



An  
Bord  
Pleanála

## Inspector's Report 300781-18.

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**Application**

Irish Water Compulsory Purchase  
(Kilkenny City Regional Water Supply  
Scheme Upgrade) Order 2018.

**Location**

Troyswood, Loughermans, Baun,  
Radestown North, County Kilkenny.

**Planning Authority**

Kilkenny County Council.

**Applicant**

Irish Water.

**Type of Application**

Compulsory Purchase Order.

**Inspector**

Mairead Kenny.

## 1.0 Overview

- 1.1.1. This case relates to the Compulsory Purchase Order for which approval is sought by Irish Water in connection with the development of the Kilkenny City Regional Water Supply Scheme, which is concurrently before the Board under case reference 300401-17.
- 1.1.2. A joint oral hearing was held in relation to both applications.
- 1.1.3. Subsequent to the oral hearing a report on the concurrent appeal case was sent to the Board with a recommendation to seek further information with respect to a single aspect of the appropriate assessment. As the CPO relates to the development subject of the appeal and any need for the CPO was based on that development, the CPO case was held in abeyance with a view to the concurrent making by the Board of a decision on both cases.

## 2.0 Policy provisions

### 2.1. Update

- 2.1.1. The remainder of the policy provisions outlined below are as outlined in the original concurrent planning report. In the interim there has been no change to the main policy provisions.

### 2.2. National Planning Framework

- 2.2.1. National Policy Objective 63 set out under the NPF is to ensure the efficient and sustainable use and development of water resources and water services infrastructure in order to manage and conserve water resources in a manner that supports a healthy society, economic development requirements and a cleaner environment.

### 2.3. Irish Water's Water Services Strategic Plan

- 2.3.1. This established the objectives for the delivery of water services to 2040. Specific objectives listed include ensuring a safe and reliable water supply including in relation to supporting social and economic growth.

2.3.2. It is an objective under WS1f to prepare and implement strategies to manage other quality issues in water supplies.

**2.4. Irish Water Capital Investment Plan 2017-2021**

2.4.1. This identifies capital investment for the period up to 2021. The Kilkenny Regional Water Supply Scheme is identified.

**2.5. South-East Regional Planning Guidelines 2010-2022**

2.5.1. The RPGs identify amongst the priority actions for infrastructure the provision of high quality water service infrastructure in order to support planned population growth and economic development.

The South-East Regional Planning Guidelines remain in force pending the adoption of a Regional Spatial and Economic Strategy by the Southern Regional Assembly. A consultation on material amendments to the draft document closed on the 11<sup>th</sup> of October 2019.

**2.6. Kilkenny County Development Plan 2014-2020**

2.6.1. The Core Strategy sets a target population of 28,200 by 2022, while the 2016 census reported a population of 26,512 for Kilkenny city.

2.6.2. Chapter 9 addresses infrastructure and environment including water services. 20 water supply schemes are in place in the county. The water supply schemes to be prioritised for investment, which are aligned to the settlement strategy include Kilkenny City Regional Water Supply Scheme.

2.6.3. Improvements undertaken to water services infrastructure listed includes a reference to Radestown reservoir, the repair of which was completed in 2012.

2.6.4. In the establishment and maintenance of water sources the Council will consult with EPA publications including the EPA's Remedial Action List.

2.6.5. A water conservation program is underway across the county. The importance of the quality of drinking water supplies is noted as is the practice of ongoing monitoring on a daily basis.

- 2.6.6. The programme outlined in the water services investment programme will be implemented.
- 2.6.7. Objective 9G is to adopt a comprehensive risk based approach to flood management to prevent or minimise future flood risk. In accordance with relevant guidance for planning authorities the avoidance of development in areas where flood risk has been identified shall be the primary response.
- 2.6.8. Objectives relating to protection of views includes the view from Bleach Road (located at the east of the Nore) to the river valley.

### **3.0 Statutory Basis for application**

- 3.1. The CPO application submitted by Irish Water requests approval to affect the acquisition under Section 76 and the Third Schedule of the Housing Act, 1966 as extended by Section 10 of the Local Government (2) Act, 1960 (as substituted by Section 86 of the Housing Act, 1966 and as amended by section 6 and the Second Schedule of the Roads Act, 1993) and the Planning and Development Act, 2000 – 2015 and as applied to Irish Water by Section 93 of the Water Services Act, 2007, as amended.

### **4.0 Applicant's submission**

#### **4.1. Compulsory Purchase Order**

- 4.1.1. In the application to An Bord Pleanála received on 26<sup>th</sup> January 2018 Irish Water made a submission relating to the Irish Water Compulsory Purchase (Kilkenny City Regional Water Supply Scheme Upgrade) Order 2018.
- 4.1.2. The main documents accompanying the application are:
- Compulsory Purchase Order signed 15<sup>th</sup> January 2018.
  - Deposit maps 1-3.
  - Copy of newspaper notice from Kilkenny People, dated 26<sup>th</sup> January 2018.
  - Sample letter of notification to landowner of making of CPO.
  - Engineer's Report, dated 2<sup>nd</sup> January 2018.

- Planning Report (undated).
- EIA Screening Report (dated May 2015).
- NIS (dated December 2016).
- NIS Addendum (dated October 2017).
- Flood Risk Assessment Report (Draft) (dated October 2016).
- Surface Water Drainage Report for Troyswood WTP (dated September 2017).
- Archaeological Study and Walkover Survey (dated October 2105).
- Archaeological Addendum report (dated January 2016).
- Ecological Impact Assessment Report (dated December 2016).
- Rising Main Route Selection Report and Troyswood Entrance Upgrade Review (dated November 2017).

4.1.3. The Maps and Schedule identify the lands which are required as Permanent Wayleaves and as Temporary Working Areas.

4.1.4. The permanent wayleave would grant the right for the company, its servants or agents, contractors or other licensees:

- to construct, operate, maintain, repair, renew and inspect water works as defined in the Water Services Act, 2007 and all associated pipelines and all other associated physical elements used for the collection, storage or treatment of water and such other works, services, facilities and other things as are necessary or expedient in relation thereto or are ancillary thereto or form part of such water works, in, on or under the land specified together with the right,
- to enter with all necessary vehicles, plant and machinery upon the said land at all times for any of the said purposes.

4.1.5. The temporary working area description of rights is as follows:

- the right for the company, servants or agents, contractors or other licensees to enter necessary vehicles, plant and machinery upon the said land specified to do anything reasonably necessary for ancillary or incidental to the construction of the structures and the water works as defined in the Water

Services Act, 2007 to be erected, laid or constructed on the lands described in the schedule and the way leaves described.

#### 4.2. **Scheme Description and Public Interest**

- 4.2.1. Based on the Engineer's Report, the Scheme is as summarised below.
- 4.2.2. The existing Kilkenny City Regional Water Supply Scheme (RWSS) is currently supplied with water from two separate treatment plants namely Troyswood Water Treatment Plant (TWTP) and Radestown Water Supply Plant (RWTP). The source of water for TWTP is from the River Nore. Raw water for the RWTP is sourced from the River Dinin and Douglas River by way of the Muckalee Impoundment.
- 4.2.3. The existing TWTP operates a sedimentation, CFC process followed by first stage filtration, disinfection using chlorine gas and fluoridation. Treated water in the average amount of 5.8 MLD is pumped to a service reservoir at Thornback. Operational issues at the existing TWTP include intake access issues during flood events, blockage of intake works, low river abstraction difficulties, maintenance difficulties and lack of operational inlet screens. The planning report presented by the applicant notes the occurrence of pesticides at this plant but the matter is not emphasised in the other reports including the engineer's report.
- 4.2.4. The RWTP is a slow sand filtration treatment process followed by disinfection. Treated water gravitates to reservoirs at the site. RWTP has been on the EPA's RAL since January 2008 for exceedances of trihalomethanes (THMs). Furthermore, the existing River Dinin water intake is unreliable and the Douglas and Dinin are 'at risk' of not meeting good status under the Water Framework Directive. Following detailed assessments the preferred solution for RWTP is to abandon it apart from retaining the service reservoirs, which in future will be supplied from TWTP.
- 4.2.5. The Scheme consists of the following works:
- New raw water intake works on the River Nore located upstream of Troyswood Weir including the new intake structure, screening facilities, pumping station with a maximum permitted daily abstraction volume of 19.085 MLD.
  - Construction of a pipeline from the River Nore intake to an upgraded TWTP.

- Upgrade of existing and proposed process tanks at TWTP to facilitate maximum abstraction rate of 19.085 MLD and production of 17.56 MLD treated water. This involves new tanks at the facility and other infrastructure.
- A new clear water tank and associated pipework.
- Provision of new storage and dosing facilities within the chemical and treated water pumping building.
- New high lift pumping arrangement within the proposed chemical and treated water pumping building.
- Provision of new residuals treatment system.
- Construction of 2.8 km of 450mm diameter treated water rising main between TWTP and the Radestown reservoirs including crossing under the River Nore.
- Decommissioning of existing River Nore intake.
- Decommissioning of existing RWTP.

4.2.6. The scheme objectives are:

- Decommissioning of RWTP, which has been on the EPA's RAL since January 2008 for frequent exceedances of the parametric limits for total of THM's.
- Provide a new intake works for TWTP with a large capacity.
- Provide increased sustainable treated water supply of 17.56 MLD to Kilkenny city and environs by extracting all raw water from the River Nore followed by treatment at the upgraded TWTP, including water storage.
- The process upgrade will provide an enhanced coagulation treatment process for the proposed increase throughput, will limit THM formation potential, facilitate compliance with Irish Water's pathogen and protozoal log credit requirements and compliance with EU (Drinking Water) Regulations, 2014.

### 4.3. **Managing Director's Order**

4.3.1. The **Managing Director's Order** was signed on 15<sup>th</sup> of January 2018.

4.3.2. It contains a **description of the primary elements** of the scheme and in this regard references the Engineer's Report dated 2<sup>nd</sup> of January 2018.

4.3.3. The **main objectives of the project** are outlined as follows:

- Decommissioning of Radestown Water Treatment Plant (RWTP).
- Provide new intake works for Troyswood Water Treatment Plant (TWTP) with an abstraction capacity of 19.085 MLD.
- Provide increased sustainable treated water supply of 17.56 MLD to Kilkenny City and environs by extracting all the water from the River Nore.
- Provide additional treated water storage at TWTP.

4.3.4. The goal of **implementation of the upgrade** at TWTP is described as:

- Provides enhanced coagulation treatment process for the proposed increase throughput.
- Limit THM formation potential.
- Facilitate compliance with Irish Water's pathogenic and protozoal log credit requirements.
- Compliance with European Union (Drinking Water) Regulations 2014.

4.3.5. The Managing Director's report states:

- All reasonable **alternatives** have been fully considered.
- That the lands, planning and way leaves, rights of way, temporary working areas and temporary construction rights referred to in the documentation and detailed in the Schedule, which are to be acquired compulsorily by Irish Water are **for the sole purposes** of the Scheme and are **necessary and suitable** for the purpose.
- There is a **need to invoke the CPO**.
- Adequate **financial provision** has been made.
- The CPO is in order from a **sustainable development** perspective and is in the **community interest** and **is required to assist Irish Water in fulfilling its duties and functions** under the Water Services Act 2007.
- The proposal is compliant with a number of plans, which are listed.



#### 4.4. Engineer's Report

- 4.4.1. The report **recommends the making** of the proposed Irish Water Compulsory Purchase (Kilkenny City Regional Water Supply Scheme Order), 2018.
- 4.4.2. The report outlines the functions of Irish Water, the **community need** underlying the scheme, the **need for the lands and the need to acquire them compulsorily**, the planning permission for the Scheme and the policy support, the resources and alternatives considered and the regulatory compliance context.
- 4.4.3. The report concludes that **all reasonable alternatives** have been fully considered and that the lands and rights are necessary and suitable for the purpose for which they are required. Further it is considered that the invoking of the CPO is necessary as it is unlikely that all of the foregoing could be acquired by agreement with the landowners with full title or otherwise in a timely fashion.
- 4.4.4. The **need for the CPO** is stated to arise due to land requirements for the proposed treated water rising main, associated valve chambers and maintenance/operational access all along the pipeline length between the upgraded TWTP to the existing RWTP reservoirs. Pipe routes were examined and the current proposal scheme was determined to be the most feasible. This will involve lands, which are described in the schedules to the enclosed draft 'Irish Water Compulsory Purchase Order (Kilkenny City Regional Water Supply scheme Upgrade) 2018' and are depicted on the following drawings
- – IW/10001 237/CPO/001
  - – IW/10001 237/CPO/002
  - – IW/10001 237/CPO/003.
- 4.4.5. The report outlines that since November 2016 **attempts have been made to acquire** permanent waves and temporary working areas by agreement, which has not been possible for reasons related to unregistered lands, inability to determine who the correct owners are, land transfers which are not finalised and unwilling landowners.
- 4.4.6. The report refers to the **planning history and the policy support** for the Scheme and refers to the planning report appended, which further outlines these considerations.

4.4.7. The report states that all reasonable **alternatives** including continuing negotiations with landowners and alternative routes have been undertaken. A detailed **route selection report** has been completed for the rising main route between TWTP and RWTP.

In proposing the CPO it is stated that full account has been taken of:

- The proper planning and sustainable development.
- European Union Drinking Water Regulations 2014.
- Protection of human health.
- Protection of the environment.
- Water Services Acts 2007 – 2013.
- Irish Water's Water Services Strategic Plan.

4.4.8. In conclusion all reasonable alternatives have been fully considered and these lands and rights of land are necessary for the Scheme and suitable for the purpose. Irish Water requires to involve the CPO as it is unlikely that all of the foregoing lands and rights over land which are required could be acquired by agreement in a timely fashion. Accordingly the scheme is recommended.

#### 4.5. **Planning Report**

4.5.1. The planning report describes the background to the project and outlines a description of the development and the benefits which are stated to arise.

4.5.2. Section 3 refers to the **route appraisal report** and its outcomes. It is considered that the route has strong credentials in terms of **minimising disruption** to local communities and also conforming to **best engineering practice** and taking cognizance of **environmental, archaeological and capital cost factors**.

4.5.3. Section 4 refers to the requirements for wayleaves and temporary working areas noting that the preferred route of the proposed treated water rising main will involve construction of the pipeline in private agricultural fields, along local roads, a transverse crossing of the N 77 using 'no dig' technologies, crossing of the River Nore in similar fashion and crossing of small water courses.

- 4.6. In private lands the pipeline will be constructed within the permanent wayleaves boundary and there will also be a temporary working area adjacent to the permanent wayleave for the duration of the construction and commissioning works. The maximum width of the permanent wayleave is between 10m and 15m while the maximum width of the temporary working area varies between 10m and 26m.
- 4.6.1. The pipeline depth will generally be between 1.8m and 3m but will be increased in places to 6m in places such as the proposed river crossing. In the main the pipeline will be constructed using open cut trenches but the crossing of the River Nore and the N77 will be carried out using no-dig /trenchless technologies.
- 4.6.2. **EIA screening** is addressed in section 6. The report concluded that based on Schedule 5 of the PDR 2001 – 2013 the Scheme does not exceed any of threshold prescribed in the regulations that will trigger a mandatory requirement to conduct an EIA and prepare an EIS.
- 4.6.3. Section 7 addresses the NIS. Its contents and conclusions are outlined. The preparation of an addendum to the NIS to incorporate subsequent design changes required under the planning permission process is noted. The conclusion of the NIS that there **will not be significant negative effects on the integrity** of the River Barrow and River Nore SAC or the River Nore SPA as long as the avoidance and mitigation measures listed in the original NIS and the addendum are implemented in full.
- 4.6.4. Relevant planning policy provisions are outlined on pages 6 to 15 inclusive.
- 4.6.5. Section 9 addresses the ecology report (EcIA) and notes that draft method statements have been prepared for:
- The new road water intake.
  - The crossing of the River Nore.
  - Small watercourse crossings.
  - The surface water monitoring program.
- 4.6.6. It is noted that the scheme design includes appropriate methods for treatment and attenuation of emergency overflows and surface water from the WTP. Full method

statements will be provided by the contractor and approved by the employers and the contractor will be obliged to implement all measures required by the EclA.

- 4.6.7. The planning report presented supports and further expands on the points made in relation to planning policy and the need for development. The CPO is considered **necessary to enable the installation** of a new treated water rising main from the upgraded TWTP to RWTP. As such it **will allow for decommissioning of the RWTP and the upgraded TWTP will provide a safer and more reliable water source**. The proposed development has been assessed with regard to relevant policy and is considered to be in order from a **sustainable development** point of view, is in the **community interest** and is required to assist Irish Water in fulfilling its duties and functions under the Water Services Act 2007. The development and associated wayleaves and temporary working areas do not present any material issues for and is **in line with the main policy provisions**.

#### 4.7. **The EIA Screening report**

- 4.7.1. Section 4.2 refers to Schedule 5 Part 1 and Part 2 of the PDR 2001 – 2013. A summary of the relevant classes under which the proposed development might be considered are set out in table 1. The scheme does not exceed any of the thresholds prescribed in the Regulations. There is no mandatory requirement for EIA.
- 4.7.2. In considering of sub threshold projects, the proposed project is not listed in part 2 of the Regulations and does not fall under the requirement for sub threshold projects. It is concluded that there is not a requirement to conduct an EIA and prepare an EIS.

#### 4.8. **Rising main route selection and Troyswood entrance upgrade review report**

- 4.9. This report dated November 2017 is a 20 page report. Page 11 in particular is of interest with respect to the Dunmore Complex, which is the option selected through the SAC (option 3A).
- 4.10. The final preferred route for the rising main is described as having strong credentials in terms of minimising disruption to local communities, while also conforming to Engineering Best Practice and taking cognisance of environmental, archaeological and capital cost factors.

## 5.0 Objections

5.1.1. Written objections were received on behalf of the following objectors to the CPO:

- Mr Liam Donegan – Plot ref. 001
- Mr Brian Holohan – Plot ref. 005, 007 and 010
- Mrs Carmel Nolan – plot ref. 013, 016 and 018
- Ms Anne Brennan (nee Fitzgerald) – Plot ref. 020
- Patrick and Barbara McKenna – Plot ref. 026.

The above objectors were all represented by Mr Callum Bain of Colliers International and the letter of objection states:

- The full **documentation** in respect of acquisitions not available for the general inspection.
- The **EIS is not on public display** at the Irish Water offices or the offices of Kilkenny County Council.
- The **EIS inadequate** for purpose as it appears that the construction phase and the effect same will have on designated Special Protection Areas (SPA), proposed Natural Heritage Areas (pNHA) and Special Areas of Conservation (SAC) has not been investigated to the extent required.
- The assessment of the impact of the scheme and its effects on property is limited without accurate **final design drawings**, thus limiting the scope of the objection lodged.
- The affected landowners **reserves the right to amend**, supplement or otherwise revise the above objection to the proposed Irish Water Compulsory Purchase (Kilkenny City Regional Water Supply Scheme Upgrade) Order 2018 at any hearing.

## 6.0 The Oral Hearing

The one-day hearing took place on Tuesday 29<sup>th</sup> May 2018 in the Ormond Hotel Kilkenny. The participants were:

- Irish Water represented by a large team lead by Mr Jarlath Fitzsimons SC
- Ms Arlene O' Connor, Senior Executive Planner, Kilkenny County Council
- Mr Callum Bain of Colliers International on behalf of objectors to the CPO
- Mr Robert McGarry
- Mr Killian McGlynn and Mrs Margaret McGlynn.

There was no representation from any prescribed bodies.

The hearing concerned the planning appeal and the Compulsory Purchase Order application. I refer as relevant in the Assessment section of this report to the content of the hearing. The full recording of the hearing is available for the Board.

The submissions of Irish Water were accompanied by written texts which are on file. The applicant presented submissions on the following topics in relation to the CPO:

- Scheme outline and need.
- CPO order procedure.
- Planning policy.
- Engineering and technical issues.
- Landowner engagement.
- Legal submissions.
- Map of kingfisher sighting and nesting sites.
- Response to queries at hearing.

At the oral hearing Mr Callum Bain of Colliers International represented the following CPO objectors:

- Mr Liam Donegan – Plot ref. 001
- Mr Brian Holohan – Plot ref. 005, 007 and 010
- Mrs Carmel Nolan – plot ref. 013, 016 and 018
- Ms Anne Brennan (nee Fitzgerald) – Plot ref. 020
- Patrick and Barbara McKenna – Plot ref. 026.

There were no other contributions made in respect of objectors to the CPO.

#### 6.1.1. **Objector's arguments**

6.1.2. The representative of the objectors at the hearing, Mr Callum Bain made the following points additional points as supplements to the written objections:

- Requirements of **appropriate assessment** are not met.
- **Alternatives** not fully explored.
- Requested a 30 day **postponement of the hearing** as there are planning application matters which are outstanding and which should be resolved before the CPO.
- Other matters relating to requirements for **appropriate assessment**.

### 7.0 **Assessment**

#### 7.1. **Introduction**

7.1.1. I consider the issues in this case under the following headings.

- Case for the CPO
- EIA
- Appropriate assessment
- Procedural matters.

#### 7.2. **Case for the CPO**

7.2.1. The criteria for the Board to be satisfied that Irish Water has demonstrated that the CPO is justified by the common good relate to:

- That there is a community need, which is met by the acquisition of the lands or rights over land.
- That the lands are suitable to meet that community need.
- That the alternative methods of meeting the community need have been considered but are not demonstrably preferable.

- That the works accord with or at least are not in material contravention of the provisions of the statutory development plan.

7.2.2. The **relevant legislation** was addressed at the oral hearing by Mr Fitzsimons and is included in the title of the CPO. The legislative basis for the powers of Irish Water were not in dispute at the hearing. Mr Fitzsimons noted that the functions conferred on ‘water services authorities’ under the Water Services Act 2007, as amended were transferred to Irish Water under section 7(1) of the Water Services (No. 2) Act 2013. I am satisfied that Irish Water is entitled under legislation to seek to compulsorily acquire lands or interests in lands, which would include rights of way.

7.2.3. In consideration of the above listed criteria I have taken into account all relevant reports which were presented and the submissions made at the oral hearing together with the written objections made.

7.2.4. All of the matters relating to need, policy and alternatives including in terms of the detail of the route selection are considered in more detail in section 9.1 of my report on the concurrent planning application case.

7.2.5. **Community need**

7.2.6. It is necessary for this CPO to be confirmed that there is a community need which would be met by the acquisitions which are subject of this CPO.

7.2.7. The need for the development of the project is subject of consideration in a range of documents presented by the applicant including the engineer’s report and the statements of Ms Cogan and Mr Warner at the hearing.

7.2.8. The case made by Irish Water relating to the need for upgrade to and extension of TWTP involving a new rising main to RWTP and works at that site is based on the following:

- Inclusion of RWTP on RAL due to inability of slow sand filtration to remove trihalomethane precursors resulting in THM exceedances.
- The need to cease the current level of abstraction from the Dinin and Douglas rivers which are ‘at risk’ under the Water Framework Directive.
- Need to comply with European Union (Drinking Water Regulations) 2014, which can be achieved by enhanced coagulation treatment process at TWTP.



- Requirement for new intake at TWTP as the existing is at an eroding part of the Nore, is subject to flooding and sediment accumulation and low flow abstraction difficulties.
- Requirement for an increased water supply of 17.5MLD.
- Requirement for additional treated water storage at TWTP.

7.2.9. Further detail and more background on all of these issues is presented on file. I do not consider that the case needs to be described in more detail. I conclude that the Scheme can be considered to be in the interest of the common good and that a community need for the scheme is established.

**7.2.10. Suitability of lands to meet the community need**

7.2.11. The suitability of the lands to meet the community need is largely established as the route comprises a logical route between the two established facilities at Troyswood and Radestown. These existing facilities constitute the natural start and end points for the scheme given that they are themselves connected with a network of water supply infrastructure to serve the different parts of Kilkenny city and environs. On that basis I do not consider that the abandonment of Radestown as a storage facility would be appropriate and I accept the principle of connecting the two sites.

7.2.12. In terms of the selection of the detailed route this is outlined in the Route Selection Report on file and following consultations and consideration of the ecological impact. A more concise summary of the route selection, the options considered and the factors which lead to the finalised route are contained in sections 3.1 to 3.5 of the submission of Mr Warner to the hearing. In the early planning stages the emerging preferred route was selected after discussion with land owners and site investigations.

7.2.13. In general the route selected seeks to secure a good design from an engineering point of view as well as the avoidance of impacts on land practices including by following close to field boundaries where possible. There is evidence presented in the application documents of attempts to secure the shortest crossings including of the River Nore.

- 7.2.14. In general the permanent wayleave widths are 10m maximum. The overall working corridor width is 10-15m wide. I consider that these widths are reasonable and necessary to allow for the construction phase and for long-term access.
- 7.2.15. Construction stage traffic disruption was a further consideration in the route selection, particularly in the selection of the options for the crossing of the N77. At this location and others including at the Nore crossing and the crossing of a local road there is a requirement to provide for no-dig construction resulting in localised increased temporary land take. Widening of the temporary working areas up to 26m width in places will be required and is reasonable.
- 7.2.16. I consider that it is demonstrated that the land take is reasonable and is suitable for the purpose. I consider that the pipeline route has been adequately justified by the applicant in the overall submissions and that it is demonstrated to comprise a reasonable balance between the environmental constraints and route length and that operational efficiencies and land practices have also been taken into account.
- 7.2.17. In conclusion I consider that the lands contained in the CPO are necessary and suitable for the Scheme.
- 7.2.18. **Consideration of alternatives**
- 7.2.19. The need for the CPO involving the pipeline route crossing the Nore largely derives from the decisions made in relation to RWTP. In response to Mr Bain's queries in relation to alternatives Ms Cogan confirmed that options have been considered but that there was a need to retain Radestown. Having regard to the established water supply infrastructure, which is in place to serve existing development in Kilkenny the retention of Radestown as a reservoir at that location is in principle acceptable. It is further confirmed by the fact that it presently comprises half of the storage capacity for the city's water supply and by the good condition of the reservoir which was upgraded in 2012.
- 7.2.20. In relation to the alternative of supplying the Radestown reservoir by an upgraded water treatment plant at that location (thus avoiding the need for the connecting pipeline) this would not be environmentally sustainable or in keeping with the Water Framework Directive. I have addressed the 'at risk' status of surface waters

and the possible supply of Radestown from groundwater in the planning report. I do not consider that these options are not robust or sustainable.

7.2.21. Regarding the option of bringing the pipeline route along to the bridge crossing to the south and connecting Troyswood and Radestown sites by existing or future bridges to the south, as proposed by Mr Bain at the hearing, I agree with the position of Irish Water that the distances are lengthy. In view of the increased pumping costs and operational inefficiencies I do not consider that such distance route alternatives are reasonable alternatives.

7.2.22. The alternative of avoidance of the SAC at Loughermans (option 3B) was rejected by the applicant in view of extremely undulating lands to the south. I agree with that decision based on my consideration of the application documents and my inspection. The lands to the south where option 3B would have been located are very steeply aligned and if selected would result in operational inefficiencies. In addition the 3B route is significantly longer. The selection option 3A is also shorter, thus impacting less lands.

7.2.23. To conclude, I am satisfied that the alternative methods of meeting the community need have been considered but are not demonstrably preferable.

#### 7.2.24. **Compliance with development plan policy**

7.2.25. I consider that there is a significant policy support for the project in relation to which Irish Water has made the application for confirmation of the CPO. In particular the project is listed as an objective of the county development plan as an investment priority.

7.2.26. I am satisfied that the Scheme for which purpose the CPO is being invoked is in accordance with the national, regional and local policy including the provisions of the statutory development plans.

### 7.3. **Environmental Impact Assessment**

7.3.1. The CPO application was made after 16<sup>th</sup> May 2017 when the 2014 Directive came into force. Mr Bain has made various comments in relation to the display of documents and raised issues relating to EIA.

- 7.3.2. The applicant's submissions include an EIA Screening report, which is part of the documentation associated with the engineer's report. The conclusion of the EIA Screening report was that there was no requirement for EIA as there is no transfer of water between river basins and in addition the transfer of piped drinking water is specifically excluded under the relevant class under the PDR. I agree the conclusion in the EIA Screening report as it pertains to the project subject of the planning application. The proposed development subject of the concurrent appeal is not of a class which is relevant to EIA.
- 7.3.3. Notwithstanding the submission by the applicant of an EIA Screening report I consider that there is no requirement for EIA Screening to be undertaken in the case of this application, which pertains only to the CPO. This application is not for permission to undertake a development but relates instead to the acquisition of interest in lands.

#### 7.4. Requirement for Appropriate Assessment

- 7.4.1. The submissions on the CPO application file include as part of the engineer's report the NIS Addendum Report. Mr Bain has raised matters related to the undertaking of appropriate assessment.
- 7.4.2. I have considered the **appropriate assessment** issues in the associated planning appeal case. I agree with Mr Fitzsimons position that the consideration of matters related to appropriate assessment are not relevant to this case. This application is not for permission to undertake a development but relates instead to the acquisition of interest in lands.
- 7.4.3. In this regard I do not consider that the matters raised by Mr Bain including comments relating to the display of the NIS (or indeed any matters relating to the adequacy of the NIS or to appropriate assessment *per se*) are relevant to the determination of this CPO application.
- 7.4.4. I refer the Board to Mr Bain's argument that appropriate assessment is relevant as the application relates to a site amalgamation process to which the individual owners are not agreeable. I consider that there are no circumstances in this case which warrant a departure from the normal practice of the Board in relation to compulsory

purchase applications. That practice does not include the undertaking of appropriate assessment for CPO applications.

## 7.5. Procedural and related matters

- 7.5.1. At the hearing Mr Bain stated that all documentation on the completed application should be available as part of the CPO application, which it is not. In that context he indicated that he could not properly advise clients with respect to any issues, which may affect their properties. In this respect he referred *inter alia* to the damage to lands which may arise and in relation to which substantial time would be required for remedy.
- 7.5.2. I consider that there are two components to this argument namely:
- Resolution of the planning process should precede the CPO as without full knowledge of the planning issues his clients were disadvantaged.
  - There is simply insufficient detail available for the purposes of understanding the implications for lands affected by the CPO.
- 7.5.3. In response at the hearing Mr Jarlath Fitzsimons for Irish Water stated that there is no reason for the separation of the CPO and the planning appeal. Mr Bain's clients are not prejudiced in any way. I agree with Mr Fitzsimons. The concurrent determination by the Board of this case and the associated Scheme is appropriate in my opinion and there are no exceptional circumstances in this case which would require departure from the normal practices.
- 7.5.4. In relation to the matter of the detail of information presented, Mr Fitzsimons noted that the Board has been advised of the public display and the details of the documents. There is no requirement for detailed design drawings at this point he stated. I refer the Board to the criteria which are relevant to the Board's determination of this case which I have outlined above.
- 7.5.5. Mr Bain offered a broader point at the hearing when he stated that all documentation on the completed application should be available as part of the CPO application, which it is not. In this regard and in the written submissions he referred to the lack of availability of an EIS and to matters relating to the NIS.

- 7.5.6. I am satisfied that there is no requirement for undertaking of EIA and I refer to the separate EIA screening statements above.
- 7.5.7. Even if there was a requirement for EIA it does not follow that there would be any requirement for the documentation to be available under the CPO application. I consider that this matter is also relevant in relation to any requirements for appropriate assessment – this is not a matter of relevance to the CPO.
- 7.5.8. The Board will note also that for the reasons outlined above the further information requested related only to the planning application. The further information was not circulated under this file as I did not deem it to be relevant to the determination of the CPO.
- 7.5.9. With respect to other procedural issues I refer the Board to the submission dated 26<sup>th</sup> of February 2018 from Irish Water. This noted that due to administrative error the documents had not been put on public display from the original date advertised. For that reason Irish Water extended the period of the public display, re-advertised the public notices in the Kilkenny People and extended the deadline for objections to the CPO to for April 2018. Letters were issued to landowners informed them of the extension. I am satisfied that there was no deficiencies in the matter of public information.
- 7.5.10. In terms of the detail of the information presented I refer the Board to the application documentation under the CPO, which includes width of the wayleaves and other information and to the circulation by the applicant to all landowners of the Code of Practice of Irish Water, a copy of which is on file.
- 7.5.11. Finally I note the submission of a detailed specimen design which Mr Fitzsimons notes was prepared for the avoidance of doubt and was presented at the hearing. In terms of the CPO the nature of the detail is relevant to procedures which will arise subsequent to any confirmation of the CPO but not to the decision of the Board in this case.
- 7.5.12. In conclusion in relation to procedural matters I am satisfied that there is no substance to the arguments put forward in relation to EIA , appropriate assessment or the detail of the information available, or any other procedural matter.

## **8.0 Conclusion**

8.1.1. I am satisfied that the process and procedures involved in the making of this application and undertaken by Irish Water have been fair and reasonable, that Irish Water has demonstrated a community need that would be facilitated by the acquisition of the permanent wayleaves and temporary working areas identified in the Schedule and drawings, that the lands are suitable to meet the community need and that the extent of acquisition is proportionate to the objective being pursued. I therefore consider that the proposed acquisition of permanent wayleaves and temporary working areas would be in the public interest and the common good and would be consistent with the provisions of the Kilkenny County Development Plan 2014-2020.

## **9.0 Recommendation**

I recommend that the Board confirm the Compulsory Purchase Order without modifications for the reasons and considerations set out below.

## **10.0 Reasons and Considerations**

Having considered the objections to the Compulsory Purchase Order, the report and recommendation of the Inspector who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the Compulsory Purchase Order, and having regard to the following:

- (a) The strategic need for the scheme in the context of providing increased water supply to meet existing and future demand in Kilkenny city and environs.
- (b) The inclusion of the Radestown Water Treatment Plant on the Remedial Action List of the Environmental Protection Agency and the need to improve the quality of water supply serving Kilkenny City and environs.
- (c) The need to replace the abstraction from the River Dinin and River Douglas both of which are 'at risk' under the Water Framework Directive.

- (d) The proposal to retain a reservoir at Radestown, which is considered reasonable in order to provide a supply to connect with existing water supply infrastructure.
- (e) The community need, the overall benefits and the public interest served by the proposed development.
- (f) The selected route alignment to connect the Troyswood Water Treatment Plant with the Radestown site, which considered to be suitable and proportionate to the identified need.
- (g) The policies and objectives of the Kilkenny County Development Plan 2014-2020.
- (h) The submissions and observations made at the oral hearing which was held on 29<sup>th</sup> May 2018.

It is considered that the acquisition of the permanent wayleaves and temporary working areas by Irish Water on the lands in question as set out in the order and on the deposited maps, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

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Senior Planning Inspector

Mairead Kenny

22<sup>nd</sup> October 2019