

Law Department

## **INTERNAL MEMORANDUM**

**Date:** 6<sup>th</sup> January 2016

**Our Ref:** "EOB" DIO001/0009

**Your Ref:** LD 708

Frank Nevin  
Director of Economic Enterprise & Tourism Development

**Re: Disposal Resolution and Contract in respect of the 2 sites at  
Foxdene Avenue, Lucan, Co. Dublin to St. Laurence O'Toole Diocesan Trust**

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Frank,

I reviewed this file last year and I have been working on it since the Solicitors for St. Laurence O'Toole Diocesan Trust, in their letter of 23<sup>rd</sup> March 2015, indicated that their client wished to complete the acquisition of the above property from the Council.

I refer to your e-mail of 18<sup>th</sup> November last and apologise for the delay in replying to same. I note, following the Clondalkin Area Committee Meeting, that you seek advice in respect of three queries as follows:-

### **1. Original Disposal Resolution and subsequent Contract**

I confirm that I hold a copy of the Certified Minute of the Council's Disposal Resolution, Minute No. C/235/1997 being an extract of the Minutes of proceedings held on 9<sup>th</sup> June 1997 duly certified on 21<sup>st</sup> July 1997.

A Contract issued on the terms of the Disposal Resolution which was signed by both the Council and St. Laurence O'Toole Diocesan Trust and is dated 11<sup>th</sup> September 1998.

I have reviewed the relevant legislation and 'Keane on Local Government' and there appears to be no situation envisaged where a valid Disposal Resolution exists which resulted in a Contract issuing in respect of the disposal of a property, the subject of the Disposal Resolution, where both parties have sealed and exchanged the Contract, that the transaction would not proceed.

The foregoing is the position where no circumstances have arisen occasioning either party to re-negotiate the terms prior to issuing a Contract. If the terms are amended then this would require a new or varied Disposal Resolution. [It is conceivable that a Disposal Resolution may have been varied prior to Contract issuing and the varied Disposal Resolution would make reference to the appropriate amendment. That is not the position in this case.]

**2. Section 140 of the Local Government Act, 2001 (as amended)**

I have reviewed the Section 140 in the context of your observations and consider that as you are aware Section 140 of 2001 permits, by Resolution of the elected Members, to direct the Chief Executive to perform a particular act "...specifically mentioned..." in the Resolution. Section 140 Resolution is not applicable in this instance, as it is my opinion the Councillors cannot pass a resolution directing the Chief Executive "not perform his Executive Function" i.e. to witness the Council's Seal on the Transfer of the property the subject of the valid Disposal Resolution and legally binding Contract. In the event of such a resolution being passed, it would result in a direction to the Chief Executive that amounts to an unlawful act which would expose the Council to substantial legal costs, as the party entitled to the property under Contract would, in all likelihood, issue legal proceedings against the Council to enforce the lawfully valid Contract that exists as is the case in this transaction.

3. It is my legal advice where a valid Disposal Resolution and a legally binding Contract exist, as in this transaction, there are no circumstances which the Council can rely on not to proceed with this transaction.

**Completion of Transaction**

As you are aware the purchaser is anxious to complete this transaction on the terms of the signed Contract. In the event that the Contract, dated 11<sup>th</sup> September 1998, is frustrated or there is a further delay by the Council in completing the transaction, it is open to the purchaser to serve a 28 Day Notice on the Council to insist that the Council complete the transaction within 28 days from receipt of the Notice.

I confirm I am, subject to a brief meeting with Marian Jordan regarding SDCC replies to Requisition on Title, in a position to complete this transaction. I should be obliged if you would confirm that it is in order for me to proceed to schedule a closing date with my colleague to complete this transaction without further delay.

I look forward to hearing from you.

Regards.

**Edel M. O'Brien**  
**Acting Law Agent**

**c.c. Billy Coman**  
**Paddy Fogarty**  
**Marian Jordan**

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