



Procuring a Second Legal Opinion in Relation to Clontarf to City Centre Cycle Scheme Part 8

The following emergency motion was passed by the City Council at its meeting on 6 November 2017:

'That Independent Counsel opinion be obtained to confirm that the Clontarf to City Centre Cycle Scheme Part 8 process was conducted in full compliance with the relevant statutory requirements. This Independent Council will be chosen by Councillor's. This opinion will also include the following in order to protect the integrity of the process;

- *what effect did DCC's non-compliance with it's own non-statutory procedures have on the Part 8 Statutory process.*
- *whether or not 'an issue that arose' (petition) after the statutory public submission cut-off of the 9th March resulted in the modifications (removal of traffic lane) that were made to the CEO's Part 8 report of the 28th August. (it should be noted that the DNC Area Committee where the modifications where to take place had at their meeting of the 17th July proposed to accept the managers initial report which did not include the removal of the traffic lane.*

The opinion will also advise on the sections of the Local Government Act 2001 which give reserved powers to Councillors e.g. Section 136, 137, 138, 139 etc and how these powers can be used to best effect if necessary. This specific information will be a much needed and valuable independent resource for immediate and future reference for all Councillors.'

Elected Members are entitled, under Section 132 of the Local Government Act 2001 (as amended), to direct that a second legal opinion be obtained in relation to the exercise of a reserved function by the Council. It is my responsibility as Chief Executive to procure the second opinion. As a legal opinion has already been obtained in relation to the Part 8 process from an eminent Junior Counsel with expertise in planning law I am proposing that the second opinion should now be obtained from an eminent Senior Counsel with expertise in planning law.

I am proposing to proceed as follows:

1. To ask the Law Agent to list between three and six eminent Senior Counsel with expertise in planning law. (He will not approach them in relation to their capacity to take this brief.)
2. To ask an t-Ardmhéara to select one of the listed barristers who will then be engaged by the Law Agent to provide the second legal opinion. (If the selected barrister is unable to take the brief an t-Ardmhéara will be asked to select a second barrister from the list who will be engaged subject to him/her being available.)

3. To give the selected barrister a copy of the emergency motion and to asked him/her to prepare a legal opinion on the issues raised in the motion and in particular:
 - a. to review the Part 8 process conducted by the City Council in relation to the Clontarf to City Centre Cycleway Scheme,
 - b. to consider any written submission made by Elected Members and by City Council management in relation to the conduct of the Part 8 process. (I am proposing that individual Elected Members and City Council management would be given two weeks to make any written submissions in relation to the Part 8 process to the selected barrister),
 - c. to advise the Council if it is safe for it to proceed on the basis of the decision made by the Council in relation to the Part 8, at its meeting on 2 October 2017 and
 - d. to advise the Council in relation to its functions under Sections 136, 137, 138 and 139 of the Act.

An t-Ardmhéara has indicated that he is happy with this approach subject to it being acceptable to the Protocol Committee.

Owen P Keegan
Chief Executive

22nd November 2017