County and implement the key goals, targets and actions of Smarter Travel – A Sustainable Transport Future – A New Transport Policy for Ireland 2009-2020 and the “National Cycle Policy Framework.
- Encourage an increase of non-car based transport within the County.
- Promote the sustainable development of walking, cycling, public transport and other sustainable forms of transport such as car-sharing and car-pooling, as an alternative to the private car, by facilitating and promoting the development of necessary infrastructure and by promoting initiatives contained within “Smarter Travel, A Sustainable Transport Future 2009-2020”.

The later two objectives are proposed amendments. It is felt that the objectives as outlined address the issue of sustainable transport sufficiently within the County.

Kerry County Council was successful in securing funding under the latest round of funding for Smarter Travel /Active Travel Towns for Tralee. As part of this €1.3 million is allocated to implement smarter travel measures to;

- Create safer walking and cycling routes through the provision of high quality infrastructure.
- Reduce the need for short distance car journeys.

- Provide sustainable travel links to schools, colleges, places of employment, amenity and leisure facilities.

It is considered prudent that an objective regarding workplace travel plans should be incorporated into the Plan.

**Chief Executives Recommendation**

*It is recommended that an additional objective should be included in section 7.2 of the Plan.*

*Facilitate the development of workplace travel plans.*

Cllr. D. Healy-Rae asked if people in rural areas are being asked to walk to the shops and said unfortunately there is very little public transport in many rural areas. In some rural areas the school bus service is curtailed and parents must drive their children to school.

Mr. P. Stack said this sets out a realistic enough approach whereby people try, at times, to get different methods of travel and he was not suggesting that people give up their cars. It is proposed to include the blue text to facilitate the development of workplace travel plans and this would include car pooling or people might have the option of cycling short journeys to work.

Cllr. M. Gleeson said he walked the N22 the previous day and the surface is unfit for cycling. It is unreasonable to expect people to cycle roads that are in such a bad state of repair.

Cllr. S. Locke asked if this relates to the Town Plan in relation to pedestrian and cycle ways.

Mr. McMahon said it does not relate to the three former Town Council areas.

Cllr. S. Locke said there are a number of cycleways in place but penalty points are not given to those who park on them.

Cllr. P. Daly said additional cycle / walkways should be provided in Tralee.

Cllr. J.F. Flynn agreed with the views expressed by Cllr. D. Healy-Rae in relation to buses. More walking routes are being provided but when he raised an issue in relation to footpaths he did not get a favourable response.

On the PROPOSAL of Cllr. M. Gleeson, SECONDED by Cllr. S. Locke it was agreed to adopt the Chief Executive's recommendation in relation to Submission S-2.

Mr. Stack then referred members to Pages 10 and 11 of the Chief Executive's Report for details of Submission No. S-3 from the National Roads Authority and he briefed them on it as follows:

**Written Submission No. S-3**

**National Roads Authority**

This submission notes that the Authority is seriously concerned that the text in the Draft Plan relating to Access onto the N69, N70 (Tralee/Kilorglin), N72 and N86 in Section 7.2.1 remains in the proposed plan and has not been subject to any revision to ensure compliance with the DoECLG Spatial Planning and National Roads Guidelines.

The evidence base provided to support exceptions to the general restriction on access to the N69, N70 (Tralee/Kilorglin), N72 and N86 does not satisfy the requirements of Section 2.6 of the DoECLG Spatial Planning and National Roads Guidelines. The Authority remains of the opinion that the proposed exceptions are not in accordance with the DoECLG Guidelines and the Authority does not support their inclusion in the Development Plan and should be removed.

The Authority acknowledges the recommendations outlined in the Chief Executives Report on Submissions received in relation to the Draft Plan in this regard and notes also the observations of the Department of Environment, Community and Local Government.

The NRAs comments on specific material alterations are as follows:-

- Proposed Amendment **MA5-5** (Adventure Tourism) and **MA5-6** (Greenways)  
The Authority notes the proposed amendments supporting the provision of links and greenways at various locations in the County. The Authority recommends that such schemes should be developed complementary to safeguarding the strategic function and safety of the national road network and be in accordance with the provisions of official policy.
- Proposed Amendment **MA5-9** (Wild Atlantic Way)  
The Authority recommends that the provision of any works to give effect to the new proposed objective, where such works have an interface with the national road network in the area, and where such works are developed having due regard to the safety of all road users and should be subject to a Road Safety Audit as appropriate.
- Proposed Amendments **MA4-9** & **MA4-10** (Economic Development) and **MA6-2** (Retail)  
The Authority requests the inclusion of a cross reference between policy on access to national roads and development categories that may generate a demand for access to national roads, such as Retail Development in the Rural Countryside (Section 6.9), Extractive Industries (Section 8.2), etc.

In addition, it is requested that Objective ES-26 would include an additional bullet point requiring proposals to be in accordance with the DoECLG Spatial Planning and National Roads Guidelines (2012) and Section 13.2 of the Draft Plan concerning access to national roads.

- Proposed Amendment **MA7-2** (Obj RD-13 National Roads)  
The Authority acknowledges the proposed amendment to Objective RD-13, and highlights a recent update to the NRA Traffic & Transport Assessment Guidelines in 2014.

### **Chief Executives Response**

In relation to the issue regarding the 'exceptional circumstances' see the response and recommendation to submission G-1.

In relation to the proposed Amendment **MA5-5**, **MA5-6**, **MA5-9** and **MA7-2** the NRAs comments are noted.

In relation to proposed Amendments **MA4-9**, **MA4-10** and **MA6-2** it is considered that the wording of the objectives is appropriate.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

Cllr. J. Healy-Rae said at the outset members wanted to ensure that people living on family farms would be granted access onto national roads i.e. the Ring of Kerry. The NRA objected to An Bord Pleanála on occasion where a person proposed to use an existing entrance. He referred to proposed Amendments MA4-9, MA4-10 and MA6-2 and asked if these will have an adverse impact on businesses. If these are included the NRA must be consulted when there is increased access onto a national road.

Cllr. P. McCarthy said since 1973 Ireland has been pleading special cases for funding with the EU where funding would not otherwise be available. Generally we have been very successful in this. It is not acceptable that a rule or law would be implemented where special circumstances would not be provided for. He acknowledged the assistance given to members by the Planning Department in trying to include special circumstances.

Cllr. M. Cahill referred to the proposed Greenway in South Kerry and asked that every effort would be made to ensure this project is completed as it is critical for the county. It would be helpful if the Council agreed to make annual payments to the landowners involved. The sons and daughters of landowners who propose to build a house on a road that leads onto the Ring of Kerry are being refused permission even though there is no accident history on the road. It is unfair as many of these always lived at home and the proposed development would not result in an increase in traffic.



Mr. McMahon pointed out there are no 'exceptional circumstances' in the current County Development Plan and all planning applications are being dealt with under the current Plan. However, 'exceptional circumstances' are provided for in the new County Development Plan and agreement was reached with the NRA to include the Ring of Kerry road with the exception of the section of this road from Tralee to Killorglin.

Cllr. D. Quigg said he understood when the NRA makes an observation; planners are not bound by it and can make their own decision.

Mr. McMahon said the NRA can lodge an objection to a planning application and they have appealed decisions to An Bord Pleanála where they state that the planning authority does not have regard to their objections. Where the NRA appeals the planning authority's decision to An Bord Pleanála they had previously lodged an objection to the application.

Cllr. D. Grady said the NRA has no greater entitlements than any member of the public.

Mr. McMahon pointed out that the NRA is a statutory body and the planning authority is obliged to notify them of certain applications.

Cllr. J. Healy-Rae said it should not require 'exceptional circumstances' for a landowner's son or daughter to get permission. He asked for a definition of 'exceptional circumstances'.

Mr. McMahon said there are national guidelines in relation to access to national primary and national secondary roads which state there should be no new accesses onto these roads. The 'exceptional circumstances' allow an exception to this requirement.

Cllr. J. Healy-Rae PROPOSED that each planning application on a national secondary road would be dealt with on its merits and a decision taken as it was prior to the involvement of the NRA. He asked if this could be implemented. Kerry has much more of the national secondary road network than any other county.

Mr. Stack again outlined the criteria for 'exceptional circumstances' and he also stated that the national guidelines do not permit new entrances onto a national road. As long as an application satisfies the criteria for exceptional circumstances permission can be granted.

On the PROPOSAL of Cllr. B. Cronin, SECONDED by Cllr. J. Finucane it was agreed to adopt the Chief Executive's recommendation in relation to Submission No. S-3.

Mr. Stack then referred members to Pages 11 to 13 of the Chief Executive's Report for details of Submission No. S-4 from the Environmental Protection Agency and he briefed them on it as follows.

**Written Submission No. S-4**

**Environmental Protection Agency**

The Agency acknowledges that many of the issues raised in its submission on the Draft Plan and associated SEA Environmental Report, have been taken into account in the Proposed Material Alterations to the Draft Kerry County Development Plan 2015-2021.

The EPAs comments on specific material alterations are as follows –

- **MA 2-1** (Core Strategy), *It is suggested that when preparing the proposed economic and community plan (by 2015), the requirements of the SEA, Habitats and Floods Directives should be taken into account.*
- *The inclusion of a specific objective on the Shannon Integrated Framework Plan (SIFP) is welcomed. A stronger commitment should be included to implement the relevant recommendations (including SEA and AA related mitigation measures) of the SIFP. This is relevant in ensuring the protection of the significant environmental resources within the Shannon Estuary in promoting the development of the strategic development locations (SDLs) at Tarbert Power Plant and Tarbert - Ballylongford Land Bank.*
- **MA4-12** (Agriculture), the following proposed highlighted rewording is suggested (in blue):

*“Support the agricultural sector in meeting its Food Harvest 2020 targets in a manner that is sustainable ~~having due regard to~~ while ensuring that the objectives, policies and standards of this Plan, particularly as they relate to water quality and the Natural Environment are adhered to.”*

- **MA8-7** (Forestry) is noted. The Agency recommends the inclusion of a commitment to protect designated habitats and species and also to ensure high status water bodies are not compromised. We suggest that a recommendation be included to integrate Draft National Forestry Programme and also the second cycle of WFD RBMPs and forestry related programme of measures.
- **MA 10-1** (Green infrastructure) is welcomed and recommends that a stronger time bound commitment be given for the preparation of such a plan/strategy given the significant environmental and heritage resources within the County, which should be protected and incorporated into land use and non-land use planning.

- *MA10-8 is acknowledged, it is suggested that the role of riparian zones in relation to flood risk management should also be highlighted.*

### **Chief Executives Response**

- In relation to the proposed Economic & Community Plan, the Council will fully assess the proposed plan and will comply with all guidelines and directives during its preparation.
- In relation to the SIFP, it is considered that the existing objectives ES-21 and ES-22 are sufficient. The latter already states that the Council will take cognisance of the environmental reports.
- *In relation to MA4-12, it is considered appropriate to amend the objective accordingly.*
- *In relation to MA8-7, it is considered that the proposed objectives are sufficient and adequately addresses adherence to a range of measures to protect the environment from forestry*
- *In relation to MA10-1 the Council are committed to the preparation of a County Heritage/Biodiversity plan and Green Infrastructure Plan as resources permit.*

### **Chief Executives Recommendation**

*It is recommended to amend the additional objective in section 4.8.1 to read as follows;*

*“Support the agricultural sector in meeting its Food Harvest 2020 targets in a manner that is sustainable ~~having due regard to~~ while ensuring that the objectives, policies and standards of this Plan, particularly as they relate to water quality and the Natural Environment are adhered to.*

Cllr. T. Ferris PROPOSED that as the original wording was sufficient the Chief Executive's recommendation would not be adopted. The changes recommended take away any flexibility and she PROPOSED that the original wording would be retained.

Cllr. R. Beasley SECONDED this proposal.

Cllr. J. Finucane said the Minister said consideration should be given to alternative power sources and that is why Tarbert Power Plant and Landbank are so important. It is critical that the emphasis on the landbank is maintained for Shannon LNG. The EU is prepared to fund a Bord Gáis development in Scotland rather than the Shannon LNG project in Ballylongford. He PROPOSED that a strong statement of support for the landbank would be included in the County Development Plan.

Cllr. P. McCarthy SECONDED this proposal.

The Cathaoirleach said Cllr. Ferris proposed that the wording would not be amended as recommended by the Chief Executive and he asked if members were in agreement with this proposal.

Cllr. P. McCarthy asked if there was any particular reason why members should accept the proposed wording.

In response Mr. McMahon said it would be acceptable if members wanted to retain the original wording.

Mr. O'Brien said a vote would be taken on the following proposal made by Cllr. Ferris which was seconded by Cllr. Beasley.

*"That this Council having considered the Chief Executive's Report and Recommendations on submissions received in relation to the proposed material amendments to the Draft Kerry County Development Plan 2015 – 2021 hereby resolves that the amendment MA4-12 that went on public display in relation to Objective ES-28 be adopted."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Cronin, Culloty, Daly, Ferris, Finucane, Flynn, Foley, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kelleher, Kennelly, Locke, P. McCarthy, McEllistram, Moloney, Moriarty, Nolan, O'Brien, O'Connell, O'Shea, Purtill, Quigg, Sheahan, Spring, Thornton, Brassil **(30)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. Connor-Scarteen, Fitzgerald, D. McCarthy **(3)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack then referred members to Pages 13 and 14 of the Chief Executive's Report for details of Submission No. S-5 from the Office of Public Works and he briefed them on it as follows.

**Written Submission No. S-5**

**Office of Public Works**

This submission's comments are as follows –

- It welcomes the inclusion of many of the OPW comments sent 22<sup>nd</sup> April 2014 including objective NE-63 which has regard to CFRAM and ICPSS studies and reports.

- It recommends that reference/text is made Re. the Planning Guidelines Sequential Approach and where applicable Justification Test to each specific zoned area contained within this Plan.
- It recommends that all the collated flood risk information is placed together in order to provide a readily demonstrated complete Stage 1 FRA.
- It is recommended that all the applicable flood risk information is collated to provide a readily demonstrated stage 2 FRA.

### **Chief Executives Response**

The points made by the OPW are generally accepted and it is recommended that modifications to the proposed material alterations to the Draft Kerry County Development Plan (CDP) 2015-2021 and the related Strategic Flood Risk Assessment (SFRA) be undertaken.

It should be noted that the flood maps contained in appendix 2 of the SFRA as modified at material alteration stage and included in S.4 of the SFRA addendum document were built upon using more up to date data, including ICPSS coastal flood risk data.

In addition, it should be noted that only a strategic level FRA was required as part of this County Development Plan preparation process. The requirement for more detailed assessments (including site investigations, as necessary) at the local area plan preparation stage and the planning application stages is clearly set out within Chapters 10 and 13 of the Draft Plan and the accompanying SFRA. No LAP was prepared as part of this CDP preparation process, while the only specific development land zoning proposed relates to the Tarbert / Ballylongford Industrial Landbank for which a stage 2 SFRA was prepared.

### **Chief Executives Recommendations**

#### **Proposed amendment number MA4-7;**

It is recommended that the following text shown **Blue** be inserted into Section 4.7 (pg 56):- **For the most part the Tarbert / Ballylongford landbank is located outside of known flood risk areas and therefore is appropriately zoned. Notwithstanding this, development proposals will be required to be supported with detailed site level flood risk assessments, as appropriate in order to ensure that the overall landbank resource is protected and developed in a sustainable manner.**

**A small portion of the overall landbank is deemed to be located within Flood Zone B for which a Justification Test was carried out and passed as per Table 3.2 of the DEHLG guidelines on Flood Risk Management. Accordingly this area is deemed to be a zoned area pending a Site Specific Flood Risk Assessment at development consent stage.**

## **Recommended modifications to the SFRA**

- It is recommended that the following text be inserted in the map title blocks in Appendix 2 of the SFRA as follows:-

MAP 1: Indicative\* Flood Zone A and Potential Pluvial Flood Risk areas for the Tarbert / Ballylongford landbank Industrial Zoning ([incorporating ICPSS data](#)).

Map 2: Indicative\* Flood Zones A + Flood Zone B and Potential Pluvial Flood Risk areas for the Tarbert / Ballylongford landbank Industrial Zoning ([incorporating ICPSS data](#)).

- The draft plan SFRA and the Addendum document to be collated so as to place all available flood risk information together in order to provide a readily demonstrated complete FRA for the Kerry County Development Plan 2015-2021.

Cllr. J.F. Flynn referred to Incharee and Cromane which are areas at risk of flooding and said no one is taking responsibility for them. Originally the Land Commission was responsible for the maintenance of the embankment in these areas and he asked if they could be included with Castlemaine Harbour.

Cllr. D. Healy-Rae acknowledged that CFRAM has taken place and he asked could anything be done for the 14 families in Foiladown who were marooned in their homes on several occasions in 2014 as a result of flooding and again the previous week. If they require emergency services it would not be possible to get to them if the road is flooded.

Cllr. M. Cahill also referred to Incharee and Cromane and said they are two critical areas in Kerry as family homes are in danger of being flooded again. There will be high tides on a few occasions this year and the residents are concerned their homes will be flooded again. He asked that funding would be identified to assist these residents in protecting their homes. He asked that these two areas would be top priority for the Council in 2015.

Cllr. D. Quigg said planning permission was granted at Incharee therefore someone must take responsibility for this area. There is a duty on some public body to protect these residents.

Mr. Stack said the points raised relate to specific locations. The CFRAM study is being carried out at present and Kerry County Council is involved and he hoped that study would address these issues.

The Chief Executive said these two areas will be addressed in the CFRAM Study and the Council is aware of the residents concerns. However the County Development Plan is a separate process.

The Cathaoirleach PROPOSED that the additional text in blue in the Chief Executive's recommendation in relation to the Tarbert Ballylongford landbank be adopted.

Cllr. T. O'Brien SECONDED this proposal and it was unanimously agreed.

On the PROPOSAL of Cllr. J. Moloney, SECONDED by Cllr. J. Sheahan it was agreed to adopt the recommended modifications to the SFRA as set out at the end of Page 14 of the Chief Executive's Report.

Mr. Stack referred members to Page 15 of the Chief Executive's Report for details on Submission No. S-6 from An Taisce and he briefed them on it as follows.

**Written Submission No. S-6**

**An Taisce**

This submission notes that:

The proposed Amendments/Material Alterations to the Draft Kerry County Development Plan 2015-2021 are, in the main, very suitable and will provide valuable control measures to ensure the proper planning and development of the county.

The main concerns outlined in the submission are with the proposals to delete, or amend, some of the Rights of Way.

**Chief Executives Response**

In relation to the above the Public Rights of Way are discussed in more detail in Part 3 of this report.

**Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. T. O'Brien, SECONDED by Cllr. M. Gleeson it was agreed to adopt the Chief Executive's recommendation in relation to this submission.

Mr. Stack referred members to Pages 15 of the Chief Executive's Report for details of Submission S-7 from Dublin Airport Authority and he briefed them on it as follows.

**Written Submission No. S-7**

**Dublin Airport Authority**

The DAA has no comment to make on the Amendments/ Material Alterations.

On the PROPOSAL of Cllr. M. Gleeson, SECONDED by Cllr. J.J. Culloty it was agreed to note Submission S-7.

Mr. Stack referred members to Pages 15 and 16 of the Chief Executive's Report for details of Submission No. S-8 from Eirgrid and he briefed them on it as follows.

**Written Submission No. S-8**

**Eirgrid**

This submission's relates to **MA7-8** (Energy & Power), and suggests an amendment to objective EP-8 (pg 122) as follows;

*Ensure that the siting of electricity power lines is managed in terms of the physical and visual impact of these lines on both the natural and built environment, the conservation value of Natura 2000 sites and especially in sensitive landscape areas. When considering the siting of powerlines in these areas the main technical alternatives considered should be set out, with particular emphasis on the undergrounding of lines, and the identification of alternative routes. ~~priority will be given to undergrounding where appropriate or the selection of alternative routes, where it can~~ should be demonstrated that the development will not have significant, permanent, adverse effects on the environment including sensitive landscape areas and the ecological integrity of Natura 2000 sites*

**Chief Executives Response**

In relation to the above, the Council has no objection to the proposed minor alteration regarding technical alternatives at appropriate locations.

**Chief Executives Recommendation**

It is recommended that objective EP-8 be amended to read as follows;

Ensure that the siting of electricity power lines is managed in terms of the physical and visual impact of these lines on both the natural and built environment, the conservation value of Natura 2000 sites and especially in sensitive landscape areas. When considering the siting of powerlines in these areas the main technical alternatives considered should be set out, with particular emphasis on the undergrounding of lines, and the identification of alternative routes at appropriate locations. It should be demonstrated that the development will not have significant, permanent, adverse effects on the environment including sensitive landscape areas and the ecological integrity of Natura 2000 sites.

Cllr. M. Gleeson said one of the great movements over the past 40 years is the Tidy Towns Committees who have enhanced the appearance of towns and villages. However, the presence of overhead powerlines continues to be an issue for them. He asked when footpaths are being replaced that the overhead powerlines would be put under ground. Windfarms are being developed and connections made to the national grid. It is imperative, if possible, that the lines would be put underground. In Clonkeen large power lines were erected over the hill. At the time he approached the Planning Department about this and he was informed that this was acceptable as the lines would be going through forestry. In the meantime some of the forestry was cut and the sagging power lines coming down the hill are deplorable. Cllr. Gleeson asked that this would never again be allowed to happen.



Cllr. D. Nolan expressed concern at the additional text being added as set out in blue on Page 16 which reads “When considering the siting of powerlines in these areas the main technical alternatives considered should be set out, with particular emphasis on the undergrounding of lines, and the identification of alternative routes at appropriate locations.” She PROPOSED that the word ‘with’ would be omitted and that the following text in the amendment would be retained “where it can be demonstrated”.

Cllr. T. Ferris SECONDED this proposal.

Cllr. J.J. Culloty said whether power lines are undergrounded or not is down to cost but it can be done. The Plan should state where possible powerlines will be undergrounded as it would benefit the appearance of the county.

Cllr. B. Cronin supported the proposal in relation to the undergrounding of power lines. He was concerned regarding the location of the powerlines. Last year following the storms there was chaos as some powerlines went through forestry and the space allowed for the lines was inadequate. As a result trees were knocked and the lines were damaged and people were left without power for 7 or 8 days. He asked if the County Development Plan could include a stipulation that adequate space would be left in forestry for power lines.

Cllr. S. Locke supported the views expressed by previous speakers in relation to the undergrounding of powerlines. Where powerlines go through forestry there can be severe difficulty when 60ft or 70ft trees fall on the powerline. He said powerlines should be put underground if at all possible.

Cllr. M. O’Shea said in the past overhead lines were undergrounded in towns and villages in association with the Development Companies. He asked if that funding is still available and if it is he asked that it would be utilised.

Mr. P. Stack requested clarification on Cllr. Nolan’s proposal.

Cllr. Nolan said she wanted the original wording in the amendment to be retained.

Cllr. D. Healy-Rae asked if this will result in additional cost for a person building a home. This should not be a requirement for a single house.

Mr. Stack said this amendment relates to extensive lines and will not affect one off houses.

Mr. McMahon said planning agrees with the submission that in some areas undergrounding of power lines is not the answer as it will impact on the environment.

Cllr. N. Kelleher PROPOSED that the Chief Executive’s recommendation be adopted.

Cllr. B. Cronin SECONDED this proposal.

Cllr. Ferris said the recommendation states “It **should be** demonstrated that the development will not have significant, **permanent**, adverse effects on the environment” and she asked if it can be proven that there would be adverse effects would that be acceptable.

Mr. McMahon said this relates to loss of habitat.

Cllr. Ferris asked what would be considered a permanent effect on a habitat.

Mr. McMahon said it means loss of a habitat.

Mr. O’Brien said a vote would be taken on the following proposal made by Cllr. Nolan which was seconded by Cllr. Ferris.

*“That this Council having considered the Chief Executive’s Report and Recommendations on submissions received in relation to the proposed material amendments to the Draft Kerry County Development Plan 2015 – 2021 hereby resolves that in relation to Objective EP-8, Amendment MA7-8 that went on display be adopted.”*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Daly, Ferris, Flynn, Grady, D. Healy-Rae, J. Healy-Rae, Locke, Nolan, O’Shea, Quigg **(12)**

**Against:** Cllrs. Cronin, Culloty, Finucane, Fitzgerald, Foley, Gleeson, Kelleher, Kennelly, P. McCarthy, McEllistram, Moloney, O’Brien, Spring, Thornton, Brassil **(15)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. Connor-Scarteen, D. McCarthy, Moriarty, O’Connell, Purtill, Sheahan **(6)**

The Cathaoirleach declared the proposal DEFEATED.

Mr. O’Brien informed the meeting that a vote would then be taken on Cllr. Kelleher’s proposal as follows which was seconded by Cllr. Cronin.

*“That this Council having considered the Chief Executive’s Report and Recommendations on submissions received in relation to the proposed material amendments to the Draft Kerry County Development Plan 2015 – 2021 hereby resolves that the Chief Executive’s recommendation in respect of Amendment No. MA7-8 in relation to Objective EP-8 be adopted.”*

The vote resulted as follows:

**For:** Cllrs. Cahill, Cronin, Culloty, Finucane, Fitzgerald, Flynn, Foley, Gleeson, Grady, J. Healy-Rae, Kelleher, Kennelly, P. McCarthy, McEllistram, Moloney, O’Brien, O’Shea, Spring, Thornton, Brassil **(20)**

**Against:** Cllrs. Beasley, Daly, Ferris, Locke, Nolan, Quigg **(6)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. Connor-Scarteen, D. Healy-Rae, D. McCarthy, Moriarty, O'Connell, Purtill, Sheahan **(7)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Pages 16 and 17 of the Chief Executive's Report for details of Submission No. S-9 from the ESB. He briefed them on it as follows.

**Written Submission No. S-9**

**ESB**

This submission relates to **MA7-8** (Energy & Power). The ESB acknowledges and supports this amendment, which proposes a minor change to Objective EP-8.

- ESB strongly welcomes proposed amendment **MA7-1** (Sustainable Transport) promoting the use of Electric Vehicles and EV infrastructure. It requests that Kerry County Council strengthen their support for the roll-out of EV infrastructure by amending section 13.5 of the Draft Plan with the inclusion of additional parking standards for EV infrastructure.
- ESB supports proposed amendment **MA7-7** (Deletion of 1km rule) to Telecommunications Policy that removes the requirement for a 1km separation distance between masts and residential properties, schools, hospitals etc. The proposed deletion is consistent with the objectives of Circular Letter PL 07/12 from the Minister of Communications, Energy and Natural Resources.

**Chief Executives Response**

In relation to MA7-8, see the response to submission S-8. In relation to MA7-1, it is considered that the parking standards in the Plan are sufficient and it is not necessary to include additional parking standards for EV infrastructure in section 13.5. The Plan has included additional text and objectives regarding Smarter Travel.

**Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

Cllr. D. Healy-Rae PROPOSED that the 1km rule would be reinstated in the County Development Plan to ensure the safety of children, teachers, parents and patients in schools, hospitals and in residential areas. There are many vantage points in the county but for economic reasons telecommunication companies want to locate masts near schools, residential areas etc. There are so many people affected by cancer that he wanted to err on the side of caution.

Cllr. T. Ferris **SECONDED** this proposal.

Cllr. N. Kelleher said he spoke strongly on this issue when it was discussed previously. He was opposed to Cllr. D. Healy-Rae's proposal and he supported the proposal that the Planning Authority would show due deference to individual residents, communities, institutions and the amenities in dealing with telecommunication mast applications. Cllr. Kelleher expressed concern that the reinstatement of the 1km rule would have an adverse economic impact on the county. When IBEC attended a Council meeting members complained about the lack of an adequate broadband service in the county but now they want to reinstate the 1km rule and this does not make sense. There is no evidence that masts or antennae cause cancer and members are being emotive. The county urgently needs an adequate broadband service to support the people living in the county.

Cllr. M. Gleeson said this matter presents members with an almost insoluble dilemma; the dilemma between possible long term health damage and the reality of individual and economic isolation. He spent much time in the Chamber seeking to highlight the very real isolation of our county both socially and economically because of the deplorable roads into Kerry. That isolation is causing real hardship and economic depravation for our people and is without doubt being deliberately inflicted on us by our 'East Coast Betters'.

The best means of overcoming that isolation is through the most up to date telecommunications. The existing 1 Kilometer rule is isolating people and is impacting adversely on the overall economy of Kerry and he had no doubt about that. On the other hand he had a rather large file from an individual who is affected, or maybe more correctly afflicted most desperately by the emissions from electronic gadgetry, from the mobile phone to television to Wi-fi. He asked how he was expected to rationalize that conundrum.

There has not been any other item over the past ten years that has so exercised his mind and each time a vote has arisen he has been torn and he was aware that it has been the same for many other members. To-date he has always, whether rightly or wrongly, voted for the retention of the 1km clause. However, he was not sure that he could continue to do so. To always give precedence to the hypothetical possibility of psycho-physiological damage to individuals over the very real reality of individual and economic isolation is becoming ever more difficult to justify.

If members are in earnest firstly about eliminating individual and community isolation and secondly about advancing the seriously depressed economy of Kerry they must seek to ensure that the very best methods of national and international communications are available to everyone. That is why members continue to fight for the best possible broadband. That is why members continue to fight for proper access roads and that is why Kerry needs the best possible

telecommunications for all. To achieve this we need Masts, because as of now there is no other way available. Cllr. Gleeson said maybe a compromise could be achieved and that a clause stipulating a 500m distance for masts from schools, homes, hospitals etc could be agreed. In conclusion Cllr. Gleeson PROPOSED that a 500m restriction would be considered between telecommunication masts and schools, residences, hospitals etc.

Cllr. D. Grady said he spoke with people who live within 1km of a mast and they are very badly impacted by it. It is easy for people who do not live near a mast to support the abolition of the 1km rule but we must protect our citizens. Cllr. Grady said he was in favour of the retention of the 1km rule.

Cllr. T. Ferris said the first meeting of Kerry County Council that she attended was in relation to the review of the County Development Plan and from that meeting till now the issue of the 1km rule has been debated. Management is proposing there would be no restriction on the siting of masts on the grounds that (1) Bord Pleanála are overturning these decisions so it is not having any effect and (2) by having the 1km rule in place it is hampering the roll out of rural broadband. She said these are mutually exclusive. Cllr. Kelleher took issue with those who say masts impact on those living close by but on the other hand he said there is no medical evidence available. The problem is with having antennae located near schools, homes, hospitals etc and it is not right to impose them on a community. She accepted that Bord Pleanála granted permission for masts that were refused by Kerry County Council. In the past members were told the planning authority does not request further information as the application will be refused because of the 1km rule. She believed when further information is not requested there will be issues immediately. Kerry is at a huge disadvantage in comparison to other counties but not because of the 1km rule and if she believed the removal of the 1km rule would make a difference she might reconsider her position. It was made clear to the Council that the service providers will not invest in unprofitable areas. She lives less than 2km from a mast yet she has no coverage at home. She tried four service providers and Eircom was the only Company that could provide her with a service. Cllr. Ferris appealed to members not to be tempted to vote in favour of the removal of the 1km rule on economic grounds as Telecommunication companies will only invest in areas that are profitable and she would prefer to err on the side of caution.

Cllr. J. Finucane said he proposed the removal of the 1km rule because as a mechanism it has failed. Almost 100% of applications refused by Kerry County Council were appealed to An Bord Pleanála and were subsequently granted. The 1km rule has not allowed planners to give detailed consideration to applications for masts and the removal of the 1km rule will allow planners to do this. An adequate broadband service is needed to help drive the economy. Cllr. Finucane said he was opposed to the retention of the 1km rule as it has failed miserably.

Cllr. J.J. Culloty supported the removal of the 1km rule for the reasons stated by Cllr. Kelleher and Cllr. Finucane. He was informed when a person uses their mobile phone where there is bad coverage it takes time to get coverage and it is therefore more harmful than masts. All applications for masts refused by Kerry County Council are being appealed to An Bord Pleanála and this results in additional costs.

Cllr. B. Cronin said this topic has spanned numerous Councils. When he was Chair of the Planning SPC at the request of the Council they invited all the major players and people from the local community who had concerns to make a presentation to the SPC. The SPC could not come to a conclusive decision and he had no doubt but the public and the business sector want proper broadband but members must take cognizance of genuine health concerns. People who made presentations to the SPC had evidence of health concerns. Cllr. Cronin said in 2014 he proposed that the service providers would be invited to a Council meeting and from that meeting it was clear that IBEC is only interested in servicing lucrative locations. The onus is on elected members to provide the best possible service to the people of Kerry. He acknowledged that this is a difficult moral decision for members. He ~~SECONDED~~ Cllr. Gleeson's proposal to reduce the distance from 1km to 500m as he would have serious concerns about giving a free for all. Many of the phone lines in the county are not fit for purpose and there has been no investment in this area. He received a phone call the previous Friday from an individual representing a company who told him if he did not abstain from the vote his name would be held up to his community as the reason they do not have broadband. While he listened to all the arguments for and against he still had concerns about the emissions from the antennae on masts. The telecommunication companies are more interested in profit and he would not support a free for all but would err on the side of caution.

Cllr. S. Locke supported Cllr. Gleeson's proposal and said all members received communications from businesses stating the lack of broadband is affecting their business. He suggested that the Council would revert to the telecommunication companies to establish if Cllr. Gleeson's proposal would be acceptable to them.

Cllr. P. McCarthy said the 1km rule has failed as most applications refused by Kerry County Council are granted subsequently on appeal to An Bord Pleanála. From a technical point of view when there is poor coverage it takes longer to make a call and the phone increases power as it is seeking coverage and that is also a danger to a person's health. In conclusion Cllr. McCarthy asked what the position is in other counties/countries in relation to the 1km rule.

Cllr. D. Quigg agreed with the views expressed by Cllr. Ferris and said the people he represents in rural areas will not benefit from this as everyone knows private companies have declared they will only invest in areas which are densely populated and where it is profitable to do so. Knowing the cost of applying within 1km of residential areas because it can only be granted, if at all, on appeal to An

Bord Pleanála does act as an incentive to look at alternative locations. Members have included a number of provisions in the Plan that may contradict national guidelines which they were told may not be enforced by An Bord Pleanála but they still included them. Cllr. Quigg said members need to do the same with the 1km rule.

Cllr. P. Connor-Scarteen said when the 1km rule was discussed previously he supported its retention and he accepted that Kerry is the only county with this provision in the County Development Plan. He has concerns regarding health risks from masts and he knew three people who died relatively young who lived near masts. However he believed the middle ground proposed by Cllr. Gleeson is reasonable.

Cllr. T. O'Brien said all members feel their argument is valid on this issue. He believed the proposal for a 500m restriction is a cop out. He did not believe the Planning Department would give a free for all and he supported the abolition of the 1km rule.

Cllr. N. Moriarty said she also supported the abolition of the 1km rule. Decisions made by Kerry County Council to refuse permission for masts are over ruled by An Bord Pleanála. The 1km rule is a greater financial barrier for smaller broadband providers and Wi-fi is available in our homes, schools etc. Cllr. Moriarty said it is acknowledged that the abolition of the 1km rule would support business in the county.

Cllr. N. Foley said she was in favour of the reinstatement of the 1km rule as she had not seen any evidence to make her change her mind. There is anecdotal evidence of sleep deprivation and cancer clusters in areas where masts are located close to homes. There is significant medical concern and there is no medical evidence available to confirm there is no risk from masts. She accepted that An Bord Pleanála overturn Kerry County Council decisions to refuse permission but suggested that planners should consider each application in detail so that the application is not refused only on the grounds of the 1km rule. Cllr. Foley said while she supports businesses she could not support the abolition of the 1km rule.

Cllr. P. Daly said he had an open mind on this issue. There is a proliferation of masts in the county and he listened to the presentation by IBEC which made him believe that the 1km rule should be retained for the common good. The telecommunication companies are only interested in maximizing profits and for this reason he supported the retention of the 1km rule.

Cllr. J. Healy-Rae said it could be argued that of 62 applications for masts refused by Kerry County Council 56 of these were overturned by An Bord Pleanála. It is also argued if the 1km rule is abolished it will provide jobs and bring services to the county. He did not believe this argument as there is no

service in areas like Glencar. He was not prepared to take a risk and to support the abolition of the 1km rule. There are plenty of mountains in Kerry and the masts could be located there. Cllr. Healy-Rae said it is harder to provide a service in flat lands.

The Cathaoirleach said the abolition of the 1km rule was put out for public consultation and not one submission was received calling for its retention. He believed that the public feel that the 1km rule is not working and the citizens of Kerry accept that. He did not believe that the abolition of the 1km rule will result in a free for all. Members invited the service providers to a meeting and told them they wanted a better service for the county yet the 1km rule is in the current County Development Plan and this is a contradiction. He did not think that having the 1km rule in the Plan was serving the citizens of Kerry. The Cathaoirleach said he would not support the 500m restriction and he would prefer that each application would be dealt with on its merits.

The Chief Executive informed members that the submission from the Department said the objective in relation to the 1km rule contravenes national guidelines and the same would apply to the proposal for a 500m restriction. If either of these proposals are included in the Plan it is possible the Minister could issue directions to remove it. Over the past few months a number of people were interested in investing in the county and if the 1km rule is deleted from the Plan it will send a strong message to potential investors that this is a modern economy with modern infrastructure. Broadband is hugely important for the county and she had confidence in the rigours of the planning process to assess each application on its merits.

The Cathaoirleach said there were three proposals as follows:

1. Cllr. D. Healy-Rae proposed that the 1km rule would be reinstated in the Plan and this was seconded by Cllr. T. Ferris.
2. Cllr. M. Gleeson proposed a 500m restriction and this was seconded by Cllr. B. Cronin.
3. Cllr. N. Kelleher proposed that the 1km rule would be abolished and this was seconded by Cllr. J. Finucane.

Mr. McMahon pointed out that the amendment that went on public display proposes to delete the 1km rule.

Members queried the correct procedure to deal with these proposals.

Mr. McMahon said the law says members must consider the Chief Executive's Report and the amendments. Having considered the report they can make the Plan with or without the proposed amendments except where they decide to



accept the amendments they may do so subject to any modifications to the amendments as they consider appropriate.

Members again queried the order in which the proposals should be taken.

Mr. McMahon again said Members, having considered the report and the amendments can make the Plan with or without the proposed amendments except where they decide to accept the amendments they may do so subject to any modifications to the amendments as they consider appropriate. A further modification can be made:-

- (a) where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site,
- (b) shall not be made where it relates to:-
  - (i) *any increase in the area of land zoned for any purpose, or*
  - (ii) *an addition to, or deletion from, the Record of Protected Structures.*

The Cathaoirleach ruled that the first vote would be on Cllr. Kelleher's proposal.

Cllr. D. Healy-Rae expressed his dissatisfaction with this decision and asked that the County Solicitor would be called to the meeting.

The Cathaoirleach explained that a vote would first be taken on Cllr. Kelleher's proposal and if that was defeated a vote would then be taken on Cllr. Gleeson's proposal.

Cllr. D. Healy-Rae then agreed to proceed with the vote.

The Chief Executive requested a resolution of Council confirming members are satisfied with the procedures being followed.

On the PROPOSAL of Cllr. B. O'Connell, SECONDED by Cllr. J. Finucane it was unanimously agreed to proceed with the vote as outlined by the Cathaoirleach.

### **Suspension of Standing Orders**

The Cathaoirleach said it was 1.30pm and it would be necessary to suspend Standing Orders.

On the PROPOSAL of Cllr. S. Fitzgerald, SECONDED by Cllr. M. Gleeson it was agreed to suspend Standing Orders to allow the meeting to continue.

Mr. O'Brien informed the meeting a vote would then be taken on Cllr. Kelleher's proposal which was seconded by Cllr. Finucane as follows:

*“That this Council having considered the Chief Executive’s Report and Recommendations on submissions received in relation to the proposed material amendments to the Draft Kerry County Development Plan 2015 – 2021 hereby resolves that Amendment MA7-7 that went on public display be adopted.”*

The vote resulted as follows:

**For:** Cllrs. Cahill, Culloty, Finucane, Fitzgerald, Flynn, Kelleher, Kennelly, P. McCarthy, Moloney, Moriarty, O’Brien, O’Connell, O’Shea, Purtill, Sheahan, Spring, Brassil **(17)**

**Against:** Cllrs. Beasley, Connor-Scarteen, Cronin, Daly, Ferris, Foley, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Locke, McEllistrim, Nolan, Quigg, Thornton **(15)**

**Not Voting:** None **(0)**

**Absent:** Cllr. D. McCarthy **(1)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Page 17 of the Chief Executive’s Report for details of Submission No. S-10 from Fáilte Ireland and he briefed them on it as follows.

**Written Submission No. S-10**

**Fáilte Ireland**

This submission’s relates to material alteration **MA5-9** (Wild Atlantic Way). Fáilte Ireland welcomes the proposed amendments to the Draft Plan. In particular, the additional objective which relates to the Wild Atlantic Way (MA5-9). In addition, Fáilte Ireland suggests that the following further amendment be made to the wording of this proposed amendment (additional text in Italics):

Facilitate the sustainable provision of required tourism amenity infrastructure such as Discovery Points at spectacular coastal locations along the Kerry section of the Wild Atlantic Way, (a small number of which may be developed as Signature Discovery Points in agreement with Fáilte Ireland), viewing areas, picnic areas, parking/laybys and public toilets, and other appropriate tourism amenity infrastructure, in conjunction with the phased development and promotion of the Wild Atlantic Way subject to compliance with the policies and objectives of this Plan and in a manner that facilitates the responsible management of the landscape. ~~particularly as they relate to the protection of the natural environment~~

### **Chief Executives Response**

In relation to the above, the Council has no objection to the proposed additional text however it is considered prudent to retain the final line.

### **Chief Executives Recommendation**

It is recommended that material alteration MA5-9 be amended to read as follows;

Facilitate the sustainable provision of required tourism amenity infrastructure such as Discovery Points at spectacular coastal locations along the Kerry section of the Wild Atlantic Way, (a small number of which may be developed as Signature Discovery Points in agreement with Failte Ireland), viewing areas, picnic areas, parking/laybys and public toilets, and other appropriate tourism amenity infrastructure, in conjunction with the phased development and promotion of the Wild Atlantic Way subject to compliance with the policies and objectives of this Plan and in a manner that facilitates the responsible management of the landscape particularly as they relate to the protection of the natural environment.

On the PROPOSAL of Cllr. S. Fitzgerald, SECONDED by Cllr. B. O'Connell it was agreed to adopt the Chief Executive's Recommendation on this submission.

The meeting adjourned for lunch at 1.35pm.

The meeting resumed at 2.10pm.

## ***PART 2***

### **Summary of issues raised from general submissions, the CHIEF EXECUTIVES Response and policy recommendations.**

Mr. Stack referred members to Page 20 of the Chief Executive's Report for the General Submissions. He briefed the meeting on Submission No. G-1 as follows:

#### **Written Submission No. G-1**

#### **Kerry Airport**

This submission relates to material alteration **MA7-5** (Air (KIA)). It is stated that the additional wording to objective RD-35 regarding the protection for the airport is very welcome and well worded. It is requested that the 13km radius is amended to read **15km radius from the Aerodrome Reference Point** which is the mid point of the main runway 08/26.

### **Chief Executives Response**

In relation to the above the Council has no objection to the proposed alteration.

### **Chief Executives Recommendation**

*It is recommended that objective RD-35 to be amended to read as follows;*

Ensure the future development and viability of the Airport by restricting development that may effect operations of the airport **or interfere with the aircraft navigation or impede the operation and/ or calibration of the Instrument Landing System (ILS).**

**Restrict any proposed development within a ~~43km radius~~ 15km radius from the Aerodrome Reference Point that could generate hazards or pose a potential safety risk to aircraft flight paths or operations to ensure aircraft safety in accordance with international Aviation Safety Guidelines.**

Cllr. B. Cronin said he proposed the amendment in relation to the 13km radius and he welcomed the amendment in the Chief Executive's Recommendation. This amendment is critically important for Kerry Airport and he PROPOSED that the Chief Executive's Recommendation would be adopted.

Cllr. T. O'Brien SECONDED this proposal and it was agreed.

Mr. Stack referred members to Pages 20 and 21 of the Chief Executive's Report for details of Submission No. G-2 and he briefed them on it as follows:

**Written Submission No. G-2 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission relates to lands at the Peninsula, Kenmare. This submission to the Proposed Amendments to the Draft County Development Plan (CDP) follows a previous submission to the draft CDP where a number of amendments were sought, including the revision of growth projections for Kenmare to bring them in line with the provisions of the National Spatial Strategy and Regional Planning Guidelines for the Southwest region and to reflect Kenmare's status as a "Regional Town" in the settlement hierarchy for the County;

the provision of a greater proportion of development on serviced lands in Kenmare with a commensurate reduction in the development of one-off housing in un-serviced rural areas; and to include an objective to encourage, a sequential development approach in favour of lands adjoining the existing town centre area.

The submission states that while the Proposed Amendments to the Draft CDP issued by the Council reflect some of the changes sought in the previous submission on the Draft CDP, there are still a number of critical issues which are required, relating mainly to the population and growth projections for the County and Kenmare, which need to be addressed in order to meet the statutory core strategy requirements of the Planning and Development (Amendment) Act 2010.

This submission comments and analyses the material alterations and suggests changes as follows;

- Proposed Amendment **MA2-5** (Population Tables) and **MA2-6** should be modified to reflect the population projections in the Regional Planning Guidelines for Kerry and increase the Total growth projection for the County to 12,325 to 2021 and not 8,108 as outlined by the Council in Table 2.1 (Population Growth 2015-2021).
- Proposed Material Amendment **MA3-2** (Population Tables) and Table 3.5 should be modified to allocate a greater population to the South and West Kerry Municipal Area and in particular Kenmare with a population increase of 500 and a housing increase of 200 dwellings so that a requirement of c. 25 hectares of zoned residential lands for housing development would be required in the next LAP.
- Proposed Material Amendment **MA3-3** (Vacant sites) should be modified to specifically state that the Council will also favour the zoning of vacant / under-utilised sites for development prior to greenfield sites.

### **Chief Executives Response**

Section 2.3.3 of the Draft Kerry County Development Plan 2015-2021 sets out the rationale behind the population and growth projections in the Draft Plan. The South West Regional Authority and the Department of the Environment, Community & Local Government has approved this approach.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. T. O'Brien, SECONDED by Cllr. N. Kelleher it was agreed to adopt the Chief Executive's Recommendation in relation to this submission.

Mr. Stack referred members to Pages 22 and 23 of the Chief Executive's Report for details of Submission No. G-3 and he briefed them on it as follows:

### **Written Submission No. G-3**

### **Transition Kerry**

Transition Kerry makes a number of recommendations to be included in the Plan, which they consider vital to the building of resilience and sustainability in Kerry's towns, villages and communities.

Transition Kerry believes it is vital for County Kerry to build resilience in how we feed our local communities, prioritise local food production for local consumption, Develop food sovereignty, provide security of food supply for our communities, reduction of external shock factors like transport (oil), market fluctuations and political influences which threaten Kerry's ability to feed its population. It is suggested that food tourism can play large role in providing local employment.

The submission suggests additional text relating to various chapters including Tourism and Recreation, Retail Strategy, Transport and infrastructure, Energy and Power/Renewable Energy.

The submission requests changes to **MA4-10**; to read as follows;

- Support the provision of on-farm tourism enterprises such as the renovation of farm buildings for tourism purposes, ecological and sustainable farming, walking, cycling, angling, pony trekking and bird watching, subject to compliance with normal Planning and environment criteria and the Development Management standards as set out in Chapter 13 of this Plan.
- **MA4-11**; It is requested to include the following text in section 4.8.1.  
In July 2010 the Department of Agriculture, Food and Marine published an updated ambitious export plan for the agricultural sector called Food Harvest 2020.
- **MA4-12**; It is requested to include the following text in section 4.8  
Support the agricultural sector in developing food sovereignty and security of supply for our local food production and supply systems while also meeting Food Harvest 2020 export targets, in a manner that is sustainable having due regard to the objectives, policies and standards of this Plan, particularly as they relate to the Natural Environment.
- **MA9-10**; It is requested to include the following text in section 9.9  
In certain instances, consider public open spaces for use as public allotments, community food gardens, community fruit orchards and community native woodlands subject to appropriate local community consultation.

### **Chief Executives Response**

In relation to material alterations **MA4-10**, **MA4-11** and **MA4-12**; it is considered that the current wording is sufficient.

In relating to **MA9-10**; it is considered appropriate to include the following text;

In certain instances, consider public open spaces for use as public allotments, community food gardens, community fruit orchards and community native woodlands subject to appropriate local community consultation.

### **Chief Executives Recommendation**

It is recommended to amend the proposed text in section 9.9 (pg145), to read as follows;

In certain instances, consider public open spaces for use as public allotments, community food gardens, community fruit orchards and community native woodlands subject to appropriate local community consultation.

Cllr. T. O'Brien PROPOSED that the Chief Executive's Recommendation be adopted.

Cllr. J. Finucane SECONDED this proposal and said he attended a presentation by Transition Kerry and they take a very practical overview. He would like to see regular meetings taking place with Transition Kerry.

Mr. Stack referred members to Pages 23 and 24 of the Chief Executive's Report for details of Submission No. G-4 and he briefed them on it as follows.

**Written Submission No. G-4 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission' relates to the following material alterations;

- **MA4-3;** It is stated that this is a vague statement with no examples given
- **MA4-4;** the submission states that it is a pity that Kerry County has not sought to specialise its centres around key sectors. All the settlements cannot, nor should they seek all the industries mentioned in the new text. They should seek to be good at a particular sector and not compete with each other by trying to win new industries
- **MA4-6;** Although welcome, it seems at odds with the links to public transport objective, given the location of Tarbert.
- **MA4-10;** it states that it is an excellent Policy and is very important for the rural economy and the small villages that need it in terms of functioning their service economy.
- **MA5-9;** There will need to be stricter controls on rural housing along the Wild Atlantic Way.
- **MA5-16;** It is suggested that a combined submission consisting of the cable station and associated features and the tetrapod trackway should be made to the UN.
- **MA12-1;** It is considered that while the landscapes of South and West Kerry are universally considered as being among the most scenic landscapes in the Country from a tourist perspective, the landscape of the remainder of the County has also got significant tourism potential and needs to be protected from inappropriate developments which might detract from the landscape.

### **Chief Executives Response**

In relation to the above:-

- **MA4-3;** This is general statement and is considered appropriate.
- **MA4-4;** Kerry County has not sought to specialise its centres around key sectors. All the settlements will continue to grow organically based on existing infrastructure and industries. The Council will continue to promote the sectors that the Hub towns have been traditionally strong in, such as education/ information technology in Tralee and tourism in Killarney.
- **MA4-6;** it is the policy of the Council to promote and facilitate the development of the Tarbert/Ballylongford Landbank in a sustainable manner.
- **MA4-10;** Comment noted.
- **MA5-9;** The controls on rural housing are contained in the rural settlement strategy (section 3.3) of the Plan. These are considered sufficient to regulate development throughout the county in a sustainable and sensitive manner that does not alter the landscape or affect the Wild Atlantic Way.
- **MA5-16;** The Council is supporting and encouraging measures to secure the tetrapod trackway as an UNESCO World Heritage Site.
- **MA12-1;** It is considered that the landscape of the entire County has got significant tourism potential and needs to be protected from inappropriate developments which might detract from the landscape. Objective ZL-1 seeks to protect the landscape of the county as a major economic asset and an invaluable amenity.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. S. Locke, SECONDED by Cllr. J. Sheahan it was unanimously agreed to adopt the Chief Executive's Recommendation on this submission.

Mr. Stack referred members to Page 25 of the Chief Executive's Report for details of Submission No. G-5 and he briefed them on it as follows.



**Written Submission No. G-5 Killarney Chamber of Tourism & Commerce**

This submission's comments on material alteration **MA5-6** and requests that the feasibility of developing a Greenway from Tralee to Killarney be examined and the possibility of linking this to the South Kerry/Great Southern Greenway.

**Chief Executives Response**

In relation to the above, it is the Council's intention to develop the Greenways along disused railway lines. A number of former railway lines are included in section 7.2.3 of the Draft Plan. A number of proposed walk/cycleways have already been outlined and assessed in the Functional Area Plans. There are no plans at present to develop a greenway from Tralee to Killarney. The proposed N22 Farranfore-Killarney realignment will contain a cycleway.

Objective T-24 (MA5-8) of the Draft CDP seeks to promote and facilitate the sustainable re-use of existing former railway lines for amenity purposes, this objective is considered sufficient.

**Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. D. Grady, SECONDED by Cllr. J. Moloney it was agreed to adopt the Chief Executive's Recommendation on this submission.

Cllr. J.F. Flynn PROPOSED that the Rights of Way would then be dealt with to facilitate the people in the public gallery.

The Cathaoirleach said Part 2 was almost completed and Part 3 deals with the Rights of Way.

Cllr. N. Foley declared in accordance with Section 177 of the Local Government Act 2001 as amended she and Cllr. Spring represent the Council on Tralee Chamber Alliance and for this reason they would leave the meeting while the Tralee Chamber Alliance submission was being considered.

Cllrs. Foley and Spring then left the meeting.

Mr. Stack referred members to Pages 25 and 26 of the Chief Executive's Report for details on Submission No. G-6 from Tralee Chamber Alliance and he briefed them on it as follows.

**Written Submission No. G-6 Tralee Chamber Alliance**

This submission relates to **MA5-6** (Greenways), it suggests additional text as follows –

Kerry County Council will seek to further develop the existing Greenway from Rathkeale to the Kerry/Limerick border and onto Listowel and Tralee in order to make it the longest Greenway in the county. The feasibility of developing a Greenway from Tralee to Killarney is to be examined and the possibility of linking this to the South Kerry / Great Southern Greenway. The Greenway from Tralee to Fenit should also be linked to this development as soon as possible.

### **Chief Executives Response**

A number of former railway lines including the Tralee to Abbeyfeale lines are included in section 7.2.3 of the Draft Plan. It is considered appropriate to include reference to Tralee in the proposed amendment.

In relation to the greenway from Tralee to Killarney, see the response and recommendation to submission G-5.

### **Chief Executives Recommendation**

It is recommended to amend the text in section 5.5.

Kerry County Council will seek to further develop the existing Greenway from Rathkeale to the Kerry/Limerick border and onto Listowel. Kerry County Council will then seek to further develop the greenway onto Tralee as a separate project in order to make it the longest Greenway in the country.

Cllr. S. Locke welcomed this proposal and said all members would like to see this walkway developed. He PROPOSED that the Chief Executive's Recommendation on this submission be adopted.

Cllr. T. Ferris SECONDED this proposal and it was unanimously agreed.

Cllrs. Foley and Spring then returned to the meeting.

Mr. Stack referred members to Page 26 of the Chief Executive's Report for details of Submission No. G-7 from Jackie Hourigan and he briefed them on it as follows.

**Written Submission No. G-7 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission relates to the site of the former Castle Hotel, Ozone Terrace, Ballybunion. The submission objects to the designation of the site as green belt.

It is stated that the development of a high quality tourism accommodation on this iconic site, namely a hotel, would have the potential to stimulate enormous economic growth in the town.

### **Chief Executives Response**

In relation to the above, this was not an amendment/material alteration on display and therefore cannot be considered.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

Cllr. R. Beasley asked if this submission can be given any consideration.

Mr. Stack said the first opportunity to consider it will be when the Municipal District Plan is being prepared.

On the PROPOSAL of Cllr. R. Beasley, SECONDED by Cllr. J. Brassil it was agreed to adopt the Chief Executive's Recommendation on this submission.

Mr. Stack referred members to Page 27 of the Chief Executive's Report for details of Submission No. G-8 from Elaine Stack and he briefed them on it as follows:

**Written Submission No. G-8 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission relates to the development of the walkway/cycleway from the Kerry/Limerick border to Listowel. The submission objects to the development of the disused railway track for amenity purposes as it would cause security and privacy issues. The submission objects to material alteration **MA5-8** (Cycleways).

### **Chief Executives Response**

In relation to the above, all projects and developments undertaken by the Council are assessed from an environmental perspective and subject to a separate planning process which will facilitate public participation.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. J. Moloney, SECONDED by Cllr. M. Kennelly it was unanimously agreed to adopt the Chief Executive's Recommendation on this submission.

Mr. Stack referred members to Page 27 of the Chief Executive's Report for details of Submission No. G-9 from Kay Canty and he briefed them on it as follows.

**Written Submission No. G-9 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission relates to the development of the walkway/cycleway from the Kerry/Limerick border to Listowel. The submission vehemently objects to the development of the disused railway track as it would cause security and privacy

issues. The submission is opposed to material alterations **MA5-6, MA5-7, MA5-8** and **MA7-4**.

**Chief Executives Response**

See the response to submission G-8.

**Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. R. Beasley, SECONDED by Cllr. J. Moloney it was agreed to adopt the Chief Executive's Recommendation on this submission.

Mr. Stack referred members to Page 28 of the Chief Executive's Report for details of Submission No. G-10.

**Written Submission No.            G-10    Vodafone Ireland**

The submission relates to **MA7-7** which deletes section 7.5.2 of the draft County Development Plan (1km rule). Vodafone welcomes the proposed change.

**Chief Executives Response**

Comment noted.

**Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

Mr. Stack informed members that this submission relates to the 1km rule and that issue was already dealt with.

On the PROPOSAL of Cllr. J. Healy-Rae, SECONDED by Cllr. N. Kelleher it was agreed to adopt the Chief Executive's Recommendation on this submission.

Mr. Stack said Submission Nos. G-11 to G-20 were already dealt with and he referred members to Page 32 of the Chief Executive's Report for details of Submission No. G-21 from Keep Ireland Open and he briefed them on it as follows:

**Written Submission No.   G-21    Keep Ireland Open   (KIO)**

KIO would like to put on record the failure of the Plan to comply with/have regard to/take into account Planning & Development Acts, NSS, Plans in adjoining counties and the Development Plan Guidelines.

KIO comments on the material alterations as follows –

**MA8-4** (Forestry) Objective NR-10; KIO is strongly opposed to this which is a retrograde step in the quiet enjoyment of this wonderful resource. Presumably it will open up the use of forestry to gun clubs, scrambler bikes and quads.

**MA9-9** (Public Rights of Way) KIO opposes the amendments to ROW 3a & b, 19b, 20, 29a, 34, 43 and 51. KIO supports the proposed Additional Rights of Way.

### **Chief Executives Response**

Kerry County Council in the preparation of the Development Plan are obliged to comply with all statutory guidelines, Planning & Development Acts, NSS, etc. Section 1.8 of the Plan includes a statement of implementation of Ministerial Guidelines.

In relation to MA8-4 above, it is considered appropriate as all proposals can be assessed and judged on their own merit on a case by case basis.

In relation to the rights of way see responses and recommendations contained in Part 3.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. J. Healy-Rae, SECONDED by Cllr. P. McCarthy it was agreed to adopt the Chief Executive's Recommendation on this submission.

Mr. Stack referred members to Pages 33 and 34 of the Chief Executive's Report for details of Submission No. G-22 from Vincent Wildlife Trust and he briefed them on it as follows:

#### **Written Submission No. G-22**

#### **Vincent Wildlife Trust (VWT)**

This submission's relates to material alterations as follows –

- **MA5-7 & 8;** The VWT requests the consideration of the objectives of their GIS study in the sustainable re-use and continued development of former railway lines as a 'Greenway' from Rathkeale to the Kerry/Limerick border and on to Listowel.
- **MA8-3;** The VWT supports the amendment to objective NR-9, that sustainable forest development be encouraged and promoted in the county as such a development will aid and facilitate the expansion of the range of the lesser horseshoe bat in the north of the county in the future.

- **MA8-6;** The findings of the GIS assessment support the amendment to objective NR-14. It is of utmost importance that the county's remaining native woodlands are protected and enhanced, the expansion of which would greatly facilitate a future population expansion of the lesser horseshoe bat, in particular in the north of the county.
- **MA10-1;** The VWT applauds inclusion of the policy objective to prepare a County Heritage/Biodiversity Plan and requests that the findings and proposals of its GIS study is an integral part of said document. It also proposes a number of surveys be undertaken as objectives of this plan.
- **MA11-1;** Note is made of the proposed additional text to be included to section 11.4.2 with regard to the provision of a grant scheme to undertake necessary works to ensure the conservation of built heritage. It is requested that consideration be given to include provision of works to make such buildings available as roosts to the lesser horseshoe bat, particularly in the north Kerry region.
- **MA13-1;** The VWT supports the inclusion of the additional text to section 13.2 (pg 187).

### **Chief Executives Response**

In relation to the above, the Council notes the comments regarding the proposed material alterations.

It is noted that the VWT strongly supports many of the material alterations proposed particularly those pertaining to protection of the environment and promoting ecological connectivity in the landscapes between South and North Kerry. It is recommended to modify MA10-1 and MA10-10 to include references to stakeholders and other groups.

### **Chief Executives Recommendation**

It is recommended to modify MA10-1 as follows:

Consideration shall be given to the preparation of a County Heritage/Biodiversity Plan and Green Infrastructure Strategy as resources permit. This will be drafted with key stakeholders including groups that aim to conserve protected species and/or habitats. Where applicable the strategy will aim to promote community led conservation projects.

It is recommended to modify MA10-10 as follows:

Support and facilitate the development of Community Woodlands in the county. Where applicable the collaboration with other groups that aim to promote the conservation of protected species and/or habitats will be encouraged.

Cllr. M. Gleeson PROPOSED that the Chief Executive's Recommendation on this submission be adopted.

Cllr. N. Kelleher SECONDED this proposal.

Cllr. D. Healy-Rae said houses are dedicated to the preservation of bats and they appear to be more important than people. He PROPOSED that people would come first.

Cllr. J. Healy-Rae SECONDED this proposal.

The Cathaoirleach said that is not the case but they are being recognised.

Cllr. J. Healy-Rae said funding is available to do up houses for bats and they are the cause of quarries being closed.

Cllr. T. Ferris referred to Submission No. 21 and said it is proposed to accept the Chief Executive's Recommendation and not to include the Keep Ireland Open comments.

Cllr. J. Healy-Rae called for a vote to be taken on Cllr. D. Healy-Rae's proposal.

Cllr. J. Finucane said there were similar objections to the Golden Eagle and now there is an objection to bats. He pointed out there is tourism and heritage tourism and people come to Kerry to see the Golden Eagle.

Mr. McMahon said Amendment MA-10 sets out a simple objective to prepare a County Biodiversity Plan. A Biodiversity Plan was in place until 2012 and a new Plan must be drawn up. It is intended that all stake holders will be consulted in the preparation of the new Plan.

Cllr. J. Healy-Rae PROPOSED the following addition to Cllr. D. Healy-Rae's proposal "where finances allow".

Mr. McMahon informed the meeting the Council must have regard to the the EU Habitats Directive irrespective of whether 'finances allow or not.'

Cllr. D. Healy-Rae then withdrew his proposal.

On the PROPOSAL of Cllr. M. Gleeson, SECONDED by Cllr. N. Kelleher it was unanimously agreed to adopt Chief Executive's Recommendation in relation to Amendment Nos. MA10-1 and MA10-10.

Mr. Stack referred members to Pages 34 and 35 of the Chief Executive's Report for details on Submission No. G-23 and he briefed them on it as follows:

**Written Submission No. G-23                      Listowel Writers Week c/o Maire Logue**

This submission suggests modifications and additional text to the material alterations **MA2-2** (Strategic Aims) and **MA5-10** (Business Tourism).

- It suggests that Kerry County Council should facilitate and support, in partnership and co-operation with relevant agencies the development of arts and arts/cultural tourism to further promote Kerry as a location for artists to live and work.
- It suggests that the Council should support arts and culture as a significant resource in Kerry.
- It suggests that the Council support and promote professional arts development and arts that engage with the wider community as a means to enhance quality of life for the citizens of Kerry and its visitors alike.
- It suggests that the Development Plan should value the contribution of arts and culture to the county and will consider all developments and submissions of strong artistic and cultural merit; in particular in terms of their impact on developing quality arts, promoting quality of life and enhancing the county via arts and culture.

### **Chief Executives Response**

In relation to the above, the Council recognises the importance of arts and culture to the daily lives and economic development of the county. The Plan supports arts and culture as a significant resource in County Kerry. The plan facilitates and supports sustainable arts development, arts and cultural tourism in partnership and co-operation with relevant agencies in order to enhance quality of life for all citizens and visitors. It is considered appropriate to include the additional text as a strategic aim of the core strategy in section 2.2.1.

### **Chief Executives Recommendation**

It is recommended to include the following additional text in section 2.2.1 (last bullet point) as follows;

Sustainably support arts and culture as a significant resource in County Kerry. Facilitate and support professional arts development. Engage with the community and arts/cultural tourism in partnership and co-operation with relevant agencies in order to enhance quality of life for all citizens and visitors.

On the PROPOSAL of Cllr. D. Grady, SECONDED by Cllr. T. Ferris it was agreed to adopt the Chief Executive's Recommendation on this submission.

Mr. Stack referred members to Page 35 of the Chief Executive's Report for details on Submission No. G-24 and he briefed them on it as follows:



**Written Submission No. G-24 Kerry Film Festival (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission suggests amendments and additional text to the material alterations **MA2-2** (Strategic Aims) and **MA5-10** (Business Tourism). This submission is the same as submission G-23.

### **Chief Executives Response**

*See Response and Recommendation to G-23.*

On the PROPOSAL of Cllr. R. Beasley, SECONDED by Cllr. J. Finucane it was agreed to note the Chief Executive's Response in relation to Submission G-23. Mr. Stack referred members to Page 35 of the Chief Executive's Report for details on Submission No. G-25 and he briefed them on it as follows:

**Written Submission No. G-25 (Name withheld for data protection purposes. A paper copy of the Minutes is available on request).**

This submission comments on the material alterations as follows –

- **MA5-9;** *The birthplace of Daniel O'Connell should be a discovery point for the Wild Atlantic Way.*
- **MA5-13;** *No further signage should be permitted near Daniel O'Connells birthplace.*
- **MA5-16;** *the birthplace of Daniel O'Connell should be supported under culture and heritage and should get the recognition because of its historical importance.*
- **MA11-1;** *The birthplace of Daniel O'Connell should be allocated maximum funding for any conservation works.*

### **Chief Executives Response**

In relation to the above, all the comments are noted. Carhan House, the birthplace of Daniel O Connell is a Protected Structure (with regional significance) RPS Ref No. 21307902. It was one of only two structures in the county to receive funding under the Structures at Risk Fund 2013.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

On the PROPOSAL of Cllr. D. Quigg, SECONDED by Cllr. N. Moriarty it was agreed to adopt the Chief Executive's Recommendation on this submission.

## **PART 3**

### **Public Rights of Way**

The Cathaoirleach informed the meeting Cllr. Spring would make a declaration in relation to Rights of Way 3(a) and 3(b) and would leave the meeting while they were being considered.

Mr. Stack referred members to Pages 38 to 40 of the Chief Executive's Report and read the following into the record of the meeting:

"The law in relation to Public Rights of Way is extremely complex and has been subject of a number of high profile court cases in recent years. The most recent such case in Ireland is the Supreme Court decision in the case of Walsh and another V Sligo County Council ("The Lissadell Case"). This case originated from the decision by Sligo County Council (following Notice of Motion from Councillors who were reacting to considerable public pressure) to include Rights of Way in the Development Plan under Section 14 of the Planning & Development Act 2000 (as amended) at Lisadell House.

As you are aware under Section 10(2)(o) of the Planning & Development Act 2000 (as amended) a Development Plan shall include objectives for, *"the preservation of public rights of way which give access to seashore, mountain, lakeshore, riverbank or other places of natural beauty or recreational utility, which public rights of way shall be identified both by marking them on a least one of the maps forming part of the development plan, and indicating their location on a list appended to the development plan"*

63 possible Rights of Way were included in the Draft County Development Plan 2015-2021 which went on public display.

#### Process

It is important at this stage to point out that in meeting its obligations under Section 10(2)(o) of the Act, the Council is not creating new rights of way by including them in the Plan nor is it saying that a Right of Way does not exist if it is not included in the Plan.

Section 14 (7)(a) of the Act provides that *"Nothing in this section shall affect the existence or validity of any public right of way which is not included in the Development Plan"*.

#### There must be a Right of Way

In order for the inclusion of a Right of Way it must be a public right of way. There is no provision for the inclusion of alleged or ostensible Public Rights of Way.

In the Lissadell case Fennelly J states that;

*"The law of Public Rights of Way is of ancient origin. Except where it can be shown to have existed immemorial, or is created by statute, a public right of way is established by proof that the landowner dedicated the way to the public"*

*“The common law of dedication continues in force in Ireland. It requires consideration of all the facts: the duration, extent, nature, and context of public user, and the possibility of inferring or presuming that the landowner has dedicated the way to the public. Mere proof of public user does not suffice to create the right”.*

*“These legal principles ensure that an appropriate balance is struck between public and private rights. Depending on the circumstances users may provide compelling evidence of dedication to the public, or may more properly be ascribed to tolerance or liberality of the landowner. The landowner will not, by respecting a tradition of generosity and openness be deemed to have encumbered his land with public rights. The law does not convert such acts into legal obligation”.*

Fennelly J went on to quote from the case of Poole v Huskinson (1843) where it was stated that:-

*“a single act of interruption by the owner is of much more weight, upon the question of intention, than many acts of enjoyment”.*

***The crucial issue therefore that arises is whether or not there is an intention on behalf of the landowners to dedicate the Rights of Way.***

#### Current Position

As pointed out earlier 63 possible Rights of Way were included in the Draft Plan that went on display<sup>1</sup>. The submissions received in relation to Public Rights of Way were considered by the members at a meeting of the Council held on 11<sup>th</sup> September 2014 and certain amendments to the original list were agreed.

These were dealt with as Material Amendments to the Draft Plan and a further round of public consultation followed in accordance with Section 12 of the Act. The report now before you deals with the submissions received from the public and from landowners and occupiers.

One of the submissions received questioned the procedures followed by the Council to date in that the decision of the members at their meeting on 11<sup>th</sup> September 2014 should not have been the subject of further public consultation. In view of the issues raised, Senior Counsel's advice was sought which advised as follows;-

- The procedures set out in Sections 11 and 12 of the Act which invite submissions from the public or landowners in relation to material amendments can also be used in respect of inviting submissions in relation to rights of way.

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<sup>1</sup> A notice was also served on any owner and occupier of the lands over which the right of way exists in accordance with the requirements of Section 14(1) of the Act

- There is no requirement on Councillors to consider all rights of way at the same time nor is there any prohibition on the Councillors recommending a different route of a public right of way following receipt of submissions.

### Next Steps

The following report gives details of the submissions received on the material amendments and the recommendations of the Chief Executive in each case. The members must now consider each submission.

In relation to each Right of Way included in the Draft Plan the members must then pass a resolution specifically under section 14(3) of the Act which states;

*“Having considered the proposal and any submissions or observation made in respect of it, by resolution as they consider appropriate recommend the inclusion of the provision in the Development Plan, with or without modification, or may recommend against its inclusion”*

Any person who was previously served with a notice under Section 14 (1) of the Act must now be notified of the recommendation and a copy of the notice published in at least one newspaper circulating in the area. Any person who is served with a notice has 21 days to appeal to the Circuit Court against the inclusion of the right of way in the Development Plan.

Because of the right of appeal Senior Counsel has advised that the members should not adopt the Development Plan until this appeal period has expired. The Act provides that where an appeal is taken, the Development Plan can be adopted, except in regard to the inclusion of the proposed provision which is before the Court. The provision will be included or excluded subsequently following the Court's decision.

It is most likely therefore that the Plan will be listed for adoption at the February ordinary meeting of the Council.”

Cllr. G. Spring declared in accordance with Section 177 of the Local Government Act 2001 the landowner in respect of Right of Way 3a and 3b had approached his father previously in relation to designing a golf course on this land and for this reason he would leave the meeting while these rights of way were being discussed.

Cllr. Spring then left the meeting.

Cllr. J. Healy-Rae asked if these Rights of Way were only being documented in the County Development Plan.

Mr. McMahon said in accordance with the Planning and Development Act a list of Rights of Ways must be included in the County Development Plan and they must be indicated on a map. The advice received states the planning authority must be satisfied the Right of Way exists. As previously stated *“in order for the*

*inclusion of a Right of Way it must be a public right of way. There is no provision for the inclusion of alleged or ostensible Public Rights of Way."*

Cllr. J. Healy-Rae said Rights of Way are highly contentious. He accepted that some Rights of Way are agreed however; there are issues with the types of access permitted on others i.e. vehicular, pedestrian, width etc. He asked, by including the contentious Rights of Way, is it likely the Council will end up in some or several legal cases. Cllr. Healy-Rae expressed concern that the Council could be exposed to litigation as a result of this provision in legislation.

Mr. McMahon said the Council is listing Rights of Way in the Development Plan where they believe they exist. By including these Rights of Way it does not change what is already in place.

Cllr. D. Healy-Rae said this is a very contentious costly exercise which Kerry County Council was forced to undertake. He welcomed the residents from Banna to the meeting and said they are very concerned about the Rights of Way in their area. Kerry County Council will not maintain these rights of way and he called on Management to revert to the Department to point out the futility of this exercise. If the Right of Way in Akeragh was not on the Agenda the people would not be in public gallery. He said this is a futile exercise which is hurting a lot of people. Initially members were advised the Rights of Way at Akeragh should be included yet it is now recommended they should not be included.

The Cathaoirleach said the process is nearing completion and it was a requirement to include Rights of Way.

Mr. McMahon said the Planning and Development Amendment Act 2010 introduced this new provision whereby local authorities had to list and map Rights of Way leading to seashores etc. in the Development Plan. Senior Counsel advice was that the Council has a duty to comply with this provision. Staff and the public in general were consulted and a list was drawn up. Members must now decide if Rights of Way will be included in the County Development Plan or not. No submissions were received in relation to 55 of the Rights of Way included in the Draft Plan. A decision must be made on whether each of these will be included and the landowners must be notified of that decision. Where a Right of Way is included the landowner has 3 weeks to appeal to the Circuit Court.

Cllr. J. Healy-Rae asked if one or more of these Rights of Way end up in Court will the Government or Kerry County Council be liable for the cost involved. He understood Kerry County Council would be liable.

The Chief Executive said that was a very valid point and that is why members must be very careful otherwise the Council could incur very substantial costs. As members consider each Right of Way she recommended that they would be prudent. No submissions were received on 55 Rights of Way and the others would be dealt with individually. She again urged members to be cautious.

Cllr. T. O'Brien said the Chief Executive had made a recommendation in relation to each of the Rights of Way and members must have regard to it. He asked could members be held liable individually if they disagree with these recommendations.

The Chief Executive said, in a general sense, members could be held liable where there is a serious financial risk to the Council. The legislation states that the names of the members voting against the Chief Executive's recommendations must be recorded.

Cllr. T. Ferris said she resented that threat and as a Council, members are entitled to decide on these Rights of Way. She was not aware of any case where an individual councillor was held liable. Cllr. Ferris said that threat should not be held over members.

The Chief Executive said she was in no way imposing a threat on members. She was asked a question and she gave advice. It would be unacceptable if she did not advise Council of the legal provision in place.

Cllr. S. Locke asked if members could seek legal advice on this issue.

Cllr. B. Cronin said he took the advice as a veiled threat. The Senior Counsel advice states there is no requirement on Councillors to consider all rights of way at the same time nor is there any prohibition on the Councillors recommending a different route of a public right of way following receipt of submissions. This contradicts the Chief Executive's advice and he requested clarification.

Cllr. N. Foley said each councillor represents the needs of their community to the best of their ability and they must decide what is in the best interests of the community. Members must do their best and if a right of way is appealed to the Circuit Court that is a matter for another day.

Cllr. S. Locke said the onus should be put back on individuals who say they do not want a right of way. In one case the right of way is in use for years and if members agree to include it in the Plan the landowner can appeal that decision to the Circuit Court.

The Cathaoirleach said no one was putting threats on members but advice was sought and a legitimate answer was given.

Cllr. T. O'Brien said he never avoided a tough decision. He asked a straight question as he has a family and a home and he was entitled to ask the question.

The Chief Executive said as previously stated by the Director legislation requires local authorities to include a list and maps of rights of way in the County Development Plan. The public were consulted and Senior Counsel opinion was sought. It was her duty to provide members with the best legal advice available. She urged members to be particularly cautious in dealing with the rights of way. She is required to advise members that there maybe a financial risk for the local

authority. Senior Counsel has advised of two cases in relation to rights of way and she again advised members to be cautious. There is provision in legislation for the recording of the names of members when a vote is taken and that is not intended as a threat. She was merely outlining the position as it is.

Mr. Stack referred members to Pages 40 to 43 of the Chief Executive's Report for details on Public Right of Way No. 3a & 3b (Akeragh Bridge) and he briefed them on them as follows:

***Public Right of Way no. 3a & 3b (Akeragh Bridge)***

A large number of submissions relate to this Public Right of Way. A full list of the submissions is listed in Appendix 1.

**Written Submission No's. S-6, G-21 and R-1 to R-262**

A summary of these submissions is as follows:-

- There are objections to any interference with existing rights of way at Akeragh and over Akeragh Bridge as they have been in existence for generations.
- Essential emergency services must use the vehicular access point (3b) to reach the beach.
- The omission of the rights-of-way as proposed would send a very negative message to the tourism industry.
- The proposals would effectively cut the North Kerry Way in half, rendering it unfit for purpose and likely to attract negative publicity to County Kerry.
- These are historic rights of way which should be maintained for essential access for recreational use such as walking, fishing & bird watching.
- It is stated that any changes will alter or stop any observations by the public at this key ornithological site.
- These points of access have been approved by the National Waymarked Ways Committee as being part of the North Kerry Way.
- The rights of way are necessary to gain access to the Black Rock.
- It is stated that if the routes are altered it will leave walkers with no alternative but to follow the northern bank of the Akeragh River between where the Tyshe River joins it and their outlet to Tralee Bay. This section of river can be very fast flowing at times depending on the amount of flood water to be discharged and also the state of the tide here.
- During high tide, the car bridge (reference ROW 3b) can be inaccessible, so one must use the Akeragh Bridge (reference ROW 3a) otherwise one could be trapped on the beach for a few hours. As Akeragh Bridge (reference ROW 3a) is very narrow with a considerable number of steep steps it is not wheelchair accessible nor can a child's buggy cross it. Therefore both bridges are required to gain access to Akeragh Beach and the Black Rock.

- Strong opposition to the proposal to terminate the rights of way at Akeragh.
- The removal or alteration of the rights of way would be abysmally ill-conceived, retrograde and anti-community.
- The rights of way are used for sports training purposes and therefore should be retained.
- These are the only easy access points to the end of Ballyheigue Beach and the Black Rock from the south side of the Akeragh River as alternative access even at low tide is not possible.
- These are historic rights of way have been used for generations in order to gain access to the beach to harvest seaweed.
- The 1812 Nimmo Map clearly shows the old road to Ballyheigue along with an adjoining road.
- It is stated that the lock on the gate on the right of way has only been applied in recent times and has been put up so illegally.
- It is stated that if there is no access for the council in the future and it will cause a blockage in the river mouth entering Banna beach due to excess sand. This will cause a very high water level along the water from Ballyheigue to Banna causing flooding in the main Ballyheigue to Tralee road.

Submission R-262 with approximately 1,000 signatures protests against the proposed closure of the right of way to Akeragh. These signatures support the retention of the public rights of way in the Akeragh Ballinprior area leading to the Blackrock and beach.

Submission R-265 is from the firm of Thomas J O'Halloran Solicitors on behalf of *(Name withheld for data protection purposes. A paper copy of the Minutes is available on request)* (the landowner). This Submission questions the procedures adopted by the Council in relation to advertising the Material Amendments and alleges that it is contrary to Section 14(3) of the Planning & Development Acts 2000-2014. It goes on to point out that in his opinion there is no provision for further submissions after the initial consideration of the Council and that if the Council proceeds further they will seek a judicial review in the High Court. It also points out that they are reserving the right to seek compensation.

This Submission is a follow up to the initial submission received on the 4<sup>th</sup> April 2014 which objected to the inclusion of ROW 3(a) and 3(b) in the County Development Plan. It pointed out that persons are walking on this land with the permission of the owner and that there is no evidence that the owner had dedicated the way to the public. The submission quoted from the Supreme Court decision in the Lissadell case, which stated that *"the landowner will not by respecting a tradition of generosity and openness, be deemed to have encumbered his land with public rights. The law does not convert such acts into legal obligations"*.



*The submission received on the 4<sup>th</sup> April 2014 included an additional eighteen (18) names. There is correspondence from 2 of those named withdrawing their support for the submission (see Sub R-263 & R-264).*

### **Chief Executives Response**

The opening statements in this section of the report set out the legal position as it currently stands following the Lissadell judgement. While it is clear that there is considerable usage of these tracks and some are “marked” the fundamental question to be answered is whether or not a public right of way has been dedicated or whether people use the tracks by permission of the landowner.

It should be pointed out that the inclusion of an objective in a development plan for the preservation of a public right of way does not create a public right of way where none previously existed, nor, as expressly provided in Section 14 of the Planning & Development Act 2000 does the omission of the inclusion of such an objective in a development plan affect the existence or otherwise of a public right of way which is already in existence. Accordingly, the non-inclusion of alleged ROW's 3(a) and 3(b) does not affect the position as it currently exists on the ground, but, it does protect the Council from legal challenge which could expose the Council to substantial financial risk.

### **Chief Executives Recommendation**

In view of the assertion of the landowner that there is only permissive use here and the clear principles set out in the Lissadell case, it is recommended that ROW 3(a) and 3(b) be not included in the Plan.

Cllr. T. Ferris requested that the video clip she provided would be played for members as this shows the right of way being used by walkers. No one made a better case than the Action Committee. The issue is whether the Council will now do what it is legally obliged to do in accordance with the Planning Act and that is to protect a legal right of way. She welcomed the fact that local authorities must now act and have an obligation to protect rights of way. She was not aware that the members of Sligo or Wicklow County Council were held liable for legal costs. In her opinion if members disagree with the Chief Executive's Recommendation they will not be held liable at a future date. Legal opinion stated *“a single act of interruption by the owner is of much more weight, upon the question of intention, than many acts of enjoyment”*. The legal opinion circulated states *‘The law of public rights of way is of ancient origin. Except where it can be shown to have existed from time immemorial.’* The legal opinion states that it is not a requirement that the right of way is dedicated by the owner. Prior to vehicular access these rights of way were used by donkey and cart to harvest seaweed. Vehicular access is needed when there is high tide. The legal opinion refers to court cases and in the 1972 case it stated when there is no direct evidence of intent by the owner it maybe assumed a public right of way exists. For many years there was vehicular and pedestrian access to this beach. If a landowner chooses to go to Court she had no doubt what the outcome would be.

This right of way has been used time immemorial. She saw a mound of sand created by this local authority from dredging at this location. She was confident any Court would recognise it for what it is. Members must do the right thing and she commended planners for including these rights of way in the County Development Plan. If it had not been included there would have been submissions seeking its inclusion. She accepted the point that by including it, it would not create a right of way but if it is not included it will give strength to a weak argument.

Cllr. N. Foley acknowledged the points made by Cllr. Ferris and supported the sentiments expressed in relation to right of ways 3a and 3b. This is a very contentious issue but members have a job to do. There is a legal obligation to protect rights of way going back to 1993. Rights of way 3a and 3b are the only direct access to Akeragh beach and the Black Rock. The crossing to Akeragh was there before the modern road. In the Lissadell Case it stated "*Except where it can be shown to have existed from time immemorial*" and this right of way can be dated back to the 1900's. Right of way 3b is the only access point for the Sea Rescue, the Ambulance Service etc. and it is imperative it continues. Activities in this area, such as the harvesting of shell fish, walking greyhounds etc. are going on for years. This is a huge educational resource for photographers, students etc. It is included in the North Kerry Way and by removing it the North Kerry Way is cut in half. In the Lissadell case the Court did uphold access to the beach. The community is not asking to change anything but they want this local authority to allow what has always been there to continue into perpetuity. In relation to the legal challenge it is acceptable that management would bring information to members' attention but management must accept that members have a duty to preserve what has been there for years. In conclusion Cllr. Foley said she supported the inclusion of right of way 3a and 3b in the County Development Plan.

Cllr. P. Daly supported the inclusion of rights of way 3a and 3b in the County Development Plan. He considered this issue when it was debated by Council in September and since then he made enquiries locally and he understands they have been used for years. The route is as old as Pattern Day in Ballyheigue and members should vote to preserve these rights of way.

Cllr. J. Finucane said it is important to note that this is a unique area in the county. The Director outlined the position and he had discussions with people who want to locate in Kerry. The quality of life is very important and the area from Banna to Ballyheigue is a key amenity area. It is unique that the Council is involved in the maintenance of this area from the point of view of flood relief. These works help prevent the flooding of this area and the landowners land. The Council has a role to play in protecting a key local /tourism asset and to protect the environment. He accepted there maybe a legal challenge but said it is members' duty to protect the common good. The essential thing is that this is an asset worth protecting and it is something the Council, as a tourism body, promotes. Cllr. Finucane said he was aware there could be an opportunity to

approach the landowner with a view to agreeing a solution to bring this access into public ownership. He called on the Council to approach the landowner immediately with a view to acquiring this access to the beach as he understood there was room for meaningful discussion. It is the Council's duty to protect a significant asset such as this and he supported the inclusion of right of way 3a and 3b in the County Development Plan.

Cllr. S. Locke said previous speakers echoed the views of thousands who want the retention of these walkways. He PROPOSED that these rights of way would be retained.

Cllr. D. Healy-Rae welcomed the people in the public gallery to the meeting and said it is clear from the phone calls he received that this right of way goes back over time. He told management it was a futile exercise to include rights of way in the County Development Plan. They included the rights of way in the Draft Plan but they now recommend they would not be included. He expressed surprise that the Roads Department did not make a submission in support of the inclusion of this right of way as they use it to maintain Akeragh Lough. It is clear from the views expressed by previous speakers that these rights of way are required for access to the beach by emergency services and they must be retained. Cllr. Healy-Rae expressed amazement despite what officials said in relation to the inclusion of rights of way in the past they are now recommending that these would be excluded from the Plan. He was informed that the only two councillors who voted against these rights of way at a previous meeting were the Healy-Raes but he said he would vote in favour of including these rights of way in the Plan. There are many rights of way in the county not included in the Plan.

Cllr. P. McCarthy said in the Lissadell case the right of way to the beach was upheld. He supported the inclusion of these rights of way in the County Development Plan.

Cllr. T. O'Brien said he always supported the inclusion of these rights of way in the County Development Plan. He knew this area well and from the outset he said he would support it.

Cllr. R. Beasley PROPOSED that a vote would then be taken on these rights of way.

The Cathaoirleach said if a member indicated they wanted to speak he would allow them to do so.

Cllr. D. Grady said he was not familiar with this area but he made enquiries about it. He welcomed the people in the public gallery to the meeting and said they richly deserve the inclusion of these rights of way in the Plan.

Cllr. J. Healy-Rae said he was glad rights of way such as these are included in the Plan and will be part of the list of public rights of way. He agreed with Cllr. Finucane that this and other rights of way are of extreme public importance and should be taken in charge by Kerry County Council. Cllr. Healy-Rae said he

supported the inclusion of these rights of way in the Plan and this case is straight forward as it leads to a Blue Flag Beach.

The Cathaoirleach said the residents of Banna knew he was committed to supporting them and this was part of his electoral area for years. He hoped these rights of way would not end up in Court and that the difficulty with the landowner can be resolved. He hoped Cllr. Finucane's suggestion would be acted upon. He thanked the members for their support for these rights of way.

Cllr. Ferris said the minutes of previous meetings on this issue are available. She did not say the Healy-Raes voted against these rights of way but when she was asked how the vote went she said two councillors voted against it and the people needed to speak to them.

Mr. McMahon said he had no doubt councillors in Sligo were equally passionate when they commenced the process in relation to the right of way across Lissadell lands. Similarly people in Wicklow believed they were right when they took the Walker case. This took 11 days in the High Court and numerous witnesses to decide no public right of way existed. Equally in the Lissadell case it took 67 days in the Supreme Court and as a result the standard for proving a right of way exists has been set extremely high. In these cases evidence was produced going back to the 1700's and it was not adequate to prove a right of way existed. Both these cases were determined after the commencement of the 2010 Planning and Development Act. Despite what people felt was over whelming evidence the Judges decision was that the right of way did not exist except in one case.

Mr. O'Brien informed the meeting a vote would be taken on Cllr. Ferris's proposal, which was seconded by Cllr. Foley as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW 3a and 3b and the submissions or observations made in respect of them resolve to recommend that these rights of way be included in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Culloty, Daly, Ferris, Finucane, Fitzgerald, Flynn, Foley, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kelleher, Kennelly, Locke, P. McCarthy, McEllistrim, Moloney, Moriarty, Nolan, O'Brien, O'Connell, O'Shea, Purtill, Quigg, Sheahan, Thornton, Brassil **(31)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. D. McCarthy, Spring **(2)**

The Cathaoirleach declared the proposal CARRIED.

The Cathaoirleach said Cllr. Spring sent his apology as he had to leave the meeting due to a family issue.

Mr. Stack referred members to Page 43 of the Chief Executive's Report for details on Public Right of Way No. 19b and he briefed them on it as follows:

***Public Right of Way no. 19b (Trench Bridge)***

**Written Submission No's. S-6, G-21, R-74 and R-266**

A full list of the submissions is listed in Appendix 1.

These submissions object to the omission of this right of way as it provides safe access to the beach from the Trench Bridge and a safe walking route from there to the public road at Castlegregory G.A.A. Club. Its removal would compromise the safety of walkers on the public road immediately adjacent to the south side of the Trench Bridge.

Using ROW 19b avoids this stretch of road and comes out close to the Trench Bridge, which must be crossed in order to walk further to the north.

**Chief Executives Response**

In relation to the above, it is considered that ROW 19a is the established route to the beach and it is clearly indicated on the OS maps. Due to the objections received from the landowners, it is considered appropriate at this time not to include ROW 19b in the Development Plan.

**Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

Cllr. S. Fitzgerald said he was not contacted regarding this right of way and he asked if the public have an alternative access to the beach.

Mr. Stack confirmed there is an alternative access 200m from this access and said there is no need to include right of way 19b.

Cllr. S. Fitzgerald PROPOSED that right of way 19b be omitted from the Plan.

Cllr. J.F. Flynn SECONDED this proposal.

Mr. O'Brien informed the meeting that a vote would be taken on Cllr. Fitzgerald's proposal as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW 19b and the submissions or observations made in respect of it*

*resolve to recommend against its inclusion in the Kerry County Development Plan 2015 – 2021.”*

The vote resulted as follows:

**For:** Cllrs. Cahill, Connor-Scarteen, Cronin, Culloty, Finucane, Fitzgerald, Flynn, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kennelly, Locke, P. McCarthy, McEllistram, Moloney, Moriarty, O'Brien, O'Shea, Purtill, Sheahan **(21)**

**Against:** Cllrs. Quigg, Thornton, Brassil **(3)**

**Not Voting:** Cllrs. Beasley, Daly, Ferris, Foley, Nolan **(5)**

**Absent:** Cllrs. Kelleher, D. McCarthy, O'Connell, Spring **(4)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Page 44 of the Chief Executive's Report for details on Public Right of Way 20 and he briefed them on it as follows:

***Public Right of Way No. 20 (Magherbeg)***

**Written Submission No's. G-21, R-74 and R- 267**

A full list of the submissions is listed in Appendix 1.

These submissions object to the omission of this right of way. It is stated that any changes will alter or stop any bird watching/observations by the public at this key ornithological site.

It is stated that the ROW is very extensively used by tourist visitors to access the beach with kayaks and other small leisure craft, and its removal would send a very negative message to international tourist visitors to the area.

**Chief Executives Response**

There is an established adjoining carpark with a route to the beach, clearly indicated on the Ordnance Survey maps.

In view of the previous comments regarding the Lissadell case and the submission from landowners the question of evidence of dedication of a right of way is in doubt.

It is considered appropriate at this time not to include ROW 20 in the Development Plan.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

In conclusion Mr. Stack said this access is close to the pub and there are numerous other access points.

Cllr. M. O'Shea PROPOSED that this right of way would not be included in the Development Plan.

Cllr. Ferris asked if this right of way was included in the Draft Plan.

Mr. Stack said it was included in the Draft Plan and its proposed omission from the Plan was put on public display as an amendment.

Mr. McMahon said there are several alternative accesses and whether it is included in the Plan or not will not alter the position on the ground.

Cllr. P. Connor-Scarteen SECONDED Cllr. O'Shea's proposal.

Mr. O'Brien said a vote would be taken on Cllr. O'Shea's proposal as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW 20 and the submissions or observations made in respect of it resolve to recommend against its inclusion in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Cahill, Connor-Scarteen, Cronin, Culloty, Fitzgerald, Flynn, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kennelly, P. McCarthy, McEllistrim, Moloney, O'Shea, Purtill, Sheahan, Thornton, Brassil **(19)**

**Against:** Cllrs. Beasley, Daly, Ferris, Foley, Locke, Moriarty, Nolan, Quigg **(8)**

**Not Voting:** Cllrs. Finucane, Kelleher **(2)**

**Absent:** Cllrs. D. McCarthy, O'Brien, O'Connell, Spring **(4)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Pages 44 and 45 of the Chief Executive's Report for details on Public Right of Way 29a and he briefed them on it as follows:

***Public Right of Way No. 29a (Gallarus)***

**Written Submission No. S-6, G-21 and R-268 to R-274**

(Full list of submissions in Appendix 1)

- These submissions object to the omission of this right of way.
- It is stated that the track is used regularly by walkers and horse riders. A fenced track protects the land on either side, used by walkers, pony riders and the community group. Row 29a is part of a route, maybe used for centuries, as the historical butter road, to Brandon.
- It is stated that the deletion of the ROW would have a serious impact on businesses and the business of other local equine providers
- It seems extremely irresponsible to force more walkers, horses and riders, bicycles, bird watchers onto the roads by closing and changing Rights of Way.

**Chief Executives Response**

In relation to the above, notwithstanding the historical nature of this route it is considered appropriate at this time due to the concerns received from the landowners and farmers who use this track, not to include ROW 29a as a Public Right of Way in the Plan.

**Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

Mr. Stack said this right of way is near the football pitch and if it is not included in the Plan the status quo remains.

Cllr. T. Ferris asked how management is reconciling their advice to members to exclude this and other rights of way in light of their duty under the 1993 Act. She PROPOSED that the Chief Executive's recommendation would not be accepted.

Cllr. S. Fitzgerald said he would have similar concerns and he SECONDED Cllr. Ferris's proposal. This is the only right of way to the beach and it is used extensively. There is no other access from this point.

The Chief Executive informed members that just because the right of way is not included in the Plan it does not mean it does not exist.

Cllr. S. Fitzgerald said if it is excluded from the Plan it gives a veto to the landowner. This is known locally as a right of way.

Cllr. T. Ferris said she appreciated the fact that members were not conferring or removing rights of way but this right of way was included in the Draft Plan. By removing it from the Plan it is strengthening a weak argument and she said the



landowner can appeal to the Court. The implication of removing it from the Plan is that members are not acknowledging a right of way that exists and it is the cowardly way out because there may be a legal challenge.

Mr. McMahon said he took exception to the use of the word 'cowardly' and he said the planning authority is not afraid to do the right thing. The list of rights of way was drawn up in good faith but the reality is there has been litigation on rights of way in the past. The law has reinforced what is a right of way and he recommended prudence in this case.

Mr. O'Brien said a vote would be taken on Cllr. Ferris's proposal as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW 29a and the submissions or observations made in respect of it resolve to recommend that the right of way be included in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Culloty, Daly, Ferris, Finucane, Fitzgerald, Flynn, Foley, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kelleher, Kennelly, Locke, P. McCarthy, McEllistram, Moloney, Moriarty, Nolan, O'Shea, Purtill, Quigg, Sheahan, Thornton, Brassil **(29)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. D. McCarthy, O'Brien, O'Connell, Spring **(4)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Page 45 of the Chief Executive's Report for details on Public Right of Way 34 and he briefed them on it as follows:

### **Public Right of Way No. 34 (Caragh Lake)**

#### **Written Submission No. R-74**

The submission objects to the removal of this ROW.

#### **Chief Executives Response**

The amendment that went on display proposed a slight alteration in the map at this location. It was not proposed to remove this ROW.

### **Chief Executives Recommendation**

It is recommended to adopt the amendment and include the right of way at the slightly amended location than that shown in the Draft Plan.

Mr. Stack said the original map has been amended slightly.

Cllr. M. Gleeson PROPOSED that right of way 34 be included in the County Development Plan.

Cllr. D. Quigg SECONDED this proposal.

Cllr. Cahill asked if submissions were received on this right of way.

Mr. Stack confirmed a submission was received and it was interpreted that the right of way was being removed but that is not the case.

Mr. O'Brien said a vote would be taken on Cllr. Gleeson's proposal as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW 34 and the submissions or observations made in respect of it resolve to recommend that the right of way be included in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Culloty, Daly, Ferris, Finucane, Fitzgerald, Flynn, Foley, Gleeson, Grady, J. Healy-Rae, Kelleher, Kennelly, Locke, P. McCarthy, McEllistrim, Moloney, Moriarty, Nolan, O'Shea, Purtill, Quigg, Sheahan, Thornton, Brassil **(28)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. D. Healy-Rae, D. McCarthy, O'Brien, O'Connell, Spring **(5)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Pages 45 to 47 of the Chief Executive's Report for details on Public Right of Way 43 and he briefed them on it as follows:

***Public Right of Way No. 43 (White Strand, Carroll's Cove)***

**Written Submission No's. S-6, G-21, R-275 to R-376 and R-377**

A large number of submissions relate to this Public Right of Way. A full list of the submissions is listed in Appendix 1.

### **Submissions S-6, G-21, R-275 to R-376**

The following is a summary of the issues raised:-

- *Support the inclusion of the access road as a public Right of Way in the County Development Plan.*
- *Object to any interference with existing right of way to the beach as it has been in existence for generations.*
- *It is stated that this legal public right of way has been established and used for hundreds of years.*
- *It is stated that old photographs clearly indicate the roadway predating the construction of the Bar/restaurant.*
- *The road down to the beach has always been a right of way and has never been blocked. The access in question has always been open to the public all year round.*
- *The beach is also known locally as Glenbeg.*
- *It is vital that the right of way on the road is included in the County Development Plan to allow for access in the case of a marine emergency*
- *The road down to the beach has been used by the farmers for generation collecting sand and seaweed.*
- *The road down to the beach has always been used by holidaymakers, locals and tourist for years.*
- *Numerous families have been going to Carroll's Cove (formally Casey's Cove) for years and always had access to the Beach.*
- *People have used this access to the beach and its environs by foot and via car for SCUBA diving, boating, swimming, picnics and fishing.*
- *White Strand is a very unique beach and amenity in County Kerry by virtue of its clear water visibility and easy access from the main road.*
- *The beach is used not only by locals but for Irish and foreign tourists because of its safety for children and bathers.*
- *The road was repaired and tarred by Kerry County Council in 1985/86*
- *It is stated that there has been public access by this route to the beach and fields beyond long before there was a house built there.*
- *The Derrynane Inshore Rescue Unit (CRBI) has used this access in a couple of call outs in recent times and feel it would be detrimental to close the road to the Public in the case of emergency.*

### **Submission R-377 (from the owner of Carroll's Cove Bar)**

- *There is no objection to the ROW being restricted to pedestrian access only. The beach is restricted by the beach by-laws and this law does not allow mechanically propelled vehicles access to the beach. The road is a cul de sac terminating at the entrance to the private caravan park at the barriers.*

- *There is no turning head and all the car parking is reserved for customers of O'Carrolls Cove Bar and restaurant. The road is in private ownership and the car parking is also in private ownership.*
- *Kerry Co. Council has confirmed that the road leading to the beach is private and is not in charge. It is stated that the legal and beneficial owner of the road and car park is Catherine O Carroll.*
- *It is stated that it is not the owner's intention to ever erect a gate and deny access to the property or to the neighbouring private caravan park.*

### **Chief Executives Response**

In relation to the above, it is evident that there is an existing right of way to the beach as it has been in existence for generations, even prior to the construction of a building on the site. It is therefore considered appropriate to include this ROW.

Kerry County Council is simply recording that a particular track/path/road is an existing Public Right of Way by listing and mapping it in the Development plan. There is no indication that the ROW is for pedestrian or vehicular use. The dimensions of these tracks/paths/roads are not stated.

### **Chief Executives Recommendation**

It is recommended to include ROW 43, as shown in the Amendments/Material Alterations (Map 7) that went on public display, in the Development Plan.

Cllr. N. Moriarty said she was very pleased with the volume of submissions in support of this right of way and she said vehicular access must be established in time. She PROPOSED that this right of way would be included in the County Development Plan.

Cllr. P. Connor-Scarteen agreed with the Chief Executive's recommendation and SECONDED Cllr. Moriarty's proposal. This right of way is in existence for years and he spent time there as a child. This right of way is very important for marine emergency services access to the beach and there is easy access to it from the public road.

Cllr. B. Cronin supported the inclusion of this right of way in the Plan. 303 submissions received were in support of the inclusion of the right of way in the Plan. This road was improved under the Local Improvement Scheme in the mid 1980's and the work was carried out by machinery. This is a critically important access for the Emergency Services.

Cllr. J. Finucane supported the inclusion of this right to way in the County Development Plan.

Cllr. S. Locke supported the inclusion of this right of way in the Plan and said the road was improved in 1989.

Cllr. J. Healy-Rae welcomed the fact that this right of way was put out for public consultation and said vehicular access to the beach is not precluded. Their submission supports the inclusion of this right of way and he called on the Council to take the road in charge so it becomes a public road. Derrynane Lifeboat states that this road is a very important access road for their service and the owner also states its importance. Twelve months ago this road was badly damaged and the local community repaired it as the road gives access to a public beach and it is a vital access if someone must be rescued from the sea. Cllr. Healy-Rae again said it is vital that Kerry County Council takes this road in charge and maintains public lights there.

Cllr. T. Ferris said she was delighted management made this recommendation and she asked what the difference was between this right of way and Akeragh.

Mr. Stack said in this case the landowner accepted there is a right of way there.

Cllr. M. Cahill supported the inclusion of this right of way in the Plan and said all public accesses to beaches should be protected.

Mr. O'Brien said a vote would be taken on Cllr. Moriarty's proposal as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW No. 43 and the submissions or observations made in respect of it resolve to recommend that the right of way be included in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Culloty, Daly, Ferris, Finucane, Fitzgerald, Flynn, Foley, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kelleher, Kennelly, Locke, P. McCarthy, McEllistrim, Moloney, Moriarty, Nolan, O'Shea, Purtill, Quigg, Sheahan, Thornton, Brassil **(29)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. D. McCarthy, O'Brien, O'Connell, Spring **(4)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Pages 47 and 48 of the Chief Executive's Report for details on Public Right of Way 51 and he briefed them on it as follows:

### **Public Right of Way No. 51 (Tomies Wood)**

**Written Submission No. R-74, R-261 and R-387**

(Full list of submissions in Appendix 1)

Two submissions object to the omission of ROW -51.

Submission R-387 says that Kerry Co. Council must be made aware that the State owns its own access to Tomies Wood. This access is located along the full length of the Western Shore of Lough Leane and states that this access should be registered as the Public Right of Way.

### **Chief Executives Response**

It is considered that this proposed right of way and access to the wood is currently disputed which would support the contention that a right of way has not been dedicated. There is presently a planning application on behalf of the National Parks and Wildlife Service of the DAHG (reg ref 14-134) for the construction of an access road to Killarney National Park in the townland of Tomies West being assessed by the Planning Authority. The decision on this application is still pending. This proposal is for an alternative access to the woods.

Notwithstanding the existence of an established track, it is considered appropriate to omit this ROW.

### **Chief Executives Recommendation**

It is recommended not to include this ROW in the Development Plan.

Cllr. D. Grady said the *(Name withheld for data protection purposes. A paper copy of the Minutes is available on request)* Family claim this is not a right of way and there was always a 'Private' sign in place. He visited there frequently as he knew their father and he believed there is no right of way there. He PROPOSED that this right of way would not be included in the County Development Plan.

Cllr. J.J. Culloty said there is a current planning application in relation to access to Tomies Wood and he anticipated there would be a decision on it shortly. He PROPOSED that a decision on this right of way would be deferred until the planning decision issues.

Cllr. B. Cronin SECONDED this proposal and said the landowner has concerns. A planning application is in the system and it is important for members to know the outcome of that planning application before they make a decision on this right of way.

Cllr. N. Kelleher supported the views expressed by previous speakers.

Cllr. T. McEllistrim SECONDED Cllr. Grady's proposal and said the State has an alternate access to Tomies Wood.

Cllr. M. Gleeson supported the Chief Executive's recommendation and said members can include it in a later Plan if necessary.

Cllr. D. Grady pointed out that planning does not grant a right of way.

Mr. Stack said it is accepted that the NPWS is trying to create another access to Tomies Wood. In the 1920's the Office of Public Works acquired a right of way through Cremin's land for their own use and the existing access for the public is a permissive access only. Regardless of the outcome of the planning application there is no right of way through Cremin's yard and it cannot be created.

Cllr. P. Daly said he understood a lot of people use it.

Mr. Stack again said it is a permissive access only.

Cllr. Culloty suggested that a decision on this right of way would be deferred. If permission is granted it will no longer be an issue.

Mr. McMahon informed members that they were dealing with the Chief Executive's Report and if they defer a decision on this right of way it will be omitted from the Plan. However, they can initiate the process to vary the County Development Plan in the future to include it. The strong advice is that this right of way should be omitted from the County Development Plan but members must make a decision one way or another on it. The Chief Executive's recommendation is that it would not be included in the Plan.

Cllr. B. Cronin asked is there were objections to the planning application.

Mr. Stack said there were a number of submissions.

Cllr. Cronin said that strengthened members case to defer a decision on it.

The Cathaoirleach asked if the landowner wants it included or does he not want people using this access.

Mr. Stack said the landowner does not want it included and the NPWS are trying to get an alternate access.

Cllr. S. Locke said he understood there is a right of way  $\frac{1}{4}$  of a mile down the road. In a working farm it is very difficult to have the general public going through the farm and no insurance company will cover the landowner for it. He accepted that the NPWS was given access and said he was opposed to including it as a right of way.

Cllr. A. Thornton asked if the Chief Executive is recommending it would not be included in the County Development Plan regardless of the outcome of the planning application.

Mr. McMahon said members have 6 weeks from the date the report issued to make a decision. If they decide to defer it, it will be omitted from the Plan. It

could take up to 9 months for the outcome of the planning decision to be known if the decision is appealed.

Cllr. J. Healy-Rae asked if members must take a vote on this right of way.

The Cathaoirleach said Cllr. Grady proposed that the Chief Executive's recommendation would be adopted and this proposal was seconded by Cllr. McEllistrim. Cllr. Culloty proposed that a decision would be deferred.

Cllr. Kelleher asked if a decision on this right of way cannot be deferred what the procedure is to re-enter it at a future date.

Mr. McMahon said in accordance with Section 14 of the Act members must deal with the inclusion of rights of way as part of the County Development Plan or they can deal with them separately. It is up to members to pass a resolution to include it in which case the landowner would be informed. Alternatively it could be included as a variation to the County Development Plan in the future and this process would include public consultation.

Cllr. D. Grady said if there are concerns, as previously discussed, members should not include this right of way.

The Chief Executive said if members vote to exclude it, it will not be included in the County Development Plan. If however, members decide in a few months time to include it they can do so by recommencing the process and varying the County Development Plan.

Cllr. Ferris asked who can initiate that process, is it the executive or the members.

Mr. McMahon says the legislation states it is the planning authority.

Cllr. Ferris asked if management would give a commitment that they will initiate the process if members so wish.

Cllr. Kelleher asked if members vote to include this right of way in the Plan and permission is granted for the current application can they remove the right of way later.

Mr. McMahon said members could not remove it later. They could put down a motion and it would be put out on public display. A report would then be presented to Council on the submissions received and they would take a decision on it.

Cllr. Daly said there are two gates at this location and a stone path to the Wood. He asked who maintains the path.

Mr. Stack suggested that the NPWS maintain it but said they have a right of way over it.



Cllr. M. Gleeson asked if there is such a thing as a selective right of way.

Mr. McMahon confirmed there is and said in many locations around the county Kerry County Council has access to its infrastructure but there is not a general public right of way there. An example of this would be the road to the sewerage treatment plan in Tralee which Kerry County Council constructed and maintains. It is locked by night and open by day.

The Cathaoirleach said walks in Ballyheigue are called the North Kerry Way and people are allowed use these paths. However if they were called public rights of way they would be blocked off. While he was not familiar with this case it appears to be similar to Ballyheigue.

Cllr. J.J. Culloty said members must take account of the landowner's rights. He visited this area on many occasions and the landowner must be thanked for allowing the public access his land. He expressed concern that if members insisted on including this in the County Development Plan it could be lost. He agreed that members should accept the Chief Executive's recommendation and omit it from the Plan.

Mr. McMahon said the NPWS application materially contravenes the County Development Plan and it will be up to the members for the Municipal District of Killarney to decide if that application will be granted or not.

Cllr. J. Finucane said the NPWS have a limited right of way through this land. If permission is granted for the current application they will still have this restricted access.

The Cathaoirleach said Cllr. Grady proposed that the right of way would be omitted from the Plan and this was seconded by Cllr. McEllistram. He understood Cllr. Culloty wanted to withdraw his proposal that a decision would be deferred.

Mr. O'Brien said a vote would be taken on Cllr. Grady's proposal as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW No. 51 and the submissions or observations made in respect of it resolve to recommend against its inclusion in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Culloty, Finucane, Fitzgerald, Flynn, Gleeson, Grady, D. Healy-Rae, J. Healy-Rae, Kennelly, Locke, McEllistram, Moloney, Moriarty, , Sheahan, Thornton, Brassil **(20)**

**Against:** Cllrs. Daly, Ferris, Nolan, Quigg **(4)**

**Not Voting:** Kelleher (1)

**Absent:** Cllrs. Foley, D. McCarthy, P. McCarthy, O'Brien, O'Connell, O'Shea, Purtill, Spring (8)

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Page 48 of the Chief Executive's Report for details on Public Right of Way 53 and he briefed them on it as follows:

**Public Right of Way no. 53 (Castle Hotel, Ballybunion)**

***Written Submission No. S-6***

This is an old route for access to the strand. This is welcomed.

**Chief Executives Response**

This is an established route to the beach, between the site of the old Castle Hotel and the main street. It is considered appropriate to include this right of way.

**Chief Executives Recommendation**

It is recommended to include ROW 53 in the Development Plan.

Cllr. R. Beasley PROPOSED that RoW 53 be included in the Kerry County Development Plan 2015 - 2021.

Cllr. J. Moloney SECONDED this proposal.

Mr. O'Brien said a vote would then be taken on Cllr. Beasley's proposal as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW 53 and the submissions or observations made in respect of it resolve to recommend that the RoW be included in the Kerry County Development Plan 2015 – 2021."*

*The vote resulted as follows:*

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Culloty, Daly, Ferris, Finucane, Fitzgerald, Grady, D. Healy-Rae, J. Healy-Rae, Kelleher, Kennelly, Locke, McEllistrim, Moloney, Moriarty, Nolan, Quigg, Sheahan, Thornton, Brassil (23)

**Against:** None (0)

**Not Voting:** None (0)

**Absent:** Cllrs. Flynn, Foley, Gleeson, D. McCarthy, P. McCarthy, O'Brien, O'Connell, O'Shea, Purtill, Spring **(10)**

The Cathaoirleach declared the proposal CARRIED.

Mr. Stack referred members to Page 49 of the Chief Executive's Report for details on Public Right of Way 54 and he briefed them on it as follows:

**Public Right of Way no. 54 (From the end of ROW 47 to the Point, Kenmare)**

**Written Submission No's S-6 and R- 378 to R-383**

*(Full list of submissions in Appendix 1)*

**Submission No's S-6 and R-378 to R-381:**

*These submissions comment as follows –*

- Long-term local residents confirm that this path has been in regular use in the past
- This path has been in regular use in the past, a fact shown on old maps as a pathway.
- A public recreational access would not in any way detract from the value of this land for agricultural use.
- A Wish to see provision of such a right of way and its inclusion in the County Development Plan.
- It is stated that given suitable precautions such as fencing, stiles and the prohibition of unleashed dogs, public recreational access would not in any way detract from the value of this land for agricultural uses.

**Submission No.'s R-382 & R-383 (from the owner/tenant)**

- Submission R-382 objects to the proposed creation of this Right of Way as it should be noted that there is no pre-existing Right of Way on the suggested route or any other similar route.
- Submission R-383 is from the tenant of the lands to be crossed. The tenant has a Legal Grazing Rights Lease in place and objects to the right of way. It is stated that horses, cattle and sheep graze there and the idea of members of the public walking through these lands unescorted is considered highly dangerous.

**Chief Executives Response**

In relation to the above, given the lack of clear evidence that a public right of way exists over these privately owned land and the strong contention of the

landowner that no right of way exists it is considered appropriate to omit this right of way at this time.

### **Chief Executives Recommendation**

It is recommended to omit ROW- 54 from the Development Plan.

Mr. Stack said RoW 54 was not included in the Draft Plan but a submission was received requesting that it would be included.

Cllr. J. Healy-Rae PROPOSED that the Chief Executive's recommendation be adopted and that RoW 54 be excluded from the County Development Plan. The submission does not prove that the right of way exists and the landowner has stated that this goes through private land which is farmed. In the absence of the agreement of the landowner he proposed that it would be excluded from the Plan.

Cllr. D. Healy-Rae SECONDED this proposal and said this is not a right of way for the general public. He was vehemently opposed to the inclusion of it in the Plan. It is unfair to expose the Council to possible costs if it is included. Until there is agreement with the landowner there is no public right of way there.

Cllr. P. Connor-Scarteen disagreed with Cllr. J. Healy-Rae's proposal and said this leads from Kenmare Pier to the Bay. He used this path as a teenager but a gate was erected 5 or 6 years ago. In his opinion it is a legitimate right of way. He PROPOSED that this right of way would be included in the Plan.

Cllr. J. Finucane supported Cllr. J. Healy-Rae's proposal and said this has potential to be very contentious.

Cllr. T. Ferris said this is one of the few rights of way she did not visit. She understood it was locked some time ago but in a case in Fenit Island the right of way was obstructed by the landowner. She requested the views of local councillors on RoW 54.

Cllr. P. Connor-Scarteen said a number of people walked this right of way for years but a gate was erected on it a number of years ago. This land is in NAMA and the public always walked down there to the old famine graveyard. It is also shown on an old map.

Cllr. J. Healy-Rae said it is irrelevant who owns it but it is not in NAMA. The owner says it was always blocked off. If the owner is correct and the evidence is weighted in his favour Kerry County Council had to get a right of way to access the sewerage treatment plant. That acknowledges that there was no historic right of way there.

Cllr. N. Moriarty SECONDED Cllr. Connor-Scarteen's proposal.

The Chief Executive said this right of way is slightly different to the one at Akeragh as there is a lack of clear evidence of the public right of way and this was factored into her recommendation.

Mr. G. O'Brien said a vote would then be taken on Cllr. J. Healy-Rae's proposal which was seconded by Cllr. D. Healy-Rae as follows:

*"That we the members of Kerry County Council having considered the proposal in relation to RoW No. 54 and the submissions or observations made in respect of it resolve to recommend against its inclusion in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Culloty, Finucane, Fitzgerald, Flynn, D. Healy-Rae, J. Healy-Rae, Kennelly, Locke, Moloney, Sheahan, Thornton, Brassil **(12)**

**Against:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Daly, Ferris, McEllistram, Moriarty, Nolan, Quigg **(10)**

**Not Voting:** Cllr. Kelleher **(1)**

**Absent:** Cllrs. Foley, Gleeson, Grady, D. McCarthy, P. McCarthy, O'Brien, O'Connell, O'Shea, Purtill, Spring **(10)**

The Cathaoirleach declared the proposal CARRIED.

Cllr. T. Ferris asked if any of the rights of way are challenged in the Circuit Court must members review the list.

Mr. McMahon said if any right of way is challenged the Circuit Court will decide if a right of way exists or not.

Mr. Stack referred members to Page 50 of the Chief Executive's Report for details on Public Right of Way 6 and he briefed them on it as follows:

### **Public Right of Way no. 6 (Banna Mt)**

**Written Submission No. R-384** *(Name withheld for data protection purposes. A paper copy of the Minutes is available on request).*

This submission relates to ROW 6 which is located in Banna, between L6092 and L10476. It objects to the inclusion of this right of way as it goes through the landowners' property.



This submission relates to ROW 17a which is located in Aughaclasla. It requests works to be carried out in order to correct the ongoing flooding problem on the bottom part of the roadway at the entrance to the beach.

### **Chief Executives Response**

In relation to the above, this ROW was not a material alteration and therefore can not be considered.

### **Chief Executives Recommendation**

No amendments to the Material Alterations that went on display.

Mr. Stack referred members to Page 51 of the Chief Executive's Report for details on Written Submission No. R-386 and he briefed them on it as follows:

**Written Submission No. R-386** *(Name withheld for data protection purposes. A paper copy of the Minutes is available on request).*

This submission relates to the private roadway through the old Godfrey Estate in Milltown i.e. from Rathpooke West to The Abbey. It is requested that it be preserved as a private road owned exclusively by the adjoining landowners.

### **Chief Executives Response & Recommendation**

In relation to the above, this route was not included in the Draft Plan that went on display and cannot now be considered at this stage.

### **15.01.12.02 Making of resolutions regarding recommendations for the inclusion or omission of Rights of Way in the Kerry County Development Plan 2015 – 2021**

Mr. McMahon informed the meeting that a list was being circulated of all rights of way included in the Draft Plan where either no submission was received or where it was decided to include the right of way and no amendment went on public display. Members must consider each one of these and make a recommendation that they be included in or excluded from the Plan. This could be one composite resolution.

Cllr. D. Healy-Rae said a number of councillors had left the meeting and did not know it was necessary to vote to include these rights of way.

Mr. McMahon said this item was listed on the Agenda and these rights of way were considered at a meeting in June and it would be necessary to take a vote on them. The effect of the vote is that a recommendation is being made that they be included in or excluded from the County Development Plan. Following this the

landowners will be notified and they will have 21 days to appeal any proposed inclusion to the Circuit Court.

Mr. P. Stack then read this list into the record of the meeting.

Number	Description
ROW-1	Access to the beach from the L6003 in the townland of Castlequarter
ROW-2	Access to the beach from the L6038 in the townland of Knoppogue
ROW-3c	From the L10472 in Ballinprior past the farm buildings, and then to the beach along the south side of the Akeragh River
ROW-4	From the end of the L10470 along the track to the beach.
ROW-5	Access to the beach from the L10476 and associated parking area
ROW-6	Road between the L6092 and L10476
ROW-7	Access to the beach car-park and grass car-park surrounding the Banna Sea Rescue building in the townland of Carrahane Lower
ROW-8	Access to the beach and associated car-park in the townland of Banna Mountain
ROW-9	Access to the beach and associated car-park in the townland of Carrahane Lower
ROW-10	From the end of the L6501 in Barrow to the beach (through the Golf Course)
ROW-11	The path from the car-park before the bridge to the pier in Fenit westwards along the coast.
ROW-12	Path along the canal in Tralee from the urban boundary to the car-park located at the end of the L10584, approx. 550m
ROW-13a	Access to the beach via a track from the Derrymore Beach car-park
ROW-13b	Access to the beach via a track from the end of the L8010 in Derrymore West
ROW-14a	Access to the beach in Tonakilly from the end of the L12163
ROW-14b	Access to the beach in Ballinknockane from the end of the L12164
ROW-15a	Access to the beach in Cappaclogh West from the end of the L12161
ROW-15b	Access to the beach in Cappaclogh East from the end of the L12162
ROW-16	Access to the beach via a track from the end of the L12160 in Meennascarty



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ROW-17a	Access to the beach from the end of the L12158 in Aughacasla South
ROW-17b	Access to the beach from the end of the L12159 in Carrigaha
ROW-18a	Access to the beach via a track from the L12263 in Tullaree
ROW-18b	Access to the beach via a track in Aughacasla North from the L12157
ROW-19a	Access to the beach in Magherabeg by a track east from the L5014 south of Trench Bridge
ROW-21a	Access to the beach in Kilshannig by the grotto from the L5014
ROW-21b	Access to the beach in Magherabeg west from the L5014
ROW-22	Access to the beach in Barrack from the L5013
ROW-23	Access to the beach in Gowlane from the L8021
ROW-24	Access to Fermoye Beach from the L12110
ROW-25	Path/Track between the L12063 and L12037
ROW-27	Access to Feohanagh Beach from the L12054
ROW-28	Access from Muiríoch to the beach
ROW-29b	Access to the beach from the L8033
ROW-30a	Access to the beach from the end of the L8034
ROW-30b	Access to the beach from the end of the L8050
ROW-31	Access to the beach from the L8033
ROW-32	Access to the beach from the L8070
ROW-33a	Access to the beach from the end of the L8042
ROW-33b	Access to the beach from the L8074
ROW-35	Access to the back beach in Rossbeigh from the end of the L11809, a distance of approx. 650m
ROW-36	Access to the shore from the end of the L11645 in Coolnaharragill/Kilkeehagh
ROW-37	Access to the beach in Kells from the L7519/L4016
ROW-38	Access to the shore in the townland of Glanleam from the end of the L11509
ROW-39	Access to the beach from the L4003 in Rathkieran

ROW-40	Path between public toilets and Ballinskelligs Beach Car-park
ROW-41	Access to the beach via a track from the end of the L7535
ROW-42	Access to the beach via a track from the junction of L4009 and L11582
ROW-44	Access to the Sneem River adjacent to the bridge on the N70 in the centre of Sneem
ROW-45	The Old Kenmare Road from the L4052 to the Killarney National Park Boundary in Incheens
ROW-46	Path between the N70 and the L7610 adjacent to the Kenmare Bay Hotel
ROW-47	From the end of the L7606 westwards for a distance of approx. 100m
ROW-48	Access to Kilmakilloge Viewing Point, including roadway, car-park and paths
ROW-49	Track from the L11774 in Esk East to the County Bounds
ROW-50	Track from the L11187 in Grousemount to the County Bounds
ROW-52	Paths along the River Maine in Castleisland

Cllr. Cronin requested that the map of ROW-37 access to Kells Beach would be displayed on a map.

A map of this right of way was then displayed for members.

Cllr. Cronin asked if the dotted line is what is being included in the Plan.

Mr. Stack confirmed that was the right of way being included in the Plan.

Cllr. J. Finucane PROPOSED that the list of rights of way read into the record of the meeting by Mr. Stack be included in the County Development Plan.

Cllr. N. Kelleher SECONDED this proposal.

Cllr. A. Thornton asked if these rights of way were discussed at all and were any submissions received on them.

Mr. McMahon said these rights of way were included in the Draft Plan and no submissions were received on 45 rights of way. It was decided at the September meeting to include 10 others. It is now necessary to pass a resolution to recommend their inclusion in or exclusion from the County Development Plan. These were included in the Draft Plan that went on public display initially. Because no submissions were received on them or a decision was taken by the members to include them as per the Draft they did not go out on public display as

amendments and were consequently not considered in the Chief Executive's Report.

Cllr. Thornton said she was cautious about voting for the inclusion of these as she did not know where they were.

Mr. McMahon said members discussed them when the Draft Plan was presented to the previous Council and prior to the Draft Plan going on public display. As this Plan is being reviewed over a period of two years it spans two Councils. Each landowner affected was already notified and no objection was received on them. The landowners will again be notified and they have 21 days to appeal to the Circuit Court.

Mr. O'Brien said a vote would then be taken on Cllr. Finucane's proposal which was seconded by Cllr. Kelleher as follows:

*"That we the members of Kerry County Council having considered the proposal and any submissions or observations made in respect of them resolve to recommend that the list of rights of way read by Mr. Stack be included in the Kerry County Development Plan 2015 – 2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Cronin, Culloty, Ferris, Finucane, Fitzgerald, Flynn, J. Healy-Rae, Kelleher, Kennelly, McEllistrim, Moloney, Moriarty, Nolan, Quigg, Sheahan, Thornton, Brassil **(20)**

**Against:** None **(0)**

**Not Voting:** None **(0)**

**Absent:** Cllrs. Daly, Foley, Gleeson, Grady, D. Healy-Rae, Locke, D. McCarthy, P. McCarthy, O'Brien, O'Connell, O'Shea, Purtill, Spring **(13)**

The Cathaoirleach declared the proposal CARRIED.

Mr. M. McMahon said that concluded a two year review of the County Development Plan. The Chief Executive's Report considered at that meeting dealt with submissions and material alterations where submissions were received. However, there were a substantial number of amendments where no submissions were received and members are now required to pass a resolution to include them in the County Development Plan.

Mr. O'Brien informed members that a vote would then be taken on the inclusion of the following Material Alterations/Amendments where no submission was received on them.

MA1-1, MA1-2, MA1-3

MA2-3, MA2-4

MA-3-4, MA3-5

MA4-2, MA4-5, MA4-8

MA5-1, MA5-2, MA5-3, MA5-11, MA5-12, MA5-14, MA5-15, MA5-17, MA5-18, MA5-19

MA6-1

MA7-3, MA7-6

MA8-1, MA8-5, MA8-8, MA8-9, MA8-10, MA8-11

MA9-1, MA9-2, MA0-3, MA9-4, MA9-5, MA9-6, MA9-7, MA9-8, MA9-11

MA10-2, MA10-3, MA10-4, MA10-5, MA10-6, MA10-9, MA10-10, MA10-11, MA10-12, MA10-13, MA10-14, MA10-17, MA10-18

MA11-2, MA11-3

MA12-2

MA13-2, MA13-3, MA13-4, MA13-5, MA13-6, MA13-7, MA13-8

Cllr. J. Finucane PROPOSED that these Material Alterations/Amendments be included in the County Development Plan.

Cllr. N. Moriarty SECONDED this proposal.

Mr. O'Brien said a vote would be taken on the following proposal by Cllr. J. Finucane which was seconded by Cllr. N. Moriarty.

*"That we the members of Kerry County Council hereby resolve that material amendment Nos. listed by Mr. O'Brien that went on public display and on which no submissions were received be incorporated into the Kerry County Development Plan 2015 -2021."*

The vote resulted as follows:

**For:** Cllrs. Beasley, Cahill, Connor-Scarteen, Culloty, Finucane, Fitzgerald, Flynn, J. Healy-Rae, Kelleher, Kennelly, Moloney, Moriarty, Nolan, Quigg, Sheahan, Thornton, Brassil **(17)**

**Against:** None **(0)**

**Not Voting:** Cllr. Ferris **(1)**

**Absent:** Cllrs. Cronin, Daly, Foley, Gleeson, Grady, D. Healy-Rae, Locke, D. McCarthy, P. McCarthy, McEllistram, O'Brien, O'Connell, O'Shea, Purtill, Spring **(15)**

The Cathaoirleach declared the proposal CARRIED.

Mr. McMahon said that concluded the process. Landowners will now be notified and a notice will be put in the local paper. The landowner/occupier then has 21 days from the date after the notice to appeal to the Circuit Court. Senior Counsel advice is that the Plan should not be made until the 21 day period has expired. An item will be included on the February Agenda to make the Plan. If there are appeals to the Circuit Court those rights of way will not be included in the Plan until the Circuit Court makes a determination on them.

Cllr. T. Ferris said she appreciated the work of the planning staff on the review of the Plan.

Cllr. J. Finucane acknowledged the work of officials on the review of the Plan and said it is a very important process for the development of the county. It will now be a challenge to improve the county. In conclusion Cllr. Finucane thanked the officials for their patience.

On behalf of the Fianna Fáil party the Cathaoirleach thanked the planners for the substantial amount of work that went into the review of the Plan. The level of discussion between planners and members was far greater than ever before. In reviewing previous County Development Plans members spoke at length about one off housing without having due regard to all the other issues in the Plan. Every aspect of the new Plan was discussed at length and there are many beneficial aspects to the Plan. Members made decisions in the best interest of the county.

The Chief Executive said while she came late to the process members now have a robust Plan for the next six years. Regardless of the disagreements between members and officials they have a good working relationship. She thanked Mr. McMahon and Mr. Stack and their team and she recorded her appreciation for the work that went into the review of the Plan. She also thanked the members for their substantial input into the Plan.

#### **15.01.12.03 Authorisation to attend a Conference**

On the PROPOSAL of Cllr. N. Kelleher, SECONDED by Cllr. J.J. Culloty it was agreed to authorise the attendance of Cllrs. Cahill, D. Healy-Rae and J. Healy-Rae at the Positive Farmers Dairy Conference to be held in Clonmel on the 14<sup>th</sup> and 15<sup>th</sup> January, 2015.

Cllr. Cahill was nominated to report back to Council on behalf of the members that attend this event.

The meeting concluded at 5.40pm.

**Gerard O'Brien**  
**A/SEO Corporate Affairs**

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**Cathaoirleach of Kerry County Council**