

Minutes of Special Meeting of Monaghan County Council held in the Council Meeting Room, Mtek 1, Monaghan on Monday 14th March, 2016 at 10.30 a.m.

Chair: Cllr Noel Keelan, Cathaoirleach

Present: Cllrs. Bennett, Campbell, Conlon, Coyle, Crowe, Gallagher, Gilliland, Maxwell, B. McKenna, McNally, McPhillips, O’Hanlon and S. Treanor.

Mr. E. O’Sullivan, Chief Executive, Mr. A. King, Mr. P. Clifford, Directors of Services, Mr. J. Murray, Head of Finance, Mr. D. McKernan, Senior Executive Engineer and Ms. C. Thornton, Meetings Administrator.

Apologies: Cllrs Carthy, Connolly, McElvaney and P. Treanor

1. To receive report from the Chief Executive in relation to the disposal of plant at the Materials Recovery Facility at Scotch Corner

The following is the text of the Chief Executive’s report which he read in full to the meeting:

“As requested at the Council meeting on 7th March, 2016 I have reviewed the matters raised by Cllr Sean Conlon and associated matters which have been the subject of a number of meetings between senior Council staff and elected representatives. A number of allegations have been made and, as Chief Executive, it is my duty to set the record straight and bring clarity to these matters. My report to the Council is set out hereunder.

Background:

On the 13th January, 2016, the Senior Executive Engineer Environment (SEE) received an email from Cllr. Brian Mc Kenna raising a number of issues in relation to Scotch Corner and the Material Recovery Facility (MRF). The SEE acknowledged Cllr McKenna’s email on that date stating that he would investigate the matters raised and revert when concluded.

On the 26th January, 2016, Cllr Sean Conlon requested, via phone call, an urgent meeting. Council staff facilitated this meeting which was held at 12 o’clock on the 26th January. The meeting was attended by Deputy Caoimhghín Ó Caoláin, Cllr Sean Conlon, Mr. A. King and Mr. D. McKernan. Cllr Brian Mc Kenna was unable to attend. At the meeting a number of issues of concern were raised by the Sinn Fein party members on foot of representations received by them from a third party.

The issues raised at the meeting were as follows:

1. An instance/instances of a waste operator bypassing the weighbridge to deposit waste at the tip head without registering at the landfill office.
2. Parking of current MRF operators plant & machinery outside of the MRF site boundary and compliance with EPA licence conditions
3. Equipment owned by Monaghan County Council was allegedly ‘sold by a third party’.

4. Issues around the current MRF tender including:
 - i. Qualifying criteria
 - ii. Quantities advertised in tender

The MCC staff members present listened to the issues and committed to revert to the Sinn Fein representatives following investigation of the matters raised. Cllr Conlon was updated as MCC enquiries continued.

Subsequently, a meeting was held on the 11th February, 2016. The meeting was attended by Deputy Ó Caoláin, Cllrs S. Conlon & B McKenna, Mr. A. King and Mr. D. McKernan.

The Monaghan County Council response to concerns raised were presented at the meeting as follows:

1. An instance/instances of a waste operator bypassing the weighbridge to deposit waste at the tip head without registering at the landfill office

Response from Chief Executive:

A report from the Weighbridge Operator outlined that an incident had occurred on the morning of the 7th January, 2016. The report confirmed that the issue was an isolated incident; whereby a lorry driver became impatient while waiting on the weighbridge for service and proceeded to the tip head. On noticing this the Council's Weighbridge Operator immediately intervened and the vehicle was prevented from tipping, and within minutes the lorry reported back to the weighbridge to weigh the vehicle concerned correctly. From emails and correspondence issued I am satisfied that this 'one off' incident has been dealt with satisfactorily.

There is CCTV located on landfill site including at the landfill inner gate area and it is a requirement of the EPA IE licence to cover all land filled material at the end of each day's activity. Accordingly, any irregularity in dumping of material at the tip head would be evident to the landfill staff, were it to occur.

2. Parking of plant & machinery outside of the MRF site boundary and compliance with EPA licence conditions.

Response from Chief Executive:

Parking of Plant and Machinery:

Monaghan County Council was aware that this was ongoing issue. Space inside the MRF site is limited and with the expansion of activity at the MRF facility, machinery and plant were being parked inside the landfill site. To regularise this, the site boundary of the MRF site is to be extended and all machinery and plant pertaining to the MRF operation will be required to be maintained inside this boundary for any future contract.

Operation of MRF in compliance with licence conditions in accepting black bin waste

Following the annual EPA audit of the EPA IE licence in March 2015, an issue was raised regarding a number of skips which were deemed not in compliance with the requirements of the licence. The Council wrote to the EPA on 19th May, 2015 requesting a technical amendment of the licence to broaden the scope of accepted material at the MRF. The Council received confirmation from the EPA on the 18th December 2015 that this variation could not be addressed under a technical amendment but would require a licence review (including a possible EIS). Subsequently, the Council wrote to McElvaney's Waste and Recycling on the 29th January, 2016 outlining the details of the EPA's correspondence and instructing them to ensure

operations complied with the EPA IE licence. A response from the Consultants for McElvaney's Waste and Recycling, dated 4th February, 2016, queried the EPA's interpretation of the specific condition in the licence regarding the acceptance of residual waste. The Council sought and met the EPA on the 5th February 2016 to seek further clarification of the licence. Arising, from this the EPA undertook a site visit at the MRF on the 9th February 2016. The Council subsequently received notification from the EPA on the 24th February stating *'The acceptance of black bin waste from waste collection vehicles at the Materials Recycling Facility for transfer to onward destinations is not authorised under your existing IE licence'* The Council wrote to McElvaney's Waste and Recycling on the 1st March 2016 notifying them of the EPA's clarification and that all acceptance and bulking of black bin waste was to cease with immediate effect. By letter dated 8th March, 2016, McElvaney's Waste and Recycling confirmed that they had put in place measures to ensure immediate compliance with the EPA IE licence.

It should be noted that the conditions of the licence were written at a time when only disposal and recycling options were available in the market. The introduction of recovery in the Region has resulted in the different interpretations of what types of material are acceptable or not under the current licence's conditions. As a result of the EPA's clarification it is clear that circa 7000 tonnes of material reported in the 12000 tonnes of the Annual Environmental Report is not acceptable under the licence.

3. Equipment owned by Monaghan County Council was *'sold by a third party'*.

Response from Chief Executive:

The sale was managed and authorised by Monaghan County Council and the proceeds of the sale have been fully accounted for. The sale of the trommel and picking line was completed in accordance with Monaghan County Council's Fixed Asset Disposal Procedures as contained within the Council's Procurement Procedures.

The trommel and picking line were purchased in 2003 with assistance from the Department of the Environment through grant aid. An assessment of the plant was carried out in September 2013 which deemed the plant to be obsolete in the operation of the MRF and a decision was made by Monaghan County Council to sell the pieces of plant. A subsequent Health and Safety inspection identified the need for a Traffic Management Plan (TMP), in relation to vehicle movements at the facility, including within the MRF building itself. The removal of the obsolete plant was deemed necessary in order to facilitate the TMP. At least two companies in the waste/recycling business were contacted by the Council to see if they would be interested in buying the plant.

In addition, an advertisement was posted on DoneDeal.ie website under 'Plant and Machinery for Sale' and McElvaney Waste and Recycling contact details were given for any queries or viewing requests by potential buyers. Arising from this process 3 quotes were received in writing by the Council, the highest being €25,000 plus VAT from Mac Machinery in Donegal in January 2014. A recommendation was made to sell the plant on 22/1/14, approved by the Director of Service on 27/01/14 and approved by a County Manager's Order dated 29th January 2014. The proceeds of the sale (€30,750) was received in full and receipted on the 3/2/14 and has been fully accounted for in the Monaghan County Council Accounts, as audited by the Local Government Auditor.

At this time, the plant had been fully depreciated in the Council's financial statements in accordance with the accounting policies and had a residual value of nil. In view of the above,

the approval of the Department of the Environment was not considered necessary at the time of the sale, as the plant was obsolete in the operation of the MRF.

4. Issues around the current MRF tender including:

- i. **Qualifying criteria**
- ii. **Quantities advertised in tender**

Response from Chief Executive:

(i) Qualifying criteria was exclusive

Clarification was given around the origin and basis of the qualifying criteria and it was emphasised that it was not written in a manner to be exclusive. It is common practice and industry standard to ensure that any operator would have the necessary experience and track record in operating contracts of a similar nature.

Similar qualifying criteria had been included in tender documents advertised in Counties Dublin and Donegal, for this type of contract.

(ii) Quantities advertised in tender were misleading to other possible tenderers

The quantities included in the tender related specifically to the recyclable quantities received at both the Scotch Corner and Carrickmacross civic amenity sites as are presented to the EPA in the annual returns. The combined tonnage through both the civic amenity site and the MRF site at Scotch Corner of 12,000 tonnes includes those tonnages of a combination of materials that are specific to the current operators own customer contracts. These figures, which are also reported to the EPA annually and are available on the EPA web site, could not be guaranteed to any potential new operator by Monaghan County Council and, therefore, were not included in the tender documentation.

As the closing date for receipt of tenders was the 29th January, 2016 and queries were raised on the 26th January, 2016, a decision was made that it would be prudent to temporarily withdraw the tender, pending clarification. I was briefed by the Director of Service and agreed that the tender be withdrawn temporarily.

I now wish to address the questions raised by Cllr Sean Conlon at the Council meeting on 7th March, 2016.

Will you now initiate a full inquiry into this reported and highly irregular disposal?

I have reviewed this matter in detail, as requested, and I am fully satisfied that Monaghan County Council has acted appropriately in relation to the disposal of the obsolete plant at the MRF. I do not consider this to be a 'highly irregular disposal' as alleged by Cllr Conlon. I reiterate that the sale of the trommel and picking line was carried out in accordance with Monaghan County Council's Fixed Asset Disposal Procedures as contained within the Council's Procurement Procedures

Will you establish and advise who gave approval, when that approval issued and how was it communicated, was it given in writing, was approval sought from the department of environment, a requirement in the case of all such grant aided equipment and of the terms of the tender document for the running of the MRF?

I am fully satisfied that recommendation and approval of the sale was handled in an appropriate manner and as previously indicated Department approval was not required. As the plant was 11 years old and had a nil value in the assets register it was not deemed necessary to contact the

Department. The disposal of the plant by Monaghan County Council did not contravene the conditions and terms of the contract agreement of the MRF.

Who had contact from the outset and throughout any negotiation with the purchasing firm Mac Machinery in Newtowncunningham in Donegal?

Both the Council's Environment Section staff and the current MRF operator were in contact with the final purchaser.

Who was the liaison official between Monaghan County Council and the mobile phone operator referenced by Done Deal?

The Executive Engineer Environment Section, Monaghan County Council.

How many expressions of interest were received?

Three expressions of interest were received, which complied with the Council's Fixed Asset Disposals Procedures.

Who made the final decision to sell the equipment to the Donegal firm?

The County Manager by Order dated 29th January, 2014 approved the acceptance of the offer of €25,000 plus VAT from Mac-Machinery.

How much in total was received by Monaghan County Council and when exactly was that sum received and receipted?

€25,000 plus VAT (€30,750) received and receipted on the 3/2/14.

Has such a means of selling-on of publicly owned equipment been employed by Monaghan County Council previously or since?

I am not aware of any other sale by Monaghan County Council using this website.

Having reviewed these matters in detail, I am fully satisfied, that all Monaghan County Council staff involved have acted with the highest standards of integrity in relation to the matters raised. In addition, my senior Council staff have invested considerable time and effort in an attempt to deal with the matters raised in an open and transparent manner but their responses have not been accepted by the Sinn Fein elected representatives. I refute in the strongest possible manner allegations of irregularity or impropriety in relation to this matter. As Cllr Conlon has already referred the matter to the Council's Audit Committee and to the National Oversight and Audit Commission, I will be forwarding a copy of my report to both bodies for their information and consideration. A copy will also be sent to the Waste Management Section, Department of the Environment, Community and Local Government for consideration."

Following, his report, the Chief Executive responded to queries from the elected members. A lengthy debate followed to which a number of members contributed.

At this point, the Cathaoirleach, Cllr N. Keelan referred to a letter which he had received on Friday 10th March from a waste management company who claimed that it had expressed an interest in the recycling equipment at the time it was being disposed of, but had been refused the opportunity to quote for it.

The Chief Executive stated that he had not seen the letter to which the Cathaoirleach referred and stated that he could not advise the Council on the content of the letter. He requested that the Council adjourn the meeting for a short period to allow time to consider it.

Cllr Keelan then circulated a copy of the letter to each member of the Council and the officials.

On the proposal of Cllr Maxwell, seconded by Cllr Coyle, it was agreed that the meeting adjourn for five minutes to consider the letter that had been circulated.

On resumption, a number of members expressed the view that the matter of the letter should be dealt with 'in committee'. Cllr B. McKenna stated that he was opposed to the idea of going into committee. The meeting continued in public session.

The Chief Executive stated that, in relation to the letter that had been circulated and which he had sight of only in the last ten minutes, he was concerned that no specific details had been given in the letter and it had not been addressed to the Chief Executive or senior Council staff. He stated that there was not sufficient information contained within the letter and that it would be necessary to revert to the writer for further information. He said that if the Council were agreeable, he would examine this matter and revert to the Council with a full report on the matters raised therein.

A further debate took place and a number of members stated that the letter should have been made available, at least to the Chief Executive and the party groups, in advance of the meeting that day.

Cllr O'Hanlon proposed, Cllr McNally seconded, that as a result of the letter introduced to the meeting this morning that Item No. 1 is adjourned until this letter is thoroughly checked out.

It was agreed that the Chief Executive would examine the matter of the letter circulated by Cllr Keelan and revert to the members at the next meeting.

Cllrs Maxwell and O'Hanlon stated that the integrity of the Council officials involved in the matter was not in question.

Cllr B. McKenna stated that he had no issue in relation to the integrity of the Council officials and if Mr. King had taken hurt from his comments he would withdraw them. He stated that what was done in relation to the sale of the plant was wrong and was not the way a local authority should conduct its business. He stated that the plant should have been sold through a tender process. He referred to situations where items such as farm homes were disposed of by the Council and tenders had been sought and these had been opened by the Tenders Committee. He queried why a different procedure had been undertaken in relation to the disposal of the plant at the MRF.

The Chief Executive stated that the Council had followed procedures in relation to the disposal of fixed assets with a value of less than €50,000. A tender was not required in this instance – three quotations were required and that was what was received by the Council.

Cllr McKenna stated that he was not happy with how the matter had been dealt with and that he was leaving the meeting in protest. He withdrew from the meeting room (time 12.02 pm).

Cllr Conlon, stated that he, as a member of the Council's Audit Committee, was not happy with the advertisement of the plant on 'Done Deal' and called on the Chief Executive to review the way in which assets were disposed of in future. He too then withdrew from the meeting in protest at the way in which the matter had been handled. (time 12.05 pm)

The Chief Executive again stated that the procedure followed was clear – a tender was not required for amounts less than €50,000 - three quotations were required and that was what was received by the Council. The Chief Executive accepted that, with the benefit of hindsight, it was a mistake that the advertisement had been posted on Done Deal by the MRF operator and not by Monaghan County Council. He said the funds realised from the sale had been fully accounted for and there was absolutely no question of anyone benefitting untowardly from the disposal.

Cllr Maxwell proposed, Cllr Gilliland seconded, that this Council accepts the Chief Executive's report dated 14th March, 2016, into the issues relating to the Materials Recovery Facility.

The Cathaoirleach put Cllr Maxwell's proposal to the meeting. A recorded vote was called for which resulted as follows:

For: Cllrs Campbell, Coyle, Gallagher, Gilliland, Maxwell, McNally, McPhillips, O'Hanlon and S. Treanor. Total 9

Against: Nil.

Abstentions: Cllrs Bennett, Crowe and Keelan. Total 3.

The Cathaoirleach declared the proposal carried.

On the proposal of Cllr Bennett, seconded by Cllr Crowe, it was agreed that in the interest of transparency and accountability that Monaghan County Council review all public procurement procedures.

In response to a query from Cllr Maxwell regarding incorrect reports in recent issues of the Sunday Times, the Chief Executive stated that he would address those matters directly with the newspaper.

2. To review future options for the Council's Landfill facility at Scotch Corner.

Mr. A. King, Director of Services informed the members that the Council's landfill at Scotch Corner was nearing capacity in relation to the current cell. He explained that aftercare costs would continue to be a burden on the Council whether the landfill facility remained open or not.

Mr. D. McKernan, SEE Environment Section, then gave a presentation to the members during which he outlined the following options and the implications of each option on the Council's finances.

OPTION	DEVELOPMENT COSTS	CAPPING COSTS	CAPACITY TONNES	NUMBER YEARS TO FILL	TOTAL INVESTMENT	PREDICTED INCOME
Phase 4	€1,010,000	€435,000	220000	5 to 7	€1,445,000	€6,952,000
Phase 5	€1,315,000	€367,000	75000	3 to 4	€1,682,000	€3,798,000
Phases 4 & 5	€2,325,000	€802,000	295000	8 to 11	€3,127,000	€9,510,000

Mr. McKernan referred to a meeting between a delegation from the Council and Department officials at the end of January when they were told that landfill was no longer an option for waste disposal. The landfill agenda was being driven by the EU and new legislation would set more stringent regulations in relation to the reduction of waste to landfill. Regarding the problem of capacity nationally, he stated that the temporary shortage of capacity would be addressed when the Poolbeg incinerator came into operation in 2017. He stated that Mr. Conor Walsh of the Irish Waste Management Association had also confirmed this in a conference call during a meeting of the Council's Landfill Committee. Mr. McKernan also highlighted a possible further burden on the Council's finances in the future if leachate treatment costs were to be increased by Irish Water.

In concluding his presentation, Mr. McKernan recommended that the Council do not proceed with any future development at Scotch Corner when capacity in the current cell is reached. He was awaiting results of a topographical survey as to remaining capacity and the continued operation of the landfill was being managed on a week to week basis. It was anticipated that the landfill would cease to operate towards the end of April/early May. The recommendation to close can be reviewed if there is a significant change in the market structure in the future.

The Cathaoirleach thanked Mr. King and Mr. McKernan for the significant time and effort that they had spent on this matter.

A lengthy discussion followed to which a number of members contributed.

Cllrs Bennett and Crowe said they were opposed to the closure of the landfill and that it was the loss of another service to the Council and the people of the county.

Cllr O'Hanlon referred to the proposal which he had made at the January 11 Council meeting and which had been deferred pending a meeting with Department of the Environment officials. He confirmed that he wished to re-submit the proposal at this point.

Cllr O'Hanlon proposed, Cllr Maxwell seconded

That Monaghan County Council accept Option 1 in relation to the landfill at Scotch Corner – ie that this facility is closed in 2016.

Cllr Bennett proposed, Cllr Crowe seconded, that Monaghan County Council should develop Phase 4 to have it ready for market changes that may arise.

Cllr Maxwell stated that he didn't want to see the landfill close but having regard to the figures given by the Council's staff he wasn't prepared to put extra charges on the ratepayers for the next thirty years. If the market changes in the future the Council can review the matter.

Both Cllr Maxwell and Cllr McNally stated that it was regrettable that the full Council was not present for such an important decision.

Cllr McPhillips pointed out that Cllr Carthy had stated at the March meeting that he would not be available for this meeting.

The Cathaoirleach put Cllr O'Hanlon's proposal to the meeting. A recorded vote was requested which resulted as follows:

For: Cllrs Campbell, Coyle, Gallagher, Gilliland, Maxwell, McNally, McPhillips, O’Hanlon and S. Treanor. **Total 9**

Against: Nil.

Abstentions: Cllrs Bennett, Crowe and Keelan. **Total 3**

The Cathaoirleach declared the proposal carried.

Given the result of the vote, the Cathaoirleach ruled that Cllr Bennett’s motion had fallen.

Canada Day celebrations:

Cllr Maxwell proposed that an invitation be issued to the Mayor and a delegation from Miramichi and the Fort August Irish Descendants be invited to the Canada Day Celebrations in Monaghan Town in July 2016. The proposal was seconded by Cllr Coyle and agreed by the members.

The meeting then concluded.

Signed: _____
Cathaoirleach Meetings Administrator

Date: _____