

Strategic Policy and Resources Committee

Friday, 12th June, 2009

SPECIAL MEETING OF Strategic Policy and Resources Committee

Members present: Councillor Hartley (Chairman);
the Deputy Lord Mayor (Councillor Lavery); and
Councillors Adamson, M. Browne, Convery, Crozier,
N. Kelly, Newton, Rodgers and Rodway.

Also attended: Councillor Ekin

In attendance: Mr. P. McNaney, Chief Executive;
Mr. C. Quigley, Director of Legal Services;
Mr. T. Salmon, Director of Corporate Services;
Mr. L. Steele, Head of Committee and
Members' Services;
Mr. S. McCrory, Principal Committee Administrator; and
Mr. J. Hanna, Senior Committee Administrator.

(Councillors A. Maskey and McCann arrived within thirty minutes of the commencement of the meeting but subsequent to the business having been concluded.)

Apology

An apology for inability to attend was reported from Councillor D. Browne.

Decision of Special Council Re: arc21 Residual Waste Treatment Facilities

Pursuant to Notice on the Agenda, the Committee met to consider a report in relation to the decision of the Special Council held on 9th June regarding the arc21 Residual Waste Treatment Facilities. A copy of the report in this regard is set out hereunder:

“Relevant Background Information

1. A special meeting of the Council was held on 9th June to consider the community consultation results in relation to the arc21 Residual Waste Treatment Facilities at the North Foreshore.

2. Following a presentation Councillor Ekin proposed:

‘That approval be granted for the disposal to arc21 of an area of land at the North Foreshore for the provision of either or both MBT or EFW facilities on terms to be agreed by the Directors of Improvement and Legal Services.’

The proposal was seconded by Councillor Jones.

3. An amendment, as set out below, was proposed by Councillor M. Browne and seconded by Councillor O’Neill:

‘That approval be granted for the disposal to arc21 of an area of land at the North Foreshore for the provision of an MBT facility only on terms to be agreed by the Directors of Improvement and Legal Services.’

4. The amendment was put to the Council and a recorded vote demanded.
5. Following the recorded vote it was announced that 17 Members had voted for the amendment and 16 against and it was accordingly declared carried.
6. The amendment was then put to the Council as the substantive motion, when 22 Members voted for and 10 against and it was declared carried.

Key Issues

1. During the first recorded vote, a vote was recorded for the High Sheriff in favour of the amendment.
2. During the second vote, whilst many Members changed their voting pattern in favour of the proposal, no vote was recorded against the name of the High Sheriff.
3. The next morning, the Head of Committee and Members’ Services sought from an officer a letter which was to have been signed the previous evening by the High Sheriff. The letter has not been signed and, following investigation, it became clear that the High Sheriff had not been in attendance at the meeting.
4. The matter was drawn to the attention of the Chief Executive who directed that, as the Strategic Policy and Resources Committee had originally determined that the matter should be considered at a special Council meeting, the Lord Mayor, the Chairman of the Strategic Policy and Resources Committee and the Party

Group Leaders be contacted to apprise them of the situation. It was agreed that the best course of action would be to convene a special meeting of the Committee at the earliest possible date to update the Members in this regard.

- 5. Given that the High Sheriff was not in attendance at the meeting, it is therefore clear that the vote attributed to him was invalid. This raises certain implications in relation to the legal standing of the decision of the Council at the meeting and the Director of Legal Services will provide advice to the Members in relation to that matter.**

Recommendations

The Committee is asked to consider the matter and to take such action thereon as may be determined.”

The Head of Committee and Members' Services reviewed the contents of the report and outlined the process in respect of the recording of votes. He explained that each Member's name was called out in turn and their vote was recorded independently by both the Principal Committee Administrator and himself on separate division lists. In this instance, when the vote in relation to the amendment had been tallied, both tellers had found that after independently recording the responses from the Members seventeen Members had voted for the amendment and sixteen against. The Chief Executive had announced the result of the vote and the amendment had been declared carried. A second recorded vote had then been taken on the substantive motion, which had been carried with twenty-two Members recording votes in favour and ten against.

The following morning it had become clear that Councillor McCoubrey had not been in attendance the previous evening and therefore had been wrongly recorded as having voted in favour of the amendment. The confusion had arisen by virtue of someone wrongly, whether intentionally or by mistake, calling out a vote on behalf of Councillor McCoubrey when his name had been called.

This had been drawn to the attention of the Chief Executive who had directed that the Lord Mayor, the Group Leaders and the Chairman of the Strategic Policy and Resources Committee be contacted immediately to advise them of the need to convene a special meeting of the Strategic Policy and Resources Committee so that this discrepancy could be brought to the attention of the Members and advice provided in terms of the steps to be taken to rectify the matter.

The Director of Legal Services tabled, for the information of the Members, the advice which had been received from Counsel in respect of the validity of the Council vote in relation to the Residual waste Treatment Facilities. He stated that the advice had concluded the following:

- “(i) The amendment vote at the Special Council Meeting of 9th June - 2009, in which a vote was counted as cast by Councillor McCoubrey when he was not, in fact, present and voting - is vulnerable to legal challenge. His vote ought not to have been counted and the amendment thereby allowed is liable to be quashed.*

- (ii) *It is likely that this would also lead to the quashing of the substantive vote at the meeting. This vote - in which an amendment was put as the substantive motion when, in fact, that amendment ought not to have been passed - was a direct consequence of the previous irregularity. Working on the assumption that the amendment vote would be held to be void, the later consequences of that are also likely to be invalidated.*

The manner of dealing with this issue is obviously a matter for the Strategic Policy and Resources Committee and/or the Council. However, my advice is that it would be unwise to proceed on the basis that the outcome of the Council meeting on 9th June was lawful."

The Director of Legal Services stated that, having received the advice of Counsel in respect of the vote taken at the Special Council Meeting on 9th June, it was clear that the decision reached stood invalid and accordingly the community consultation results in relation to the question of the siting of the arc21 Residual Waste Treatment Facilities at the North Foreshore would have to be reconsidered.

The Chief Executive then explained that, given the advice of the Director of Legal Services, there appeared to be three options open to the Committee:

- (i) to determine a view in respect of the disposal of the land and to make an appropriate recommendation to the Council;
- (ii) to recommend the convening of a special meeting of the Council on a date to be determined by the Chief Executive in consultation with the Lord Mayor but prior to the end of the current month and, since all relevant information had been provided to the Members already, without further presentations being made by the consultants; or
- (iii) to consider the matter as a separate item at a Special Council Meeting to be held at 6.00 p.m. on Wednesday, 1st July, with the ordinary Monthly Meeting to follow immediately thereafter.

Proposal

Moved by Councillor Convery,
Seconded by Councillor N. Kelly,

That the Committee agrees to adopt Option (iii).

On a vote by show of hands four Members voted for the proposal and six against and it was accordingly declared lost.

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Further Proposal

Moved by Councillor Rodgers,
Seconded by Councillor Adamson,

That the Committee agrees to adopt Option (ii).

On a vote by show of hands six Members voted for the proposal and none against and it was accordingly declared carried.

Chairman

Chairman