

**MINUTES OF MONTHLY MEETING OF ROSCOMMON COUNTY COUNCIL
IN COUNCIL CHAMBER, ÁRAS AN CHONTAE, ROSCOMMON
ON MONDAY, 28TH MARCH, 2022 AT 2.15 PM.**

PRESENT: Councillor Joe Murphy, Cathaoirleach 2021/2022 **PRESIDED**

MEMBERS: Cllr L. Fallon, Cllr E. Kelly, Cllr P. Fitzmaurice, Cllr D. Kilduff, Cllr T. Crosby, Cllr M. McDermott, Cllr A. Waldron, Cllr O. Leyden, Cllr T. Ward, Cllr N. Dineen, Cllr J. Cummins, Cllr J. Keogh, Cllr M. Mulligan, Cllr J. Naughten, Cllr K. Shanagher and Cllr L. Callaghan.

OFFICIALS: Eugene Cummins, Chief Executive
Majella Hunt, Director of Services
Shane Tieman, Director of Services
Caitlín Conneely, A/Director of Services
Sean Mullarkey, Acting Head of Finance
Patricia Bohan, Meetings Administrator
Claudette Collins, Asst. Staff Officer

Apologies: Cllr V. Byrne

55.22 DISCLOSURE OF CONFLICT OF INTEREST (SECTION 177 OF THE LOCAL GOVERNMENT ACT 2001 AS AMENDED)

No declarations recorded from the Members.

56.22 ADOPTION OF MINUTES

On the **PROPOSAL** of Cllr. Cummins
SECONDED by Cllr. Crosby

It was **AGREED** to adopt the minutes of the Plenary Meeting of 28.02.2022

On the **PROPOSAL** of Cllr. McDermott
SECONDED by Cllr. Fallon

It was **AGREED** to adopt the minutes of the Special Plenary Meeting of 08.03.2022

57.22 MATTERS ARISING

There were no matters arising.

58.22 MANAGEMENT REPORT

- Management Report for February 2022 noted.

59.22 LEASE OF LANDS

On the **PROPOSAL** of Councillor Dineen
SECONDED by Councillor Callaghan

It was **AGREED** that the Council consent to the lease of property pursuant to the provisions of Article 206 of the Planning and Development Regulations 2001, Section 211 of the Planning and Development Act, 2000 (as amended) and Section 183 of the Local Government Act, 2001 of particulars of property which it is proposed to lease at the location in County Roscommon and to the persons set out in the schedule hereunder. Particulars of the property which the County Council proposes to lease:

The Property: Site comprising 0.0418 hA (0.1032 acres) at Mullaghnashee Td., Fairymount, Co. Roscommon

The person(s) to whom the property is to be leased to: On Tower Ireland Ltd, Suite 311Q House, 76 Furze Rd., Sandyford Industrial Estate, Dublin 18

The consideration proposed in respect of the lease: €135,000 plus VAT @ 23%

Term of Lease: 30 years

60.22 UPDATE ON LOUGH FUNSHINAGH

The Chief Executive welcomed Brendan Slattery, Solicitor with McCann Fitzgerald to update the Members on the recent Court Case brought against the Council in relation to works to relieve flooding at Lough Funshinagh.

The Chief Executive outlined his actions in relation to the matter on behalf of the Council and gave his view on the matter:

- The Council attended court on 10 occasions in the matter with costs incurred exceeding €250k
- Everything legally possible was done by the Council including emergency works under the 1949 Act and subsequent works.
- The Friends of the Irish Environment took an action to find the CE in contempt of court and this has also generated costs, but was rejected by the court.
- The Court in its decision accepted conforming issues ensuring that Roscommon County Council could not give comfort to this in danger of losing their houses, generated costs and has left the Council in an impossible situation. Nothing could be as traumatic to people as the possibility of losing their home and having to leave their community.
- FIE in its litigation, was successful in preventing every action of the Council and therefore ensured that the Council could not give comfort to those in danger. They successfully convinced the court that water flows uphill and the situation that pertains to the people of Lough Funshinagh was not an emergency.
- Lough Funshinagh is a turlough and by definition under the annex attached to that designation, must increase. Having engaged top consultants to advise the Council on screening works for the intermediate scheme, and only a few days before their work was completed they were finally able to screen it out as previously it was uncertain that this was the case and the works being proposed was a simple pipe in the rock to decant water from the lake to Lough Ree.
- The Court did not accept the independent advice of the Consultants but accepted FIE advice and rejected that an emergency existed at any stage of the Councils intervention.
- The Chief Executive thanked Minister O'Donovan and the State who made resources available to keep the people of Lough Funshinagh in their homes. There have been enormous resources expended by the OPW to date including pipes, machinery, bedding around pipes and after Easter they have to return to take away pipes and shingle and restore the land.
- While the natural assumption is that the Council will start again and carry out all of the studies etc. and return in 3 years time with an application to An Bord Pleanala, but the possibility of being granted permission is slim. This is because of the designation under the annex, one cannot determine ever the level above which it cannot raise and it is my considered and informed view they would have no choice but to refuse. The risk of failure is great in this regard and all decisions can be appealed to court.
- There is only one way to go, and FIE will recognise this, where people are forced out of their homes. I am very angry about the waste and hurt for the people of Lough Funshinagh who had hope and strangers with no connection to the area have intervened. The Council have to find the €250k costs to date and not to mention what OPW have spent and we have to walk away. We are hurt for the people affected and in the end it was just a simple pipe required that would only be used when necessary.
- There seems to be only one way forward due to the clarifications brought to bear by the court that

the lake has to be left to rise and fall as the weather permits with no intervention. The issues that have been raised by McCann Fitzgerald will be brought to the attention of the NPWS, Department of Agriculture and others.

Mr. Slattery outlined the legal services provided to the Council in the context of this case:

- A wealth of information has been gathered on the lake by the teams working on the project and the levels of the lake are trending in only one direction. Malachy Walsh and Partners have been working for an extended period of time to identify a technical solution that could alleviate flood risk for those not just living but working and using infrastructure in the in the area of Lough Funshinagh. From a legal perspective this has evolved a fact matrix in relation to the lake with information constantly being updated and showing the lake having reached its highest level on record 12 months ago.
- On the basis of the information a decision was taken by the council in May 2021 to carry out emergency works under the 1949 Local Authority Works Act and approx. 800m of pipeline was laid pursuant to the Chief Executives order. In August, as works were ongoing, the FIE took a legal challenge against Roscommon County Council as first respondent and Ireland and the Attorney General as second and third defendant (due to EU and Irish law involvement in the case), proceedings that were ultimately heard by the High Court where leave or permission to bring the legal challenge was granted by the high court and ultimately on consent a short period thereafter orders made quashing the decision of the Council under the 1949 Act.
- McCann Fitzgerald became involved at this point to advise the Council in relation to the range of options legally that are available to a Council to progress matters ranging from the urgent advice immediately required through to regulatory approvals necessary. Confidential legal advice produced for RCC allowed Malachy Walsh and Partners prepare technical analysis and act on its behalf - in this context the amount of water that could be decanted to Lough Ree the technical solution.
- The solution being worked on at this period was adjusted from what was first considered in May to be something that was capable of being delivered this winter and a shorter run of permanent pipeline in a different location and a constraint in the amount of water that would be decanted to Lough Ree.
- The first legal exchanges with the FIE occurred very swiftly after the Chief Executives Order on 14th October with a range of information requests to ascertain the depth of the Councils decision making process. They contended that the works undertaken from October onwards were in breach of the High Court in August. At the end of August, the Order made by the High Court was one quashing the decision of May preventing further work to undertake the pipeline and related works and to remediate in accordance with a specific formal method set out in a formal plan that was attached to the court order to effectively put the pipe beyond use and end the pipe-laying process in a way that didn't make the pipe a conduit.
- Subsequently screening for appropriate assessment and an environmental impact assessment were assessed by McCann Fitzgerald as to what extent they present an issue for the important features from a regulatory ecological and environmental perspective.
- The complaint of the FIE was that using the pipe in the ground was in flagrant breach of the Order made by the Court in August and this was rejected by the Court and the Council was not in breach of any court order. The FIE signaled that they would back to court to complain about substance of the decision making process, that Council failed to meet specific standards in relation to EU Law.
- There were two court appearances in relation to the May decision making process and the balance in relation to the contempt complaint and the October decision making process. The same judge was in charge of all of the cases. In 21st December the FIE served their challenge to the October decision making process and the court set a timetable for first fight. In relation to what should happen in the meantime while the court proceedings are running – should the council be entitled to continue laying the pipe or stop and be forced to await – this was to be decided in early January following submissions and affidavits from both sides.

- The case was to be heard the third week of January but adjourned for a week to allow the State to make observations— this was not just a challenge to how RCC complied with Irish law but also how Irish law was compliant with EU rules.
- The Council undertook not to continue laying pipelines during the Christmas period as there was little to be gained in terms of work before the case was heard.
- The court explained that this was a particularly difficult and complex weighting exercise where it was forced to choose between the risk of irreparable damage to a SAC protected under EU law and the council's objective of solving a flood risk for infrastructure and livelihoods of people in the area and acknowledging losers in both cases, the court found in balance in favour of the protected site.
- There are a number of legal issues of significance on what would or should happen next - In relation to a conflict in the evidence provided by both sides, the court took a view to discount weight given to those involved in the decision making process and give greater weight to concerns raised by third parties. It relied on a NPWS statement regarding the labelling of Lough Funshinagh as a turlough without consideration of its current hydrological functioning and how it now works in practice.
- The court also had to deal with the state of knowledge regarding flood risk in Roscommon and the updated reports of Malachy Walsh and Partners. The court had to deal with if this was an emergency response to new facts or if this was a fact matrix that was well known and understood. The court made its observation on the first Malachy Walsh report and suggested there was some time on the part of the council i.e. that the council could have used other consenting procedures that would have seen an application to An Bord Pleanala.
- The Courts made two observations around the strength of the complaint of the FIE. An observation in relation to the 800m of pipe laid between May and October and the requirements to complete a specific kind of assessment for a job part done under a process that became legally challenged. The second observation was in relation to the emergency procedure used by the Council and the difference in the process used in May (emergency Act) and subsequently relied on in October .The process in October could have been completed under Part 8 but I circumstances where it is deemed an emergency this is not necessary. Where there is an urgent need for action the Court observed that under European Law that the definition of an emergency here is different from what Local Authorities would have previously been dealing with as emergencies and Irish law should be read narrowly. In the context of European law which states with regard to flood relief that if it's been a wet the winter before then it's not an emergency that an emergency in the context of flooding would involve a place that's only flooded once in its past not a place like Lough Funshinagh where there has been flood events and more than once in the past. The court observed that that it's a conforming obligation.
- The court also observed on the freedom and flexibility of a Local Authority to make decisions on its own projects and suggested that there was a real matter of European that needed to be considerable weight in this circumstance and it struck the balance in favour of continuing to restrain the implementation of the pipeline.
- The Council now has to decide if it is to appeal to the Supreme Court which would take 12 to 18 months this will involve resources and costs and the potential of having it overturned. It also has to consider the substantive case and how that might work and the "free right of appeal" and the references to European law in this case it could ultimately end in the European Court of Justice. The timeline and costs involved would also be considerable – the expectation that if you win and your opponent pays the costs is set aside in environmental matters and everyone pays their own legal bill. However if the plaintiff raises a winning point they will ultimately obtain a costs order against the Council.
- There is one last pending process with regard to the current proceedings as the FIE have a costs order against the Council that is yet to be determined.

The Cathaoirleach and Members welcomed the very detailed update from the Chief Executive and Mr. Slattery and discussed as follows:

- All of the Members who spoke thanked the Chief Executive, Director of Services, Council staff for their heroic work so far.
- The situation is very concerning as the Council, despite its best efforts, has effectively been stopped from helping people in a crisis.
- It is appalling that our legislators have allowed this to happen and the costs involved in court cases is prohibitive.
- Despite approving a County Development Plan, part of our community has no future.
- Thanks to the OPW and Minister for State Mr. Patrick O'Donovan for their work and support.
- The FIE have invaded South Roscommon and it is beyond belief that this can be done Who is in charge - The EU, Irish Government or a charitable organisation?
- Protecting the environment – it is forgotten that people are part of the environment and have lived there for many years. The Government is addressing the mica problem in houses and should find a compensation scheme for houses affected here.
- The FIE are not friends of the communities. The Roscommon people are not against the environment.
- We need tangible answers as to how this problem can be rectified. If Irish or EU law cannot facilitate such problems then legislation needs to be changes as it must also protect communities.
- This is a humanitarian crisis for the people affected and needs to be seen and treated as such.
- This is a sad day for all trying to help solve this problem. There are other turloughs in the county that act as such so if the lake levels are not rising and falling as turloughs by their nature do, then Lough Funshinagh can no longer been seen as such. FIE, by their actions will make people environmental refugees.
- At some point common sense must prevail as people affected are in a distressed state. An overflow pipe was a simple solution – when EU environmental laws were passed it was not for this particular situation.
- Hope that Roscommon County Council will continue this fight – no one wants to move from their houses as generations of people lived there. People are losing 50% of their income as a result of the loss of lands to flooding.
- We have tied ourselves up in knots in Ireland in relation to laws and red tape. This is a fundamental matter of right and wrong and we create laws of unintentional consequences that do not serve the communities it is supposed to protect.
- What is the definition of an emergency if this is not – people have fundamental needs of shelter and food and if we cannot protect this our laws need to be changed.
- In the context of EU legislation, what changes are required so it can protect lives homes and habitats? Is there any humanitarian compensation available? Government Departments are going to have to start addressing these issues honestly and truthfully. For those affected, there is a need for viable proposals as there are wide ranging implications and if change is required – what is it?
- The Council tried to resolve this using emergency powers but this was thwarted. Is the fight over or just beginning?

In response to points raised Mr. Slattery confirmed that how laws apply to the fact matrix were applied to the Lough Funshinagh situation. There is a flexibility in EU law that the court did not use. In relation to the definition of projects that are treated as an emergency, two types are relevant: Environmental Impact Assessment – the substance of which has not changes since 1997 and the Habitats Directive that has not changed since 1992 -there is a reluctance to amend due to complex directives. These projects could be waiting up to two years for a decision by an Bord Pleanala or 36- 48 months for issues with consent.

There is an argument for the rights of people vs the environment however the public interest associated with Lough Funshinagh such as people relying on accessible roads were not weighted in court. There is a place for public interest in the habitats directive and this has only been used twice in Ireland and only once

successfully. The impact of doing nothing is definitely for consideration. The challenge is in assessing all the alternatives and unless we are unable to eliminate all scientific doubt, this is a problem where there is a very high standard to be met under these conditions.

In relation to the possibility of having the SAC designation reversed for Lough Funshinagh, he stated that there is a procedure where the State has taken steps in this regard (the freshwater pearl mussel on the river Blackwater) and it was reinstated months later as litigation was subsequently commenced and it is therefore not a straightforward process.

The Chief Executive added that there is risk associated with moving forward - relocation of houses is a risk and making sure a successful scheme is found is also a risk and anyone, known or unknown can challenge other schemes in court. He thanked everyone for their confidence in what he did and Mr. John Curtin of the OPW who supported the Council totally and put resources in place to carry out the work to date. He also thanked the Director, Council staff involved, the consultants, solicitor and the Senior Counsel. He also thanked the local media for their fair coverage of the situation.

On the **PROPOSAL** of Cllr. Crosby

SECONDED by Cllr. Naughten

It was **AGREED** to write to the Minister for Environment and the Dáil Members and MEPS to change the regulations with regard to costs. It was further agreed to write to RTE Investigates to expose what has happened with regard to this case in terms of costs incurred and which will ultimately be paid by the people living in Lough Funshinagh through their taxes.

On the **PROPOSAL** of Cllr. Fallon

SECONDED by Cllr. Naughten

It was **AGREED** to

- Invite the NPWS to a meeting in Roscommon to outline what the future plan is and to account for their failure to protect the environment of Lough Funshinagh.
- It was also agreed to request that our EU Members clarify the current status of the lake and investigate the steps necessary at EU and Irish level to assess the designation of an SAC and to de-designate it if they find the requirements are not being met in relation to flora and fauna
- write to all relevant Government Ministers to find out what options are now available to rectify this situation.

On the **PROPOSAL** of Cllr. Keogh

SECONDED by Cllr. Cummins

It was **AGREED** to write to the Department of Agriculture, the Department of Local Government and Housing and the OPW with regard to putting in place the necessary humanitarian schemes to allow for those who wish to avail of a relocation scheme. The time has now passed for such a scheme to be put in place.

On the **PROPOSAL** of Cllr. Kilduff

SECONDED by Cllr. Dineen

It was **AGREED** to write to the European Commission to enquire if the definition as used in this case of an emergency is appropriate and if other members states approve of that definition of an emergency that if summer floods previously and floods a second time, if it can be considered an emergency i.e. are they happy with the definition applied by the courts in this case.

61.22 ROSCOMMON COUNTY COUNCIL AUDIT COMMITTEE

On the **PROPOSAL** of Cllr. Cummins

SECONDED by Cllr. Fallon

It was **AGREED** to adopt the Local Government Audit Committee Charter

On the **PROPOSAL** of Cllr. Fallon
SECONDED by Cllr. Cummins

It was **AGREED** to adopt the Audit Committee Annual report 2021

62.22 CHIEF EXECUTIVE BUSINESS

There was no Chief Executive business.

63.22 NOTICES OF MOTION

63.22a 04.22 - ABOLITION OF 3RD LEVEL COLLEGE FEES - CLLR. FITZMAURICE

"I am calling on the Minister for Education and the Government to abolish third level College Fees for all families which are an average of 3000 euros to help families with the enormous costs associated with College"

The Members discussed the motion which was broadly welcomed:

- In a household with two people working, they are not eligible for a grant from SUSI.
- Some houses have multiple children in college at the same time – it is difficult to sustain the cost of fees with no grant and increased inflation
- The threshold for grants is too low – no point in increasing grants if the thresholds are not increased.
- There is too much red tape in grants and fees – if abolished, the abolish for everyone.

There was some opposition to supporting the motion:

- There are plenty of families that can afford the fees and a blanket abolition is not the answer.
- The threshold for grants should be increased and not the abolition of the fees
- There is a ridiculous situation whereby students cannot work for a full summer in case their grant is affected.
- College is not for everyone – students leaving schools should consider apprenticeships.
- While there is a lot of pressure on middle income families who don't appear to be eligible for any help, a blanket ban of fees is not a good idea.

On the **PROPOSAL** of Cllr. Fitzmaurice
SECONDED by Cllr. Kelly

It was **AGREED** to write to the Minister for Education to abolish third level College Fees for all families which are an average of €3000 in order to help families with the enormous costs associated with College

63.22b 05.22 -PAEDIATRIC OCCUPATIONAL AND SPEECH AND LANGUAGE THERAPY SERVICES- CLLR. KELLY

"That Roscommon County Council write a letter to the Minister for Health, Mr. Stephen Donnelly, and the government requesting the urgent need for additional paediatric occupational therapy and speech and language therapy services in County Roscommon."

Cllr. Kelly spoke of the waiting list in the county for that is continuing to grow for paediatric service due to staff shortages in particular. In March 2022, 217 awaiting occupational therapy, 379 for speech and language services. It is critical in early childhood for these services to be available. People are having to

travel to access these services privately and it is unacceptable to see families having to do this.

The members supported this motion:

- There is a 3 to 4 year wait to get a diagnosis for autism – we are failing our future generations.
- It should be understood that the longer the wait, the more damage that is being done
- No child should be left waiting for and we are not getting a return on our investment in health services.

On the **PROPOSAL** of Cllr Kelly
SECONDED by Cllr. Ward

It was **AGREED** to write a letter to the Minister for Health, Mr. Stephen Donnelly, and the government requesting the urgent need for additional paediatric occupational therapy and speech and language therapy services in County Roscommon.”

64.22 CORRESPONDENCE

Replies to Resolutions from Roscommon County Council:

- **2nd March, 2022** - Reply from Revenue Commissioners regarding our letter to the Minister for Finance concerning the taxation of online sales,
- **9th March, 2022** - Reply from Minister for Health Stephen Donnelly T.D. ref Notice of Motion concerning public funding for IVF services.

Resolutions from other Local Authorities:

- **10th March, 2022 – Notice of Motion, Westmeath County Council.**
That Westmeath County Council write to the Minister for Health, Stephen Donnelly T.D. regarding the high number of children currently requiring urgent Orthopaedic intervention, requesting that these children be fast tracked for surgical review as a matter of urgency.

Other Correspondence:

- **25th February, 2022 – Funding Allocation from the Dept of Rural & Community Development**
Details of projects funded under the Town & Village Renewal Scheme 2021.

65.22 COUNCILLORS CONFERENCES - PAYMENT/ATTENDANCE

On the **PROPOSAL** of Cllr. Cummins
SECONDED by Cllr. Callaghan

It was **AGREED** to approve the list of payments for training and conferences as circulated.

66.22 ANY OTHER BUSINESS - UKRANIAN REFUGEES IN CUISLE

Cllr. Shanagher expressed thanks to the chief Executive and staff who were involved in getting the Cuisle Centre in Donamon ready for receiving Ukrainian refugees over the St. Patricks holiday weekend. She thanked the Council, Roscommon Lions Club, staff of LEADER and volunteers who were involved in an extraordinary effort to get the centre ready and to those who supplied food, gave donations etc.

The Chief Executive thanked all of the staff who gave their time over the weekend under the guidance of

Director Majella Hunt and Acting Director Fiona Ni Chuinn.

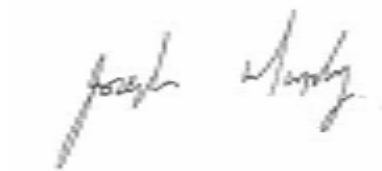
NEXT MEETING

The next meeting will be on Monday, 25th April, 2022.

This concluded the business of the meeting.

The foregoing Minutes are
Confirmed and Signed:

Patrick Bohan
Meetings Administrator



Cathaoirleach

Patrick Bohan
Countersigned