



An
Bord
Pleanála

Inspector's Report ABP-302533-18

Development	Galway City Council CPO - Multi Modal improvement scheme
Location	Bóthar na dTreabh, Kirwan Roundabout upgrade, Galway City
Planning Authority	Galway City Council
Type of Application	Local Authority Project
Observer(s)	<ol style="list-style-type: none">1. Pauline Kelly2. John Francis3. Niall Rooney4. Peter Cunnane5. Kirwan Action Group6. Noreen & Bartley Collins7. Noreen & Pádraig Collins8. Matt Lohan
Date of Site Inspection	13 December 2018 16 January 2019
Date of Oral Hearing	17 January 2019
Inspector	Gillian Kane

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1.0 Introduction

1.1.1. This report refers to 8 no. objections received by the Board following a Compulsory Purchase Order No. 1 2016 served by Galway County Council

1.1.2. The Bóthar na dTreabh (N6) Multi Modal Corridor Improvement Scheme, Phase 7 Kirwan Roundabout Upgrade development for which the CPO was made is described by the Planning Authority as:

- Upgrading the existing Kirwan Roundabout to a signalised junction
- removal of the existing roundabout on the Headford Road N84 at its junction with the Coolough Road, Sandy Road / Liosban and N6 Bóthar na dTreabh
- replacing it with a signalised junction with pedestrian crossing on each arm
- Improved cycling facilities
- Ancillary works including landscaping, signage, signals, drainage, utilities and lighting in the townlands of Terryland and Ballinfoile
- The realignment of the Coolough Road with a new junction onto the Headford Road
- Extinguishment of the public right of way

2.0 Site Location and Description

2.1. Photographs and maps in Appendix 3 serve to describe the site and location in further detail.

2.2. The subject site is part of the N6 corridor serving as an orbital route on the eastern side of the city. This section of the N6 distributes traffic entering the city from the M6 Dublin Galway motorway. The subject site – the existing Kirwan roundabout - is the termination of the N6 Bóthar na dTreabh and comprises a 5-arm roundabout:

- Bóthar na dTreabh to the east, 4-lane road bound to the north by open space (Terryland Forest Park), car sales room and the Nox hotel to the south,
- N84 to the north-east, national secondary road, single carriageway with footpath on both sides, residential development Tirellan Heights on the eastern side and Sandyvale Lawn and two properties owned by the Collins family on the western side,

- Coolough Road to the north-west, local road with footpath on both sides, Menlo Park Hotel to the north-east, open space and Castlelawn Heights to the south-east
- N6 to the south, 4-lane national road with the Maldron Hotel and neighbourhood retail area including a petrol station to the east and low density residential development, including the objector Matt Lohan to the west.
- Sandy Road, a local road with pedestrian facilities providing access to the Liosban Industrial estate to the south.

3.0 Background

3.1. Part 8 Development Process

- 3.1.1. The proposed Bóthar na dTreabh (N6) – Multi Modal Corridor Improvement Scheme Phase 7 – Kirwan Road Roundabout project has been subject to the process set out under Part XI of the Planning and Development Act, 2000, as amended, and Part 8 of the Planning and Development Regulations, 2001, as amended (Planning Authority reg. ref. 1/2018 refers).
- 3.1.2. The report prepared for the Part 8 process as presented to the Council in January 2017 provides a Non-Technical summary, details of the need for the scheme (chapter 2), options development and selection (chapter 3), a description of the scheme (chapter 4) and details of land acquisition and accommodation works (chapter 5). Two appendices are attached: Notice of Proposed Development (Appendix A) and Drawings (appendix B).
- 3.1.3. The introduction section of the report states that the subject development is the final phase of an ongoing initiative to improve the traffic management and congestion in the city. Five of the seven junctions along the N6 corridor have already been upgraded: four roundabouts have been replaced with signalised junctions and one existing signalised junction was upgraded. The Kirwan roundabout is one of only two roundabouts remaining on the N6. In relation to the need for the scheme, the report refers to safety issues at the roundabout and high congestion levels at peak times. Regarding land acquisition the report states that a total of 0.5ha will be permanently acquired of which 0.1ha is in private ownership and 0.4ha is in the control of Galway City Council.

- 3.1.4. Section 1.2.2 of the report provides detail on the proposed development.
- 3.1.5. The report outlines the benefits of the scheme as being:
- Safety: reduction in accidents, more secure transportation network
 - Traffic and transport: reduced congestion, queuing times, fuel consumption and journey times, reduced rat-running leading to shorter distances travelled, increased reliability of public transport,
 - Increased competition in markets, efficiencies in clustering of economic activity (agglomeration), attract inward investment, expand local labour supply, contribute to urban regeneration,
 - Environmental Benefits for non-motorised users from improved cycle and pedestrian facilities,
 - Increased physical activity leading to improvement in ambience, absenteeism and reduced health risk.
- 3.1.6. The need for the scheme is described in section 2 of the report. It provides details of the number of minor (17 no.) and serious / fatal collisions (none) each year between 2005 and 2013 and states that the replacement of the roundabout with a series of signalised junctions will reduce the number of expected collisions.
- 3.1.7. In terms of traffic demand, traffic count results are presented for each arm of the roundabout during the AM and PM peak in November 2013, 2014, 2015 and 2016. Noting that the number of vehicles using the roundabout has decreased, the report states that the reasons for this are unclear but it is suggested as being due to a reduction in capacity of the network rather than a reduction in demand. The report states that evidence of rat-running through the industrial and residential areas causes further problems.
- 3.1.8. The report states that the City Council are implementing an Urban Transport Management Control (UTMC) system of signalised junctions. Currently the Kirwan roundabout, without signalisation, breaks the link along the N6 as the two other roundabouts (Bodkin junction and Font junction) have been upgraded. The report notes that only two of the five arms of the junction have pedestrian facilities. The dropped kerbs on the three other arms are stated to be insufficient.

- 3.1.9. Improving the efficiency of the roundabout will take the form of reduced queuing times, fuel consumption, journey times and rat running and making public transport more reliable. According to the Part 8 report this will support the growth of Galway the direct economic benefits to road users will ripple out to the wider economy. The report states that the proposed development underlying the CPO complies with the Galway City Development Plan 2017-2023 and the Galway Transport Strategy.
- 3.1.10. At a meeting on the 5th March 2018, the Council approved the motion “To adopt the Part 8 Bóthar na dTreabh (n6) – Multi Modal Corridor Improvement Scheme Phase 7 – Kirwan Road Roundabout”.

4.0 Proposed Development

- 4.1. The proposed development comprises the upgrade of the existing Kirwan roundabout as part of the N6 Multi Modal Corridor Improvement Scheme. The works consist of the following:
- Replacement of roundabout with a 4-arm signalised junction
 - 4-lane carriageway upgrade to N6 Bothár na dTreabh, N6 Headford Road and N84 Headford Road,
 - Single lane carriageway upgrade to Sandy Road
 - Diversion of Coolough Road using single lane carriageway to new 3-arm signalised junction with the N84 Headford Road
 - Drainage works including the provision of culverts where necessary and incorporating SuDS,
 - Utility diversions,
 - Earthworks, Roadworks, road pavement, traffic signage and road markings, access and accommodation works, ancillary road works, traffic management, traffic signalisation works and street lighting.
- 4.1.1. The proposed acquisition and order involves three schedules of development: land to be permanently acquired, land to be temporarily acquired and the extinguishment of a public right of way between the N84 Headford Road and the Coolough Road.

- 4.1.2. Schedule 1, part1 of the CPO order lists 17 no. plots of land to be permanently acquired. The land is in the ownership of O'Malley Construction, Matt and Mary Lohan, John Francis, Noreen & Padraig Collins and Noreen and Bartley Collins. Of the 17 no. plots, 9 no. refer to public roadway, 7 no. refer to private amenity areas and one is a section of private residential land – plot 002D.002, 0.0057ha in the ownership of Mary and Matt Lohan.
- 4.1.3. Lands to be temporarily acquired are listed in Schedule 1 part 2. This refers to five plots of land, three of which are residential and two of which are public roads. One of the residential plots is in the ownership of Mary and Matt Lohan (plot 002D.004) and the other two are owned by Noreen & Padraig Collins (004D.002) and by Noreen and Bartley Collins (005D.002).
- 4.1.4. The proposed right-of-way to be extinguished is set out in Schedule 3, Part 1. It is described as being “that public right of way over the section of the Kirwan Roundabout between the N84 (Headford Road) and the L10055-4 (Coolough Road). The area is stated to be approximately 32m long with an average width of 18m and a total area of 576sq.m.”

5.0 Compulsory Purchase Order

- 5.1.1. On the 9th August 2018, the Chief Executive of Galway City Council, signed an executive order as follows:
- 1 the lands outlined in red and coloured grey and pink and indicated by the various plot numbers described on the maps marked with reference numbers 681085-HB-GEN-Z_ZZZZZ-DR-ZZ-0025, 681085-HB-GEN-Z_ZZZZZ-DR-ZZ-0026, 681085-HB-GEN-Z_ZZZZZ-DR-ZZ-0027, 681085-HB-GEN-Z_ZZZZZ-DR-ZZ-0028, 681085-HB-GEN-Z_ZZZZZ-DR-ZZ-0029, 681085-HB-GEN-Z_ZZZZZ-DR-ZZ-0030 and entitled (Bóthar na dTreabh (N6) – multi modal corridor improvement scheme – Phase 7 Kirwan Roundabout Upgrade) “Galway City Council Compulsory Purchase Order no. 1 2018” and set out in:
- Schedule 1 Part 1 – land proposed to be compulsorily acquired
 - Schedule 1 Part 2 – lands being temporarily acquired
 - Schedule 3 Part 1 – public rights of way proposed to be extinguished

be acquired for the purpose of facilitating the construction of Bóthar na dTreabh (N6) – Multi Modal Corridor Improvement Scheme – Phase 7 Kirwan Roundabout Upgrade and

2 that the said Compulsory Purchase Order, and the maps attached thereto, be sealed with the Seal of Galway City Council and submitted to An Bord Pleanála for approval.

5.1.2. The Order comprises the following: Drawings, Schedule 1 Part 1: Lands to be compulsorily acquired, Schedule 1 Part 2: Lands being temporarily acquired, Schedule 3 Part 1- Description of Public Rights of Way Proposed to be Extinguished. No. 1.

5.1.3. The seal of the Council was affixed to the Schedule on the 29th August 2018. The CPO was advertised in the Galway City Tribune on the 31st August 2018 advising that objections were to be submitted to the Board by 5.00pm on Monday 15th October 2018. The advertisement included details of Parts I and Part 3 of the Schedule and a description of the Private Right of Way to be extinguished.

6.0 **Objections to the Order**

6.1.1. Eight objections to the Order were received by the Board within the required period. The issues raised in each can be summarised as follows:

6.1.2. **Matt Lohan, Headford Road, Galway:**

- No objection in principle to the upgrade of the junction but concerned about the impact on his residence.
- Area of approx. 0.0057ha being acquired. This will result in the primary vehicular access being severely compromised due to its proximity to the proposed traffic lights.
- A planning application is being prepared to close the existing access point and create a new access point as per Fig. 2.
- Currently motorists slow down as they approach the Kirwan Roundabout from the west. With a signalised junction those with a green light may not slow down and may even speed up to access the junction prior to a signal change. This will make the junction unsafe.

- A new vehicular access to the east (fig. 2) as a solution was supported in principle by the Roads Department of the City Council yet not included in the CPO.
- This proposed access being across lands zoned Recreation and Amenity will require a material contravention of the development plan. Mr. Lohan is hopeful of receiving support for this.
- By way of compensation Mr Lohan requests the swap that parcel of land Folio Ref. GY 10545F owned by the City Council to the west of Mr Lohan's residence.
- The Board is requested to take Mr Lohan's safety concerns into account.

6.1.3. **Peter Cunnane**

- The right of way across the Coolough Road has existed for centuries, unlike the Liosban entrance which was created in the last few decades.
- The extinguishment of the right-of-way was never presented to the public. It only became apparent on publication of the submission to the Board. This must be considered contrary to the relevant laws.
- The Council has not proposed compensation for the acquisition of public amenity space but does plan to compensate O'Malley Construction for the acquisition of land that has been maintained by the Council for over thirty years.

6.1.4. **Peter Cunnane, Kirwan Action Group, Menlo, Galway**

- The extinguishment of the right-of-way was never presented to the public. It only became apparent on publication of the submission to the Board. Therefore, the Council is not compliant with the Roads Act and the plan should be struck out.
- The Council has a pre-conceived solution: alternatives were ignored, public consultation was not engaged with and the box-ticking exercise is contrary to the spirit of public consultation.
- Commercial interests have been prioritised over proper planning and sustainable development of this expanding residential area.

6.1.5. **Niall Rooney, Tirellan Heights,**

- Strong objection to the removal of the right-of-way which is used by many residents of Tirellan Heights and school children.
- Objection to the removal of the green area. No compensation has been offered for the loss of the area which has been paid for and is maintained by the residents.
- As well as a play space, the area also provides a buffer to noise and air pollution – as per section 8.7 of the development plan.
- The Board is requested to ask the City Council to find an alternative solution.

6.1.6. **Pauline Kelly, Castlelawn Heights**

- Objects to the removal of the public right-of-way.
- The proposed development means it will take longer to get to Tirellan Heights.
- The proposed road will destroy the green space, removing a number of mature trees.
- It is feared the hotel will lose trade. The hotel brings tourists to the area.
- The Board is requested to ask the City Council to find another option to the proposal.

6.1.7. **Noreen, Bartley, & Padraig Collins, Terryland Cross and Coolough,**

- Applications will soon be made for the Moycullen Bypass scheme and the Galway Outer Bypass scheme.
- The proposed Terryland Cross upgrade has not been submitted to the Board but was subject to a Part 8 permission. There was nothing in the minutes of 05/03/018 to suggest that the Councillors were made aware of the option to add conditions.
- The City Manager dismissed without justification the points made by the Collins family.
- The Collins family put forward an alternative access to their properties: a new access through the existing cul-de-sac at Sandyvale Lawn. It is submitted that this was not properly examined.
- Under PL61.131237, the Councils roads engineer preferred the option of access via Sandyvale Lawn. The City Manager stated that this could only be considered if retaining the existing access / egress were not possible. It is submitted that while

retaining the current access is possible it is not workable or efficient and will have a severe negative impact.

- Neither the Collins' Family nor their agent have seen the safety audit.
- The only information available is a simple plan with indications of traffic-light locations. No information is provided on the phasing or filtering of the lights or how they will work in the event of a power cut.
- No road markings have been indicated on the road outside the Collins property. Yellow box markings are required to clear the area clear.
- Only the existing bellmouth to the Collins property is indicated. It is clear that there is no intention to replace the existing boundary walls.
- No kerbs are shown on the cycle lanes to force a stop when green lights favour vehicles entering / exiting the Collins property.
- The City Managers report says that screening will be provided but presents no details.
- It is feared that the scheme may be drastically altered without consultation as happened at the Moneenageisha junction.
- No information is provided about compensation. The Collins operate a business that will be affected. The proposals may jeopardise the possibility of Padraig Collins received permission on his lands adjoining his parent's house.

6.1.8. John Francis, Owner of Menlo Park Hotel

- The proposed CPO and extinguishment of the right-of-way will transect the hotel grounds and run through the amenity grounds of the hotel and the adjoining Tirellan Heights.
- The proposed CPO will restrict access to the hotel, will injure its residential amenity and would impair its development potential.
- This is the fourth CPO on Francis family lands: Sandy Road improvements, the Kirwan Roundabout and the junction of the N6 and the Newcastle Road. This is prejudicial and unprecedented.

- Details drawings of the proposed scheme have not been made available. This makes it very difficult to fully comprehend the impacts.
- It is submitted that the Councillors were asked to vote on option 3B only, and not given details of the 15 no. examined proposals. As part 8 has no appeal, Mr Francis could not challenge the process.
- The proposed development will severely restrict access to the hotel. Passing trade from the Dublin Road (N6) would be expected to negotiate a new Kirwan traffic light junction involving a right turning lane to head north-east along Headford Road, then cross into a left turning lane to access the slip road past the hotel before turning back along the proposed new Coolough Road to connect into the existing Coolough Road and enter the grounds of the hotel. This complicated arrangement will discourage many from travelling to the hotel.
- The acute bends will be insufficient to cater for larger 6-wheeler super-buses, particularly turning left from the Headford Road onto the new Coolough Road and /or those turning left from the N84 Headford Road onto the Coolough Link Road. The CPO cannot be confirmed in the absence of these details.
- Approx. 837sq.m. of the existing greenspace to the south-east of the hotel will be lost. This is the only amenity space available to the hotel and is used for outdoor wedding receptions, photographs etc. It will be adversely affected and is likely to lead to weddings being cancelled.
- In November 2014 permission was granted (reg. ref. 06/954) for an underground structure to provide a swimming pool and leisure centre. The proposed CPO means it will be curtailed and that construction costs will increase due to the need for expensive reinforcements and retaining walls.
- The presence of the CPO within the red line boundary of the application would be problematic if the hotel was for sale as the boundaries of the application would no longer be correct.
- Site investigations undertaken for the planning application revealed that the lands to the south-east are of poor ground conditions. In the event that a road was constructed across these lands it would require a 'bridge design' standard, may require retaining walls or the acquisition of additional lands.

- The remaining hotel site would result in a lower plot ratio and density for any future hotel development. It is noted that commercial developments can use recreationally zoned lands in the calculation of housing density.
- The proposed CPO will decimate the open space available to Tirellan Heights and remove the entire shelter belt (3,810sq.m.). No compensatory amenity space has been proposed. This will result in a permanent adverse impact.
- Actual speed limits on the N6 towards the City are far in excess of the 50kph speed limit. There is a substantive risk of higher vehicular speeds. This is a traffic hazard in an area of housing estates, schools, retail and employment developments. There is a real risk to public safety and therefore the CPO is not in the interests of the common good.
- The RSA shows no serious or fatal accident at the existing junction between 2005 and 2014. It has yet to be demonstrated that this is the safest design option.
- It is submitted that the proposed layout will lead to driver confusion. Drivers from the main Dublin road might attempt to take a right turn onto the link road and drivers from the Sandy Road might be tempted to rat run through the junction and use the Coolough Link Road.
- The junction of the new Coolough Road onto the N84 is not perpendicular as is best practice.
- It has not been demonstrated that the proposed development will reduce traffic congestion along the Headford Road and Kirwan junction. It is a prerequisite that a junction upgrade would significantly improve traffic movements.
- It is submitted that the CPO should not be confirmed.
- The AA screening report did not consider Article 10 of the Habitats directive. An analysis of the NHA's and pNHA's in terms of their supporting role for mobile fauna should have been undertaken. Article 10 places a high degree of importance on features that connect the Natura 2000 network such as ponds, woodlands and hedgerows.

7.0 Planning Policy Context

7.1. Smarter Travel A Sustainable Transport Future

7.1.1. Smarter Travel sets out a transport policy for Ireland. The policy proposed is to retain investment in roads that will remove bottlenecks, ease congestion and pressure in towns and villages and provide the necessary links to support the NSS.

7.2. Design Manual for Urban Roads and Streets

7.2.1. The subject roundabout and the approach roads are within the Galway city 50kph speed limit. Therefore, the proposed development must comply with the Design Manual for Urban Roads and Streets. DMURS sets out the manner in which roads and streets in urban and suburban areas should be designed in a manner which ameliorates the historic dominance of the private car and other motorised forms of transport. The Transport Strategy is required to put forward complementary policies and objectives, which will, at the regional level, facilitate the implementation of DMURS at the local and district level.

7.3. Galway Transport Strategy 2016

7.3.1. The Galway Transport Strategy is a partnership between Galway County Council, Galway City Council and the National Transport Authority. The GTS sets out a series of actions and measures, covering infrastructural, operational and policy elements to be implemented in Galway over a twenty-year period. The GTS notes that Galway has a road and street network that is ill-suited to the high traffic flows that currently increase congestion and delay, affecting quality of life and impacting on the functionality of the City. The GTS states that a fundamental shift towards sustainable travel is needed, reducing dependency on the private vehicle. The strategic objectives are as follows:

- to promote and encourage sustainable transport and in particular to make it convenient and attractive to walk, cycle or use public transport.
- to manage the traffic in a way which maximises mobility and safe movement
- to maintain and develop/upgrade Infrastructure

7.4. Galway City Development Plan 2017-2023

- 7.4.1. The stated aim of Chapter 3 of the Galway City Development Plan 2017-2023 is “to integrate sustainable land use and transportation, facilitating access and choice to a range of transport modes, accessible to all sections of the community that ensure safety and ease of movement to and within the city and onward connectivity to the wider area of Galway County and the West region”.
- 7.4.2. Section 3.10 of the plan lists specific objectives. Of relevance to the subject proposal is “*Continue to implement junction upgrades as part of the N6 Multi Modal Corridor Improvement Scheme to improve the functioning of the junctions, provide for pedestrian and cycle movements and to facilitate public transport*”. On a more strategic level, another objective of relevance is “*Investigate and develop road improvements, junction improvements and traffic management solutions in the context of the Galway Transport Strategy (GTS) and strategic developments, to maximise the operating efficiency and safety of the network having regard to the requirements of all categories of road users and road network capacity constraints. Such solutions or interventions will be developed in conjunction with the relevant agency, such as the TII, NTA, and the Department of Transport, Tourism and Sport and will, where necessary, be subject to the requirements and consenting procedures of the Planning and Development Acts and the Roads Acts*”.
- 7.4.3. The development plan also provides for specific objectives relating to supporting access for public transport, pedestrians and cyclists to and within major employment areas, implementing traffic management and infrastructural changes to facilitate a cycle network in accordance with the Galway Transport Strategy and to prioritise pedestrian movements and safety.

7.5. Variation no. 3 Galway City Development Plan

- 7.5.1. Variation no. 3 of the Galway City Development Plan 2017-2023 was made on the 11th December 2017, referring to Section 11.2.2 Natural Heritage, Recreation and Amenity RA Land Use Zoning Objectives
- 7.5.2. RA lands located to the front of the Menlo Park Hotel, flanking Tirellan Heights residential development on the Headford Road and RA lands located to the north east of the Maldron Hotel. The Council will consider the use of these lands to facilitate revisions to the Kirwan Junction. These revisions will include the

replacement of the existing access from the Coolough Road onto the Kirwan Junction by facilitating the construction of a link road from the Coolough Road connecting onto the Headford Road and will also facilitate a re-design of the existing junction through use of some portions of RA zoned lands located adjacent to the existing junction. These revisions will facilitate improvements to the functioning of the Kirwan Junction and provide for better opportunities for pedestrian and cycle movements and public transport.

- 7.5.3. Amend the existing Specific Development Objective Fig. 11.2 Menlo Park Hotel: RA lands in front of the Menlo Park Hotel adjacent to the Kirwan Roundabout. The Council will consider the development of a leisure centre and swimming pool, both located underground with minimal effect overground, as part of the overall hotel development but only where such development satisfactorily takes into consideration the requirements to deliver the works associated with Section 11.2.2 Specific development objective as provided for in Fig.11.5.

8.0 Oral Hearing

- 8.1.1. An oral hearing was held in the Maldron Hotel, Sandy Road, Galway on 17th January 2019. The hearing commenced at 10.00am and an audio recording of the proceedings was made.
- 8.1.2. A summary of the Oral Hearing is attached in Appendix 1 and referenced throughout section 9 below.

9.0 Assessment

- 9.1. The statutory powers of the Local Authority to acquire land are contained in section in s11(7) of the Local Government Act 2001 and sections 212 and 213 of the Planning and Development Act 2000, as amended. Under s212 of the Planning and Development Act 2000 a Local Authority may, in order to carry out its functions powers and duties, carry out forms of development and in so doing a Local Authority is entitled to use CPO powers. S212(1) of the Act confirms the general power of a Planning Authority to develop, secure or facilitate the development of land and may do one or more of the following (a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving; (b) develop any land in the vicinity of any road or public transport facility

which it is proposed to improve or construct; (c) provide areas with roads, infrastructure facilitating public transport and such services and works as may be needed for development.

9.2. Section 212(2) of the Planning and Development Acts states that a Planning Authority may provide or arrange for the provision of (c) transport facilities, including public and air transport facilities, and (d) any services which it considers ancillary to anything which is referred to in *paragraph (a), (b) or (c)*.

9.3. Under s213(1)(i) of the act, in terms of land acquisition, the power conferred on a Local Authority to acquire land shall be construed to acquire land, permanently or temporarily, by agreement or compulsorily. Section 213(2)(a) of the act states that a Local Authority may, for the purposes of performing any of its functions including giving effect to or facilitating the implementation of its development plan, acquire land, permanently or temporarily, by agreement or compulsorily.

9.4. It is generally accepted that there are four test criteria¹ that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property.

These are that:

1. There is a community need, which is met by the acquisition of the property in question.
2. The particular property is suitable to meet the community need.
3. The works to be carried out accord with the Development Plan.
4. Any alternative method of meeting the community need have been considered but are not available.

9.5. These criteria will be applied to the compulsory acquisition of land currently before the Board for confirmation prior to addressing the issues raised by the objectors.

9.6. **Community Need**

9.6.1. Galway City Council have stated that the existing Kirwan roundabout needs to be upgraded for five reasons: collisions and safety, traffic demand, network integration, pedestrian facilities and strategic fit. In relation to collisions and safety the project engineer for the scheme Mr Eamon Daly stated at the oral hearing that during the

¹ McDermott & Woulfe, Compulsory Purchase and Compensation: Law and Practice in Ireland (Butterworths, 1992)

period 2005- 2014 the RSA website recorded 18 no. collisions at the Kirwan roundabout. In response to a question from myself Mr Daly noted that the Part 8 report to the City Council referred to 17 no. collisions between 2005 and 2013. He also confirmed that this record referred to all collisions – pedestrian, cyclist and vehicular.

- 9.6.2. The issue of safety was raised by all of the objectors at the hearing. On behalf of Mr John Francis owner of the Menlo Park Hotel, Mr Matthew Steele questioned the Council representative Mr Eamon Daly. Mr Steele stated that roundabouts force traffic to slow down whereas signalised junctions allow greater speeds. Collisions that occur at greater speeds naturally involve greater damage. In response, Mr Daly on behalf of the Council stated that side-swipe impacts were taken into account by the assessment and that “safety” considerations were greater than just collisions but also include the improved facilities for both pedestrians and cyclists.
- 9.6.3. The written submission of Mr Francis also raised the claimed reduction in traffic at the new upgraded junction. The written response of the City Council refers to the traffic modelling undertaken as part of the route selection stage that demonstrated that Option 3B provides a reduction in overall delay, a reduction in queuing and an increase in capacity at both the AM and PM peaks for the modelled area. For a period between 2019 and 2034 peak hour costs and total delay time for each movement were calculated. This time delay was multiplied by the value of time associated with the user class to quantify the time savings in financial terms. This demonstrated that option 3B showed the greatest traffic and transport efficiency and effectiveness. Delay per vehicle was found to reduce by approx. 40% compared to the do-minimum scenario in the AM peak period and 12% in the PM peak period. Average travel time will reduce by approx. 18% and 10% compared to the do-minimum scenario for the AM and PM peaks respectively.
- 9.6.4. Shane Foran for the Kirwan Action Group raised the safety of the proposed junction for cyclists. He stated that roundabouts are generally not safe for cyclists but that the proposed scheme involved a number of conflict points and a cycle path that ends abruptly at the junction of the new Coolough Road and the N84 Headford Road. Noting that accommodation works did not form part of the CPO process, Mr Daly on behalf of Galway City Council stated that they would be happy to meet with cycling

representatives prior to detailed design stage. He further noted that the Road Safety Audit undertaken had recommended a number of measures that would be incorporated into the final design.

9.6.5. Mr Liam Ferrie on behalf of the Kirwan Action Group stated that evidence has shown that properly designed roundabouts can be safer than signalised junctions. While that may be the case, the existing roundabout is not safe for cyclists with no cycle facilities on any of the five arms and a dominance of vehicular traffic. A move towards increasing the modal share for cyclists would require a comprehensive redesign of the existing roundabout. It is not known if one of the 15 alternatives assessed by the Council at Stage 1 involved the re-design of the existing roundabout to facilitate cycle routes. None of the six options brought to Stage 2 involved the maintenance or re-design of the existing roundabout. It is noted that the chosen option 3B scored highest (table 3.2.1, Part 8 report and confirmed by Mr Eamon Daly at the oral hearing) for safety. Safety considerations included that for pedestrians and cyclists as confirmed by Mr Daly following a question by me at the oral hearing. The existing Kirwan roundabout provides pedestrian facilities on only two of the five roads with no cyclist route. The GTS notes that notwithstanding that the flat terrain of the city is conducive to cycling, the modal share for cycling is only 5%. The network of cycle infrastructure is limited and discontinuous and the volume of vehicular traffic creates an unappealing environment that cyclists perceive as unsafe. The pedestrian network throughout the city is noted to be sparse. I am satisfied that the chosen route represents the safest option for cyclists and pedestrians.

9.6.6. It is considered that the case for the community need for the proposed road has been established and can be justified by the exigencies of the common good. The proposed junction will reduce the dominance of the private vehicle, in favour of a junction that is safer and more welcoming for pedestrians and cyclists, all of which are required to create an environment and travel network that supports a change in modal choice. Arising from the above, I am satisfied that the stated purpose of the subject CPO –Bóthar na dTreabh Kirwan Roundabout upgrade will serve an identified community need and that the potential positive impacts (direct and indirect) outweigh the interference with the Objectors property rights.

9.7. Land is suitable for proposed development

- 9.7.1. The total permanent land take for the proposed scheme is 0.5ha with a temporary landtake of 0.03ha. Approx. 0.4ha of lands are registered to a private company but are in the charge of Galway City Council with the remaining 0.1ha being in private ownership. The alignment is predominantly online and therefore the impact on commercial and residential properties will be limited to landtake along the external boundary with the road network.
- 9.7.2. The lands to be acquired comprise lands in the freehold / ownership of Galway City Council, O'Malley Construction, Mary & Matt Lohan, John Francis and Noreen, Padraig and Bartley Collins.
- 9.7.3. The O'Malley Construction company own ten plots of land sought to be compulsorily acquired, a total of 0.8401ha. Five plots refer to public road (001B.001, 001B.004, 001B.006, 001B.007 and 001B.009) and five refer to areas of public amenity (001A.002, 001A.003, 001A.005, 001A.008 and 001A.010). Plot 001A.003. The largest of the plots (001A.003) of 0.381ha is located to the south of Tirellan Heights. No objection to the proposed acquisition was submitted by the company.
- 9.7.4. Mary and Matt Lohan own three plots of land (002B.001, 002D.002, 002B.0030) which are proposed to be acquired permanently and one (002D.004 of 0.0074ha) plot which will be sought temporarily. Of the permanently acquired land plot no. 002D.002 is residential land of 0.0057ha. At the oral hearing the representative for Mr Lohan confirmed that he did not object to the acquisition of the land but wished an alternative access point to be created onto the new Coolough link road.
- 9.7.5. The proposed CPO will affect three plots of land owned by Noreen and Padraig Collins: 0.0020ha to be temporarily acquired (plot no. 004D.002) and two sections of public road. Bartley and Noreen Collins also own three plots of land: 0.0022ha of residential land to be temporarily acquired (plot number 005D.002) and two plots of public road.
- 9.7.6. Landowner John Francis of the Menlo Park Hotel owns two plots of private amenity area to be permanently acquired, with a total area of 0.0837ha: plot numbers 003E.001 and 003E.002.
- 9.7.7. The lands to be permanently or temporarily acquired are not affected by any nature conservation designations, or tree preservation orders. There are no protected

views in the locality and no development constraints have been identified. No buildings of any description will be removed to facilitate the road. Whilst the scheme will result in the loss of private lands, these lands are not subject to any designations or constraints, which would render them unsuitable for the proposed development. I am satisfied that the CPO lands are suitable in principle for the proposed scheme. The objection of the landowners is dealt with in section 9.10 below.

9.7.8. I am satisfied that the extent of lands to be acquired is reasonable and commensurate to the scheme.

9.8. **Compliance with the Development Plan**

9.8.1. The stated aim of Chapter 3 of the Galway City Development Plan 2017-2023 is “to integrate sustainable land use and transportation, facilitating access and choice to a range of transport modes, accessible to all sections of the community that ensure safety and ease of movement to and within the city and onward connectivity to the wider area of Galway County and the West region”.

9.8.2. Section 3.10 of the plan lists specific objectives. Of relevance to the subject proposal is “Continue to implement junction upgrades as part of the N6 Multi Modal Corridor Improvement Scheme to improve the functioning of the junctions, provide for pedestrian and cycle movements and to facilitate public transport”. On a more strategic level, another objective of relevance is “Investigate and develop road improvements, junction improvements and traffic management solutions in the context of the Galway Transport Strategy (GTS) and strategic developments, to maximise the operating efficiency and safety of the network having regard to the requirements of all categories of road users and road network capacity constraints. Such solutions or interventions will be developed in conjunction with the relevant agency, such as the TII, NTA, and the Department of Transport, Tourism and Sport and will, where necessary, be subject to the requirements and consenting procedures of the Planning and Development Acts and the Roads Acts”.

9.8.3. The development plan also provides for specific objectives relating to supporting access for public transport, pedestrians and cyclists to and within major employment areas, implementing traffic management and infrastructural changes to facilitate a cycle network in accordance with the Galway Transport Strategy and to prioritise pedestrian movements and safety.

- 9.8.4. I note Variation no. 3 of the city development plan that inserted a specific objective for lands at the Kirwan Roundabout and the RA lands to the front of the Menlo Park Hotel. The objective states that the Council will consider the use of these lands to facilitate revisions to the Kirwan Junction, including the replacement of the existing access from the Coolough Road onto the Kirwan Junction by facilitating the construction of a link road from the Coolough Road connecting on to the Headford Road, a re-design of the existing junction using some portion on the RA zoned lands adjoining the roundabout.
- 9.8.5. The proposed development being within the 50kph is subject to DMURS. The Part 8 report submitted to the Council states that as the scheme is located along the national road network with two arms of the existing junction being national primary route (N6) and one being a national secondary route (N84), the appropriate guidelines for the proposed development are the TII Design Manual for Roads and Bridges (DMRB). The report states that the high number of HGV's using the Kirwan junction is that that the DRMB is the most appropriate standards document. Section 1.3 of DMURS states that in "exceptional circumstances" the written consent of a sanctioning authority (TII in this case) can be sought to apply the DMRB standards rather than DMURS.
- 9.8.6. On the date of the oral hearing the project engineer Mr Daly confirmed that derogation had been received from TII to allow compliance with the DMRB. Mr Daly stated that the exceptional circumstances were that the subject site involved national routes and also the volume of traffic involved.
- 9.8.7. The proposed upgrade of the Kirwan Roundabout as part of the Multi-modal corridor improvement scheme fulfils a specific objective of the development plan. The provision of cyclist and pedestrian facilities where there are none or where access is limited is in accordance with the objectives of the development plan and the Galway Transport Strategy. I am satisfied that the proposed development is in compliance with the policies and objectives of the Galway City Development Plan 2017-2023.

9.9. **Alternatives Assessed**

- 9.9.1. In assessing applications for compulsory purchase the Board should satisfy itself that the site is suitable to accommodate / facilitate the proposed development for which the compulsory acquisition of land is being sought and that the applicant has

explored and examined feasible alternatives that may be better suited to accommodate the development or achieve its aims.

- 9.9.2. I note that the Part 8 report states that an information night was held in January 2017. Members of the public raised concerns about accesses to two dwellings on the N84 close to the roundabout (properties of the Collins family). To address this a right turn pocket lane was introduced into the plan. To address a public concern about access to the N6 southbound for four dwellings on the west of the N6 Headford Road a left turning slip was introduced to allow access to the Coolough Road diversion. This is stated to allow greater access to the Castlelawn Heights / Tirellan area.
- 9.9.3. In relation to option development and selection, chapter 3 of the Part 8 report submitted to the Council states that the first stage of the options study started in February 2016. 15 no. options including a do nothing and a do the minimum scenario were examined. This was then reduced to 6 no. feasible options which were assessed against the following criteria: safety, economy, environment, accessibility and social inclusion, integration and physical activity. Table 3.2.1 of the Part 8 report provides the results of this assessment but gives no details of how the assessment was undertaken and how the results were arrived at.
- 9.9.4. In terms of absolute results option 3B scored equal highest for five of the six criteria. It ranked the same as options 2B and 3A in safety, economy, accessibility and social inclusion, integration and physical but higher on environment. Option 1 had a higher environment score but a lower economy and safety score. Option 3B emerges as the preferred option and was therefore brought forward to design stage.
- 9.9.5. The issue of alternative proposals to the proposed upgrade was raised at the oral hearing. As part of his brief of evidence the project Engineer Mr Daly briefly outlined the process of arriving at the preferred route. He referenced the appraisal criteria used: economic, safety, environment, integration and accessibility & social inclusion. In response to my question Mr Daly confirmed that all six criteria were given equal weighting.
- 9.9.6. At the oral hearing Mr David Browne, on behalf of the Menlo Park hotel stated that the issue of alternatives had not been adequately assessed. Mr Browne stated that an alternative proposal prepared on behalf of Mr Francis and providing an alternative entrance to the Menlo Park hotel, was presented to the Council during the Part 8

process. He stated that the Council had rejected this proposal at such a late stage that Mr Francis was precluded from objecting to the Part 8 scheme. The Councils response to the proposal “Technical note to assess Design Proposal from Menlo Park Hotel” was submitted into evidence at the oral hearing. Mr Browne stated that alternative routes are an appropriate ground for objection to the Board when deciding to confirm or annul a CPO and that case law supported this argument – he submitted five cases in support of his submission. Mr Browne stated that even where development consent had been granted, where a defect was identified, the power to revoke or suspend that consent existed. Mr Brown referenced the 2003 High Court case *Michael Wymes v An Bord Pleanála and Meath County Council*.

9.9.7. In response to the above, Mr Keane, for the City Council stated that the cases referred to by Mr Browne involved development consent rather than a CPO and that the only avenue available to challenge a Part 8 process was by means of an Article 50 judicial review. He noted that Mr Francis had not challenged the decision of the Part 8 and that the time for such a challenge had lapsed.

9.9.8. While Mr Browne presented information relating to circumstances where development consent could be suspended or revoked, the case remains that the Part 8 process was not challenged during the given time frame. The remit of the Board in accordance with section 217C of the Planning and Development Act 2000, as amended, is limited to the confirmation of a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof. I note that in the case referred to by Mr Browne - *Wymes v An Bord Pleanála and Meath County Council* – Justice Ó Caoimh stated that “the role of the Board is limited in its nature to ensuring compliance with the provisions of the Act itself and that the land is in fact being acquired for the purposes of the Act”. He further noted that there was no basis for challenging a decision based on planning considerations that were properly the subject matter of a Part X procedure. The alternative proposal of Mr Francis was not presented as part of the written submission nor at the oral hearing. The Board therefore is not in a position to adjudicate on whether the alleged defect in the Part 8 process is valid. I note that the Counsel for the Planning Authority declared at the hearing that the allegation was not valid. I would argue nonetheless, that the subject CPO before the Board is not the

appropriate mechanism by which to seek a challenge of the Part 8 process, alleged defect or no.

- 9.9.9. Should the Board disagree, I note that under section 217B of the Planning and Development Act 2000, as amended, the Board is entitled to request further submissions or observations from any party to the CPO. Should the Board decide to take this option, I draw the Board's attention to the Technical response submission. The response of Barry's for the City Council is that the proposed 5-arm alternative proposal would lead to confusion for drivers due to the proximity to the new Coolough Link Road. It would result in a skewed junction at the Coolough Road and overall would be less safe and would increase delay across the network. The complex crossing manoeuvre would be difficult for the visually impaired and would conflict with vehicles. The proposed alternative was found to score lower than the preferred Option 3B on environment, economy and safety grounds. The submission of Mr Browne is that alternative routes are an appropriate ground for objection to the Board. The case law referenced by Mr Browne is the *Lord Ballyedmond v Commission for Energy Regulation (2006)*. Justice Clarke dealing with that case stated that "if there were a demonstrably better route with significant advantages and / or significantly less adverse effects on a range of material factors" then the Board would be acting irrationally or disproportionately in making an acquisition order for property along a demonstrably less favourable route. It is my considered opinion that it has not been demonstrated that the alternative proposed by Mr Browne is superior. As noted by the Counsel for the City Council, the mechanism to challenge the validity of the assessment of alternatives is not the CPO process before the Board.
- 9.9.10. I am satisfied that the Council has taken steps to consider all reasonable alternatives to the proposed road. The current road proposal, the subject of the CPO, is considered to be the most reasonable option in terms of minimising the wider environmental impact of the scheme and in providing an appropriate design response to the identified need to upgrade the Kirwan roundabout. Therefore, the subject lands are considered suitable and necessary for the construction and operation of the scheme.

9.10. Issues Raised by the Objectors

9.10.1. A number of the parties raised similar concerns about the proposed development.

For convenience these are addressed together below. Individual concerns raised by specific parties are addressed as they arise.

9.10.2. **Removal of public right of way:** The extinguishment of the right-of-way was presented to the public was listed as Schedule 1, Part 3 of the CPO order. The submission that the Council is not compliant with the Roads Act is not accepted. The extinguishment of the right of way over the road is required to create the new junction – over which pedestrian access is provided.

9.10.3. **Creation of a Traffic Blackspot / Inconvenience caused by longer travel distances:** A number of the objectors raised the concern that the installation of 8 no. extra traffic lights would actually slow traffic. It was submitted during the hearing that traffic flows freely through the roundabout whereas requiring stops at traffic lights would impede and / or slow traffic moving through the junction. Shane Foran of the cycling group, Mr. Shane Collins and Mr. Donal Horan of the Kirwan Action Group all presented information relating to the flow of traffic through the various junctions. It was the submission of many that the additional time caused by stopping at the lights and the lack of detail regarding coordination of signalisation would cause back-ups at each set of lights, thereby negating the Council's stated aim of improving traffic flow.

9.10.4. Details of the traffic modelling undertaken by the Council as part of the Part 8 process are not before the Board. Only that the traffic modelling was undertaken using Vissim software. The results of the model as presented in section 4.3 of the evidence of Eamon Daly at the hearing is that there will be a significant reduction in queue lengths at the Kirwan junction in the AM peak compared to the do-nothing and do-minimum scenarios for the modelled years 2019 and 2034. The average maximum queue drops by 337 vehicles in the AM peak in 2019 and by 583 vehicles in 2034. For the PM peak, the maximum queue length drops at the Coolough Road and the N6 Bothár na dTreabh in both 2019 and 2034. Increased queuing lengths are predicted at the N84 Headford Road southbound in 2019 and 2034 and at Sandy Road northbound.

9.10.5. The written submission of Mr Francis also raised the claimed reduction in traffic at the new upgraded junction. The written response of the City Council refers to the

traffic modelling undertaken as part of the route selection stage that demonstrated that Option 3B provides a reduction in overall delay, a reduction in queuing and an increase in capacity at both the AM and PM peaks for the modelled area. For a period between 2019 and 2034 peak hour costs and total delay time for each movement were calculated. This time delay was multiplied by the value of time associated with the user class to quantify the time savings in financial terms. This demonstrated that option 3B showed the greatest traffic and transport efficiency and effectiveness. Delay per vehicle was found to reduce by approx. 40% compared to the do-minimum scenario in the AM peak period and 12% in the PM peak period. Average travel time will reduce by approx. 18% and 10% compared to the do-minimum scenario for the AM and PM peaks respectively.

- 9.10.6. The signalisation of the new junctions is a matter for design works, should the Board to decide to confirm the CPO.
- 9.10.7. **Safety of roundabout v. safety of a junction:** Mr Liam Ferrie of the Kirwan Action group stated that roundabouts, properly designed, can be safe for cyclists. Mr Shane Foran of the cycling group and also the Kirwan Action group disagreed, stating that roundabouts are not safe for cyclists. It is the stated position of the Council that safety of the junction for all traffic, including pedestrians and cyclists is their primary concern for replacing the existing 5-arm roundabout with a 4-arm junction. The existing roundabout is not safe for pedestrians and cyclists – with pedestrian facilities on only two arms and no cycle route. The roundabout is markedly car dominated. There is currently no incentive to walk from the residential areas to the retail units on the Headford Road. While Mr Pauline Kelly stated that should there be safety concerns the residents would be the first to raise them, the reality is that the existing junction is designed for cars, not people.
- 9.10.8. Mr Matthew Steele, on behalf of Mr John Francis submitted that evidence from the RSA for the years 2014-2016 demonstrated that the reduction in the number of collisions was not significant and that the change from a roundabout to a signalised junction could not be justified on that basis. In response, Mr Eamon Daly on behalf of the City Council stated that where the number of collisions is low, the reduction will also be low. He further noted that the safety of the roundabout was measured as the increased accessibility and permeability of the junction for pedestrians and cyclists.

9.10.9. The introduction of pedestrian and cycle facilities will significantly improve the environment for all residents and visitors to the area. That this will occur at the expense of some landowners, is regrettable but can be justified by the exigencies of the common good. The need to improve pedestrian and cycle facilities across the city of Galway is a stated aim of the development plan and the Galway Transport facility. That the proposed design would inconvenience the property owners affected was acknowledged by the City Council at the hearing. Counsel for the City Council stated that notwithstanding the remedy of compensation, that some property owners would undoubtedly be affected during the period of construction. The submission of the Council was however, that this short-term pain would lead to a longer-term gain in the form of a safer and more efficient road junction. I accept the position of the City Council that the disruption will be for the long-term gain of the area and is a proportional response to the identified community need. It is considered that the positive impacts arising from the upgrade outweigh the interference with the Objectors property rights.

9.10.10. **Impact on Surrounding Roads:** Many of the objectors raised the concern that the proposed upgrade would dissuade vehicles from using it and that they would instead commence (or continue) to rat-run through the residential areas and / or the surrounding residential roads. Mr Liam Ferrie gave evidence of in excess of 600 no. cars passing his house on Monument Road in a 90-minute period. Ms Pauline Kelly stated that she frequently used the Dyke Road to access town. She stated that the road is dangerous in its existing state and that should extra traffic be forced onto the road that it will be even more dangerous. Peter Cunnane on his own behalf and on behalf of the Kirwan Action Group stated that drivers took the route they perceived to be fastest / shortest. He queried how such a perception could be quantified. This issue was also raised by Mr Steele, traffic consultant representing Mr John Francis. He stated that the traffic modelling undertaken was flawed as it did not include the route through Tirellan Heights and therefore the predicted time savings would not occur.

9.10.11. The City Council presented details of the traffic modelling undertaken, which they state will reduce queuing times at the junctions, thereby allowing a freer flow of traffic. Accepting the submission of the City Council that the do-nothing option (eliminated at Stage 1 Options Selection Stage) is not feasible, then the option

before the Board, option 3B was found to be the safest (table 3.2.1 Project Appraisal Matrix Results, Part 8 report). It also had the second highest score for environment and scored equal highest for accessibility & social inclusion, integration and physical activity. In the long-term the improvement of the junction for traffic will result in more cars using the junction and being drawn away from rat-running through the residential area and / or using lower-grade country roads that are not suitable for such levels of traffic.

9.10.12. **Types of Impacts:** Mr Matthew Steele on behalf of Mr John Francis stated that whereas roundabouts self-regulate the speed of traffic, signalisation allows traffic to proceed at greater speeds, thereby increasing the volume and significance of impacts. In response, Mr Daly referred to the obligation to comply with statutory speed limits. Mr Daly stated that the nature of impacts would change to side-swipe but noted that the number of minor collisions at the roundabout was low and that the proposed upgrade would reduce this by 30%. This would result in less than 1 no. collision per year. In response to a question from Mr Steele, Mr Daly for the City Council stated that the traffic analysis undertaken used both RSA and TII data sets.

9.10.13. **Alternatives** The submission that alternatives to the proposed development were not assessed is discussed in section 9.9 above. I am satisfied that reasonable alternatives were assessed and that the subject route was chosen after a comprehensive analysis.

9.10.14. **Breach of EU Directive:** Mr David Brown on behalf of Mr John Francis stated that where a defect in the EIA procedure had been identified it falls to the Board as a State Body to remedy that defect. He referred to European case law that found that such remedy could include the revocation or suspension of a development consent procedure. The alleged defect identified by Mr Browne is that the screening for EIA undertaken as part of the Part 8 process did not identify alternatives and did not look at the cumulative impacts of the proposed development in relation to the Galway bypass. In response, Counsel for the City Council stated that the case law referred to by Mr Browne related to the development consent process only and was not applicable in a CPO application.

9.10.15. It is considered that the means by which to remedy an alleged defect in either the Part 8 or the CPO process is by means of a legal challenge to either of those

decisions. It is my considered opinion that, first identifying if an alleged defect occurred, secondly if it is valid and thirdly if it is of such merit that it requires a revocation or suspension of a previous decision made by a State Authority other than the Board, is beyond the powers of An Bord Pleanála under the compulsory acquisition process currently before it.

9.10.16. **Green Space:** The removal of the green space to the front of Tirellan Heights is regrettable. However, I note Variation 3 of the city development plan that provides for the inclusion of this land within the upgrade of the Kirwan roundabout. The benefits arising from the scheme in terms of greater pedestrian and cyclist accessibility must be balanced against the removal of the green space for the residents of the adjoining residential areas.

9.10.17. **Destruction of green space at Tirellan Heights and removal of trees:** The removal of trees between the Menlo Park Hotel and Tirellan Heights was referred to by the Council at the hearing. They stated that a landscape and visual assessment undertaken as part of the Part 8 process found that the majority of trees will be retained and that while the visual receptor sensitivity is high, the magnitude of change is low to medium with a minor / slight negative visual impact.

9.10.18. **Traffic lights / Signalisation:** Mr Sean Collins in behalf of the Collins family raised concerns regarding the introduction of a new junction directly across from his family's property and a series of traffic lights at the proposed new junction. He stated that while exiting the two properties at the moment, the driver visually checks that the road and the footpath are clear before exiting. He noted that the proposed traffic lights would stop cars outside his house but that no such measure existed for stopping pedestrians or cyclists on the proposed new footpath and cycle track outside his house. In response, the Council stated that a right turn filter lane into the Collins property has been included as part of the scheme and that traffic signalisation and road markings will be confirmed during the detailed design stage. The installation of traffic lights at the junction to the south of the Collins property will apply to cyclists as well as vehicles, regardless of the separation of the two forms of traffic. The need to stop for pedestrians in the proposed scheme remains the same as the existing situation.

- 9.10.19. The concern of Mr Collins regarding the lack of input from the family if the scheme is confirmed is understood. It is not within the remit of the Board however. Issues in relation to accommodation works are addressed at detailed design stage.
- 9.10.20. **Boundaries:** Mr Sean Collins raised a concern about the impact of the proposed development on the boundaries of the two Collins properties. He stated that the landscape plan had not been made available to the public before the hearing and that previous plans drawn up by the City Council had omitted one of the entrances. In response the Council stated that accommodation works will be addressed as part of the detailed design and accommodation works and compensation agreements. In response to the concern regarding glare impacts from traffic coming down the new Coolough Link Road and the noise impacts from traffic accelerating up the slight incline in the new road, the Council stated that the new Coolough Road was moved slightly out the Headford road to minimise glare and noise impacts into the Collins property.
- 9.10.21. **Alternative Entrance:** Mr Collins stated that in a previous planning application, the option of creating an entrance onto Sandyvale Lawn for the two Collins properties was supported by the Council and An Bord Pleanála. In their written response to the objection, the City Council stated that the proposal was not included in the subject upgrade as the existing access / egress points have been retained in their current location. When questioned by me. Mr Collins confirmed that a planning permission exists for development on the second Collins property (that in the ownership of Padraig Collins). The option to seek an alternative access through Sandyvale Lawn remains open to the Collins family.
- 9.10.22. **Compensation** The diminution of value of a property is a matter for the property arbitrator. I note that as per article 5(2) of the Third Schedule (Housing Act 1966 as amended), objections should not relate to matters which would more appropriately be addressed by the property arbitrator. Likewise, that some of the lands to be permanently and temporarily acquired is in the ownership of a commercial entity but is maintained by the Council and the residents of Tirellan, is not a matter for adjudication by the Board.
- 9.10.23. **Lack of Public Consultation:** Regarding the submission that public consultation was not undertaken, I note section 3.5 of the Part 8 report that gives

details of a public consultation meeting on January 25th, 2017. This was further confirmed by the PA at the hearing. That the consultation was not adequate (submission of Mr Peter Cunnane) or that late / inadequate or no follow up consultation occurred (submission of many parties) is a matter to be addressed by the City Council.

9.10.24. **Amenity Area at Menlo Park Hotel:** Mr John Francis submitted that the acquisition of the land to the front of his hotel would damage his business as the area is used as an amenity area and for weddings etc. In response the Council referred to their landscaping plan which they stated would reduce the visual impact. In response to Mr Francis submission that this acquisition would damage the development potential of his hotel, I note variation no. 3 of the development plan that provides that “the Council will consider the development of a leisure centre and swimming pool, both located underground with minimal effect overground, as part of the overall hotel development but only where such development satisfactorily takes into consideration the requirements to deliver the works associated with Section 11.2.2 Specific development objective as provided for in Fig. 11.5. – this refers to the upgrade of the Kirwan Roundabout. As with other property owners adjoining the Kirwan roundabout, there will undoubtedly be a degree of disruption at the Menlo Park Hotel during construction. It is considered however, that the short-term disturbance will be outweighed by the long-term increase in pedestrian accessibility, pedestrian and cyclist safety and improvement in traffic throughput at the junction.

9.10.25. **‘Bridge Design’ standard for road works at the Menlo Park Hotel:** Mr Francis written submission stated that the condition of the ground at his hotel was so poor that it would require a ‘bridge design standard’. In response, the City Council stated that such grounds would be subject to earthworks pre-loading which will consolidate the ground and facilitate the construction of the junction upgrade. Additional lands beyond those identified in the CPO will not be required.

9.10.26. **Matt Lohan, Headford Road Galway:** Mr Lohan stated in his written submission and repeated by his representative at the oral hearing that he had no objection in principle to the proposed development. Mr Lohan’s concerns related to his access onto the N6 Headford Road. Details of a proposed land swap which would allow a new access to be created onto the new Coolough Link Road were raised at the oral hearing, with a traffic report read into the record. Mr Lohan’s

representative stated that Barry's Transportation had no objection to the proposed minor alterations. The response of Barry's was that incorporating the proposed amendments would still allow the development to be substantially compliant with the Part 8 as approved and the variation of the development plan.

9.10.27. The response of Galway City Council to the proposed land swap (as per written response to Mr Lohan dated 15/01/19 and submitted at the hearing) is that the Council are not in a position to offer such a land swap as it would require approval from the Council members. The provision of such an arrangement is outside the scope of the acquisition before the Board. It involves lands outside of the Council's control and lands outside of the proposed development. While there appears to be broad support for the proposal, this is a matter for resolution between the two parties and not An Bord Pleanála. The matter is not one that would justify exclusion of any lands from the proposed compulsory purchase order.

10.0 Conclusion and Recommendation

10.1. I am satisfied that the process and procedures undertaken by Galway City Council have been fair and reasonable and that they have demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable. I consider that the proposed acquisition of these lands would be in the public interest and the common good and would be consistent with the policies and objectives of the Galway City Council Development Plan 2017-2023.

11.0 DECISION

11.1. I recommend that the Board CONFIRM the above Compulsory Purchase Order, based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having considered the objection made to the compulsory purchase order, the report of the person 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 also having regard to the following;

- (a) the policies and objectives of the Galway City Development Plan 2017 - 2023,

- (e) the community need, public interest served and overall benefits to be achieved from the proposed road development
- (b) the design of the proposed junction, constituting a design response that is proportionate to the identified need,
- (c) The submissions and observations made at the Oral Hearing held on 17th January 2019 in the Maldron Hotel, Sandy Road, Galway

It is considered that, the permanent and temporary acquisition by the Local Authority of the land in question and the extinguishment of public right of way, as set out in the order, schedules and on the deposited map, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

Gillian Kane

Senior Planning Inspector

04 February 2019

Appendix 1 Oral Hearing

Attendees

Esmond Keane SC Galway City Council
Eamon Daly, Project Manager Barry
Hilary Molloy, Solicitor, Blake Kenny
Alan Moriarty, Galway City Council
Uinsionn Finn, Galway City Council,
Bríd Dawson, Galway City Council,
Caroline Phelan, Galway City Council,
Liam Blake, Galway City Council,
John Francis, Menlo Park Hotel,
Matthew Steele, Menlo Park Hotel,
Rhoda Jennings, RDJ Solicitors, Menlo Park Hotel
David Browne BL, Menlo Park Hotel,
Donal Horan, Kirwan Action Group,
Peter Cunnane, Self and Kirwan Action Group
Liam Ferrie, Kirwan Action Group,
Pauline Kelly, Castlilawn Heights,
Niall Rooney, Tirellan Heights
Shane Foran, Kirwan Action Group / Galway Cycling Campaign
Padraig Collins,
Sean Collins
Bartley and Noreen Collins,
Gus McCarthy for Matt Lohan
Caroline Phelan, Senior Planner, Galway City Council
Barry Egan for the Collins Family
David Kennedy for the Collins Family

INSPECTORS SUMMARY OF PROCEEDINGS.

Not to be taken to be an exact, complete or binding record.

Inspector opened Oral Hearing at 10.00. Opening statement and agenda. Invited Local Authority to make their submission

Submission of Galway County Council

Mr Esmonde Keane, SC on behalf of Galway City Council. Provided the background to the CPO scheme and the preceding Part 8. Noted that no challenge to the Part 8 was made. Stated that responses to the objections to the CPO would be provided at the hearing.

Mr Eamon Daly outlined his qualifications, stated that he was the project director for the scheme. Read his brief of evidence which detailed the need for the scheme, an overview of the route selection process, a description of the proposed scheme, consultations undertaken and assessment of environmental impacts. Regarding the **need for the scheme** Mr Daly stated that between 2005 -2014 the RSA recorded a total of 18 collisions at the Kirwan roundabout. In terms of traffic demand, he stated that the roundabout suffers from congestion, operating over capacity at the AM peak period. Circulating traffic on the roundabout delays traffic travelling southbound on the N84 by an average of 8 minutes. Rat-running occurs through the residential areas causing further problems. Mr Daly stated that investment in a junction is essential. He stated that proposed junction would be integrated with the Urban Transport Management System (UTMS) which currently runs along the N6. Mr Daly provided detail of the lack of pedestrian and cycle facilities: a pelican crossing at the N6 Bothár na dTreabh and a zebra crossing on Sandy Road. The proposed multi modal corridor improvement scheme would provide facilities for vulnerable road users, including fully controlled pedestrian crossings in all directions and cycle lanes. Mr Daly outlined how the proposed scheme complied with the Galway City Development plan 2017-2023 and the Galway Transport Strategy. Mr Daly then moved to discussing the **route selection process**. He stated that in February 2016

sixteen options including a 'Do Nothing' and a 'Do Minimum' option were assessed against environment, economy and engineering. Six options went forward to the Stage 2 process. These six options were assessed against the Department of transport, tourism and sports "Common Appraisal Framework": safety, economy, environment, accessibility & social inclusion, integration and physical activity. Option 3B emerged as the preferred option as it scored equally highest for 5 of the 6 criteria. A **public consultation** evening was held on the 25th January. Concerns raised by the public resulted in some amendments to the scheme. Mr Daly referred to a **Road Safety Audit** that examined the six options. He outlined the eight recommendations made which are reflected in the scheme that went to planning. Mr Daly then provided a description of the proposed scheme, the proposed upgrade works, earthworks / excavations, structures, drainage, landscaping plans, public utilities, traffic management and street lighting. **Traffic** was next. Mr Daly provided details of the traffic modelling undertaken which showed that there would be an overall reduction in delays and queuing with the proposed upgrade. The average maximum queue drops by 337 vehicles by 2019 and 583 vehicles by 2034 compared to the do-nothing scenario. For **landtake**, Mr Daly stated that it was required for various reasons including: road construction, grass verges, embankments / cuttings, realignment of the Coolough Road, accommodation works, extinguishment of the public right of way, maintenance strips, construction staging & traffic management, drainage & environmental facilities and buffer zones & landscaping. Mr Daly stated that accommodation works and boundary treatments would be negotiated with landowners at design stage. Regarding the **assessment of environmental impacts**, Mr Daly stated that an EIA screening report and an AA screening report were carried out. The assessment identified a number of impacts that would arise and ameliorative measures were incorporated into the scheme. Further design measures would be refined prior to construction. He outlined the main findings on population & human health, air quality & climate, noise & vibration, landscape & visual, biodiversity, water & drainage, soils, geology & hydrogeology, agricultural & non-agricultural properties and materials assets, archaeology and architectural

heritage & cultural heritage. Mr Daly states that overall, there will not be any significant impacts on the local environment. In relation to **land requirements**, Mr Daly stated that the extinguishment of the public right of way noted in the CPO order is necessary to formalise the realignment of traffic. The existing carriageway will be removed and replaced with a green open space. Outlining the **land acquisition** Mr Daly stated that the total landtake is 1.0166ha: 0.3717ha of public road, 0.5553ha of public amenity area, 0.0057ha of residential land and 0.0837ha of private amenity area. Temporary landtake in the order of 0.0116ha is required for the construction phase. Mr Daly stated that it was his opinion that the lands included in the CPO are required for the construction of the scheme and that the lands are necessary for the purposes for which they are required. He noted that such acquisition would affect landowners and stated that Galway City Council would negotiate with landowners on compensation. Finishing, Mr Daly stated that Appendix A of his evidence is the scheme layout, Appendix B is the landscaping layout and Appendix C is a summary of the landowner's plots and the reason for each acquisition.

Mr Esmond Keane SC for Galway City Council read in a statement from Ms. Caroline Phelan, Senior Planner, Head of Planning in Galway City Council that the proposed development complies with the Galway City Development Plan 2017-2023, including variation no. 3. The planning assessment was submitted to the Council on the 5th March 2018 and was approved as proposed in accordance with s 179 of the Planning and Development act 2000, as amended.

Inspector questioned Mr Daly on the difference in the number of 17no. minor collisions in the Part 8 Report versus the brief of evidence presented at the oral hearing (18 no. collisions). She questioned section 2.1.3 of the evidence – the two junctions on either side of the subject roundabout: were they subject to the Part 8 process? Answer provided in the afternoon session is that yes, both junctions were subject to the Part 8 process. Inspector asked Mr Daly to talk through section 4.2, page 13 of the report on the route map on the wall in the room. Mr Daly pointed to

the drawing on the wall showed the Coolough Road at the roundabout. He stated that the proposal is to divert the Coolough road around to the N84 Headford road with a T junction, provide a left turn lane for Headford and two right turn lanes into Galway. The junction would be signalised to allow traffic to clear the junction. Inspector asked about traffic coming from the N6 Bóthar na dTreabh going west up past the Menlo Park Hotel. Mr Daly stated that two lanes widens out to three lanes: a right turn lane to turn to the N84, two further lanes, one of which the middle is straight through into Galway city and the left has a left turn up Sandy road. Traffic going up towards Menlo would take a right turn and then a left turn up the Coolough road. Sean Collins on behalf of the Collins family asked how many lights would have to go red to let traffic in to the property. Mr Daly answered that they were proposing actuated lights to allow access and egress. The detailed design phase would provide greater detail on lights. The Inspector asked Mr Daly to clarify what KER (key environmental receptor) was referred to in section 6.6 of his evidence. Mr Daly stated that this referred to a tree belt along the Menlo Park Hotel adjoining Tirellan heights.

Inspector invited the Objectors to make their submission using the order advised in the agenda.

Pauline Kelly, Castlelawn Heights Residents stated that she represented a residential estate of over 253 houses. She stated that she was more used to working with the Council than against them. Noting that she had no objection in principle to a signalised junction, she stated that the residents would be majorly inconvenienced and felt a lack of consultation. They objected to the manner in which their access was being taken away. She stated that the most attractive thing is the proximity to town and noted that the whole point of a CPO was that the affected parties would be left in the same position afterwards. She stated that if the proposal goes ahead it will make a complete shambles of the traffic and create a traffic blackspot. She fears she won't be able to sell her house. Regarding the Council citation of the main reason for the development being safety, she stated that if there was a real safety problem the

residents would be the first to ask for improvements. Ms Kelly stated that they had not received any data or statistics and that the drawing of the scheme had only been received that morning. Ms. Kelly stated that when she walks into town she uses the dangerous Dyke Road. There is no footpath at Eamon Deasy park and with traffic going in both directions she is forced step in off the road. With 9 no. sets of traffic lights proposed, more cars will use the back roads making it more dangerous. Ms Kelly stated that it took her ten minutes to get to her physio appointment in Sandy Road, but the proposed development would add 15 minutes to that journey. She asked how the Council would quantify that wasted time.

David Browne BL on behalf of John Francis. Stated that a detailed written submission had been made but he had some questions from Mr Daly's evidence. Noted that his client has a major commercial development that will be adversely affected by the permanent land acquisition. Key concerns that his client has: has been the subject of 4 no. CPO's and the particular concern is the landtake adversely affecting his development proposal and the amenity area facing the road, the reconfiguration of the access and egress, commercial vehicles being able to access the site. Mr Browne stated that he would be raising a legal objection based on the principle of proportionality. He stated that his Client did not make a submission on the Part 8 process as he had proposed an alternative proposal which he understood was being considered. His Client received a response from the council that it wasn't a preferred option on the eve of the Part 8. Mr Browne stated that there is case law that finds that if there are any breaches of European law that the Council and the Board cannot shut its eyes to. The legal position is that if a defect is shown up during the day, it must be take into consideration. He stated that it is artificial to ignore the environmental impacts as they have been presented in evidence during the day. The Inspector reminded Mr Brown that he was present to object to the CPO. Mr Browne stated that there were broader objections in terms of traffic modelling and process of identifying alternatives. Inspector asked regarding the previous application for an underground extension. Mr Browne stated that permission was granted by Galway,

who then extended the permission but that this had withered without commencement. Mr Browne stated that variation no. 3 of the development plan may have an impact on his client's development objectives. He finished by stating that the CPO would frustrate his client's intentions.

Niall Rooney – resident of Tirellan heights. Did submit an objection to the proposal removal of the roundabout. Stated that his is more used to working with rather than against the council. Mr Rooney stated that he used the road every single day. He stated that the council have chopped and changed between traffic management and safety as being the reason for changing the junction. Putting 9 sets of traffic lights between the Coolough road and the top of the shopping centre, is not going to alleviate traffic and not make it any safer, it's going to landlock the residents of Tirellan Heights. Mr Rooney referred to the removal of the green area where many residents and their children play. He stated that the solution to the problem lay further away than the Kirwan roundabout. The installation of traffic lights would not help the back up of traffic on the Headford Road. Mr Rooney noted that no one mentioned Terryland park, the grounds of Galway United that is used by 5,000 people every Friday night. Mr Rooney finished by saying that the residents wished to work with the Council but that the proposed development was the wrong solution.

Kirwan action group – Liam Ferrie listed the areas representing. Opposes the proposed development totally. Mr Ferrie said that his objection was not nimbyism as he considered the proposed development would damage Galway. He noted that he had gathered 1360 signatures. He stated that the proposal to replace the Kirwan roundabout with a 4-arm signalised junction should be rejected on the grounds that it seriously inconveniences local residents by extinguishing a traditional ROW onto the Headford Road and uses green area to the front of Tirellan Heights without consulting residents. Mr Rooney stated that the proposal is more likely to exacerbate Galway's traffic problems than ease them. The proposed removal of the ROW has no benefit to the greater community for the following reasons: Dutch Design Manual

for Bicycle Traffic shows cyclists and pedestrians can be safely catered for at roundabouts, if designed properly they can be a better solution than signalised junctions. The council has claimed safety concerns for pedestrians and cyclists as the primary reason for instituting the proposed changes. Mr Ferrie noted that the Council has failed to accommodate cyclists and pedestrians in other parts of the City such as Salthill Prom. He referred to an article in the Connacht Tribune wherein a Council spokesperson stated that replacement of the roundabout at the Headford Road will greatly improve the traffic flow across the city. This isn't true, traffic congestion is much worse. Extra traffic lights are not a better way to manage traffic. Mr Ferrie stated that up to 10,000 residents will be seriously inconvenienced by having two sets of traffic lights to access the Bóthar na dTreabh and the Headford Road. Stated that the problem is a lack of public transport within the city and on commuter routes. He noted that the Council has ignored a Councillor vote for park&ride facilities. States that the Council's plan is to provide marginal relief to the City's traffic problems rather than fix the problem. Temporary traffic lights should have been trialled. Data predicting the effects of changes is spurious. Council stated that temporary traffic lights would cause traffic problems, but it is not clear how permanent lights will avoid these problems. This is a 24-hour solution to a three-hour problem. Traffic will be impeded in the other 21 hours. The number of traffic lights between Ballinfoile Church and the Cathedral already breaches international norms. The proposed ten sets – one set every 200m, over a two-kilometre stretch. Council says no rules from TFI. Five-arm roundabouts controlled by traffic lights are acceptable in other countries. The 500 cars that rat-run through Menlo in the mornings will increase when faced with the alternative of additional traffic lights. The Dyke Road will see greater traffic which will make it even more dangerous for pedestrians. the area will be less attractive for bus traffic. Journey times on the no. 407 bus will increase. The Council states that the new junction will allow for a 15% increase in traffic but doesn't state where the traffic will go as Galway cannot absorb any more traffic. Traffic congestion at the Bodkin roundabout will remain the primary cause of traffic at the Kirwan roundabout. Removing other roundabouts in Galway

has only temporarily alleviated traffic at rush hour. At other time the traffic lights inhibit traffic movement. Given that rat-running through Menlo falls by two third on school holidays a school bus service would improve traffic more than the proposed solution. The Council prioritises car traffic over all other forms of transport – refusal to create a bus lane across the Quincentenary bridge. Needs to be a change in mindset to making people the priority. Buses heading to Dublin are all full. Buses will be used if the right service is provided. A flyover over the roundabout would be a more effective solution. The Council ruled this out on lack of space for ramps. With only one lane no ramps would be needed. The current N6 footprint would be sufficient. A free-flow of traffic at all times. The community needs to unite if safety for pedestrians and cyclists is the real priority. Residents of the communities to the north-west of Headford Road can exit without impeding traffic coming from the any direction other than the Headford Road. The volume of traffic in the Kirwan Roundabout is such that the proposed upgrade will not ease traffic congestion. The Residents believe that rat-running will increase. 630 cars passed in house Monument Road in 1.5 hours in September. That will increase with this scheme.

Dónal Horan Kirwan Action Group – at the map on the wall. Concern is The junction at the Coolough Road and Headford Road. The estate of over 100 homes plus all the traffic going to Menlo are rat-running through Menlo use the Kirwan Roundabout so it is important it works well. The online model shown on the website is deceptive as it predicts a smooth flow of traffic. If one assumes a 2-second delay per car, there will be a build-up of traffic due to the length of green lights in the sequence. This will also occur at the Headford road slip road and the Bothár no dTreabh slip road – eight cars will be left in the queue. The tailback will not clear. This looks lovely on the Vissam model but in reality, will cause traffic back up all the way into town. The perpetual motion of the roundabout will be replaced with stop -start of traffic lights.

Shane Foran Kirwan Action Group. Initial observation roundabouts are not safe for cyclists. Not a matter for dispute. He accepts the concerns about rat-running through the estates. That is a very serious problem, if there is some way to stop the cars using these minor rural roads to get around the main N84. Needs to block that traffic from using those roads, then that traffic would not be competing with local residents to use the N84. Would leave more capacity for local traffic to move locally. The dyke road has a low bridge of 2.1m couldn't get an ambulance under. Mr Foran suggests could closing the dyke road between 8-10am but admits that this would be controversial. Coolough link road one way going north, it's an obvious desire lawn for Tirellan and Castlelawn. There is no cyclist facility at into those crossings. That should be put in the design. Regarding the Coolough road itself there is a cycle lane that disappears. That's not a good design. If it can't be kept at the right width, then end it. Create a situation where the cars and the cycles know that they are merging with each other. The Tirellan Heights area should be connected directly somehow from the tarmac and the bike path as a short cut through the estates. People coming down the Headford Road and wanting to turn up Bothár na dTreabh: the cycle lane and the pedestrian go directly into the toucan crossing. Give cyclists a bypass to go left they could go straight through without stopping people crossing the road. This drawing shows islands on this arm and on this arm is there a stage crossing. A two-stage crossing should go green for pedestrian and cyclists when red for cars. The N84 corner with sandy road should be a leg turn bypass into Sandy road. The road into sandy road appears to be 3.5m. and so will get HGV traffic using Liosban. Mr Foran stated that the road should be 4.5m. He stated that the development only needs three entry lanes coming in to Sandy road. If you want cyclists to turn right into Headford road, provide a bypass through this green area so they don't have to wait at the traffic lights to turn right.

Peter Cunnane. Member of the Kirwan action group and fully supports their submission, notes that he also made an individual submission. Mr Cunnane states that the first point the Local Authority must satisfy the Board that the CPO is necessary

for the common good. That is established in law. He states that this is not satisfactorily demonstrated with this design. From the instigation of the project the whole multi modal corridor project, the council has sought to segment each junction to treat each separately and avoid the bigger picture. They have done nothing to achieve one of the stated aims which is to improve traffic flow on the N6. So how can this be said to be in keeping with proper planning and sustainable development. Mr Cunanne stated that surely a major aim of investment in transport infrastructure should be a reduction in pollution and promotion of public transport, noting that this design has no public transport, no bus lanes, no facilities to improve the uptake of public transport. He stated that this design and the resultant CPO should fail the criteria for sustainable development. Mr Cunanne said that they told that there were 15 options whittled down to six. He stated that these were presented to the public at a community centre. This was farcical because it was display boards with a Council representative at various points and no opportunity to present a view from either side. He notes that in the course of the discussion with the Council, that the Kirwan Action Group have presented an alternative design which did not involve CPO and that was a proposal to use lands at Liosban to provide an alternative exit from Liosban. Thereby enabling the closure of the Sandy Road junction and leaving Coolough road open. He notes that never considered and that they have never seen the 15 no. options. He states that the Council owned and used lands in Liosban industrial estate were not considered as an alternative. He stated that no traffic figures were presented to justify the closure of the Coolough road and maintaining an opening to Liosban. The figures show that rush hour is when the roundabout fails. There is more rush hour traffic from the residential areas than there is in the industrial side on Liosban. Mr Cunanne questioned why a Masterplan for Liosban is being now when it should have been first given that the Coolough road has been in use for generations and Liosban is recent. The concerns of 1000 residential people were ignored, and priority given to business interests. Replacing the roundabouts traffic lights theoretically provides a safer environment for pedestrians and cyclists. But why was this not a consideration when they were designed in the first place? Roundabouts existed for years and replacements were

only proposed when they became inefficient due to traffic volumes. The Council has safety for pedestrians and cyclists as the first stated reason and traffic volume is the second. Priority has shifted from improving traffic flow and safety. Lower speeds in heavily traffic roundabouts may make them safer for cyclists and pedestrians.,. Higher speeds and that red lights are ignored mean the expected safety benefits will not occur. Higher speeds mean more serious accidents. It is imperative that the proposed coordinated lights will be implemented as there will be no chance of traffic of getting out from Coolough road unless coordinated. Reference to traffic backing up on the N84 in the mornings considerable volume wants to go up Bothár an dTreabh by left turn. You don't get an opportunity to segment the traffic only in the last 50 yards, that could have been addressed by widening that road and installing a left turning lane. Regarding the various references to rat running Mr Cunnane states that everybody uses what they perceive to be the best method of getting to a destination. Not always the shortest, that's a perception. You can't make a statement that 90% of rat running through Tirellan will be eliminated as you don't know what people will perceive at the best way. Increased lights will increase the rat running. The lights signalisation of junctions on the N6 has helped on the N6 but not on the roads which meet the N6. Coming in from the Tuam road is now much more difficult than it used to be. May be easier to go straight through. But side roads are more difficulty, this will not be any different. A lesser junction than the main N6. The purpose is to improve flow on the N6. The traffic on the N84 will be adversely affected and the Coolough road will be more adversely affected. The endangers no change in the pollution or noise levels so no benefit to the overall traffic from new design. Public green space the fact that lands which is in public use and maintained by residents and the council and another party compensated, no justice. Council has treated residents badly and ignored their concerns.

Barry Egan representing the Collins Family. Bartley & Noreen Collins owner of St Anthony's B&B and Pdraig Bartley owner of the site next door. The Collins have been in the areas since the 1960's long before Liosban, Tirellan when it was a rural

area urban sprawl has over taken huge big scheme on top of them. Not about the scheme but its effects on the Collins property's and their futures your experience dealing with the Council has been difficult. March 2018 Part 8 motion the scheme was based on this photomontage map and this animation. Councillors were asked to vote. Neither of those indicated access or get to the Collins property. Told verbally that there will be a filter land to allow traffic to turn into the property. No lane shown on the drawings. Traffic coming out from the Collins property no deviation of traffic lights but told. Nothing writing. Meaningless. Board asked to adjudicate on a scheme that relies on too much information at the design stage. Don't expect the detailed design but do expect a reasonable level of detail to be included in the planning stage so that the effected parties can make a judgement on how it affects them. Noise this report responding to the submissions arrived in the post. Didn't receive it. On the subject of noise for the first time. This one specifically says noise will be concluded that there will be a small increase in noise at both Collins properties there is no requirement for mitigation. Family have seen no evidence to support that broad-brush statement. The reality is that the traffic going up the new Coolough road diversion route opposite the Collins house will be accelerating up a slight hill – more noise than the traffic they currently suffer. Can't quantify a "small increase".

Concerned about the effects of lights. The new sweeping road coming across the green area coming from Coolough Road lights will sweep across their front windows. Regarding the proposal to raise the wall or provide planting, they have not seen the referenced detailed planting scheme. Principle issue is its effects on their house – how will they get in and out. Sensor recognise when there is traffic looking to turn into or out of the property. Cannot accept the whole of the Headford road traffic is going to stop every now and then for 30 secs because of traffic into or out of the Collins house. No commitment to this lighting scheme anyway, only verbal assurance. Not convinced that their access and egress will be made any better. All they want is to be no worse off than currently. Mr Collins stated that the submission they made to the City Council was rejected the day before the council meeting without explanation. Their submission was to close the gate and provide an alternate

access through Sandyvale lawn. This was the Council's suggestion ten years ago in relation to a previous planning permission and was referred to in the ABP report. The City Managers response that it would be over lands over which they have no control is not true, as the lands have taken into charge. The lands area owned by O'Malley construction, but they own 90% of the lands to be acquired. Council haven't justified the elimination of the other options.

Sean Collins on behalf of the Collins Family: never objected to the removal of the roundabout. They have two entrances at the moment, can come out and go across a footpath and a lane of traffic outside the house. The Collins family are concerned about the plans for traffic lights. Their concern is that once the CPO is confirmed that it will be too late to address the design details. Mr Collins notes that while the model of the City Council showed everything flowing smoothly it omitted their two entrance points and so is not correct. He queried how the lights would know where they wanted to go on leaving their house. Leaving the house at the moment they watch for a break in pedestrian and vehicular traffic. The proposed 2m cycle lane shown outside their house will not be signalled for cyclists. Mr Collins recounted bringing Councillors to their property to demonstrate the issues. He noted that there is planning permission for a second dwelling on the site after the previous dwelling burned down. Lights from the traffic at the new Coolough Road junction will shine into both houses. He asked what screening proposals would prevent this? Regarding the proposal to go through Sandyvale Road, he stated that the Councillors did not have the option to approve this or not – only vote for scheme or not. No other option. The scheme was rejected 5 years previous. Mgr. agreed to meet. Met the Barry's design team in May. Sat down with he produced drawings: had one for in and one for out entrance for the two properties. Two separate properties. Went back in sept to Council. No drawings to be seen. Have to take whatever is give, cannot see any consideration for these two entrances.

Inspector – clarified that permission still exists for the second property with its own entrance.

David Kennedy on behalf of Noreen and Bartley Collins: reside and run a successful business at St Anthony's B&B for 49 years. Ms Collins and her husband are anxious and upset about the proposed re-routing of the junction on which their family home is located. The house is their PPR and accommodates their children and grandchildren for major events. The B&B hosts mostly foreign tourists who appreciate the easy access to Galway city and surrounds. The proposed development will remove that ease of access and poses safety concerns for those leaving on foot or by car or bus. Noise levels from construction will mean the business cannot remain open. The proposal involves a road diverted to opposite their entrance. The house would be located between two major junctions and would threaten their business. The proposed development has caused them great distress and they fear that there will be nothing left to hand to the next generation.

Gus McCarthy on behalf of Matt Lohan: owner of a residential property located to the south-west of the existing junction N6. This is not an objection to the scheme it's a submission relating to his property and to the entrance and the exit. Alan Lipscombe Traffic and Transport Consultant. Option 3B identified as the preferred option. Access arrangement to Matt Lohan with the proposed upgrade. The existing access is provided by means of a left in left out on the N6 Headford Road. two northbound traffic lanes passing the property. Access to the property is gained by turning left from the nearside lane off the N6. Vehicles existing heading to Coolough Road or N84 Headford Road, turn left approach the roundabout on the nearside lane. Vehicles heading east on the N6 Bothár na dTreabh or south-east towards Sandy Road. these vehicles are required to cross one lane of traffic to approach the roundabout on the off-side lane. The propose upgrade will be a 4-arm signalised junction with the Coolough Road re-aligned and linked by means of a new signalised junction with the Headford Road to the north of the proposed main N6 Bothár na dTreabh junction. It is proposed to retain the access to Mr Lohan's property in the existing location. Gaining access will generally be the same. Exiting the site will

become more complex particularly for traffic movements designed for Sandy Road – will be required to cross an additional lane of traffic in a very short distance in order to gain access to the right turn lane at the stop line. This was the subject of a Technical note prepared by Barry Transportation in July 2018. A potential solution “landowner No. 002, Access Option”. This involves the permanent closure of the existing access and the creation of a new left in left out onto the Coolough Link Road, this will cause increased journey times and distances. However, it would provide safety benefits by reducing the number and severity of conflict point and removing an existing junction on a heavily trafficked national road. It is not clear why this was not included in the final scheme design as it involves no additional third party.

Afternoon Session

Inspector questioned the City Council

Planning Department – Galway City Development Plan development plan map – designation on the map not shown on the legend – refers to a cycle network.

Eamon Daly confirmed that the difference in collision rates brief of evidence 2005-2014 from the RSA website. Part 8 report referred to the time period 2005-2013

Two junctions on either side of the Kirwan Roundabout were upgraded from roundabout to a signalised junction by way of Part 8 that required no CPO.

Mr Daly provided details on how the UTMS works to control the flow of traffic through traffic sequencing.

One bus route through the junction from Galway City to N6 Headford left up Coolough Road onto Tirellan on to the N84. Returns in a similar route.

Inspector - Part 8 report – table 2.2.1 relation to the traffic counts. Queueing times recorded? Mr Daly confirmed that a number of different traffic surveys were undertaken including queueing times. Reduction in demand – related to capacity of the network. Was that assumption based on? Mr Daly – traffic model used survey information Western Regional model whole region. Developed a localised Vissim model

Regarding the submission of Mr Matt Lohan – Mr Daly stated that the new access point raised by Mr Lohan – will not form part of the scheme as his existing access is suitable.

Inspector asked about cycle facilities on the Coolough Link road — Mr Daly stated that they weren't shown in the original Part 8. Road Safety Audit recommended that cycles facilities provided on the link road. City Council would be happy to provide that. Happy to discuss with the cycle groups. Can be incorporated into the same land parcels.

Inspector - Page 25, paragraph 3.3 table 3.2.1 of the Part 8 report – TII weighting of assessments was evenly distributed.

Inspector - DMURS – Mr Daly: Council applied for a departure of standards that TII have granted. What are the exceptional circumstances. DMURS is for urban design, this development refers to two national roads meeting, using HGV more appropriate to use the DMRB standards. Covers the entire junction design.

Inspector: Collins have access onto the N84 as part of the scheme. Mr Daly: One the diversion of the Coolough road was moved to avoid headlight glaring. The access from and into the property., committed to providing a signal actuated light at that point. Was highlighted in the Part 8 drawings. Right turn facility. Then can come out and make a right turn now whereas before they could not. They can cross over – from a green light.

Ms Pauline Kelly – Requested clarification of where the Lohan's exit is going to be.

Mr Daly confirmed that the scheme will maintain the current access. Access for right turning movements will remain as the same.

What timing on the lights from the slip road. Inspector noted that was outside of the CPO scheme

Mr David Browne questions of the City Council Questioned Mr Daly about his qualifications, his involvement in the process, the modelling used, the NTA model

and the Western Regional model, survey data dates. Inspector queried the appropriateness of the question and noted that this was beyond the scope of the hearing. Mr Browne stated that he considered the model to be flawed and the impact of this of the CPO. Whether the acquisition is a disproportionate response. Mr Daly referred to the extensive traffic surveys undertaken in the wider area, the model used and verification against other traffic data. Stated that he is not an expert on traffic modelling. Mr Browne asked if the Galway By-pass was included. Mr Daly stated that the model did not include the Galway by-pass. Assumed that there will be no modal shift towards bus use but there would be a pedestrian and cyclist facilities. Mr Daly outlined the facilities proposed on each arm of the junction included at the Menlo Park Hotel.

Inspector questioned the relevance of the question. Mr Browne stated that the Board needed this information regarding the multi modal aspect of this proposed upgrade and that this a consideration of the CPO process. He stated that he wished to identify the disproportionate impact on his client. He submitted that if there a breach of the EIA directive it is incumbent on the Board to remedy it. Mr Browne questioned that the options presented to the Council under the environment criteria, landtake was assessed and had a score of 44. Option 1 had 46. Mr Francis put forward a modified Option 3B. Mr Browne asked if this was ever presented to the Council but not the local Councillors. Mr Browne circulated the response to the proposal. Mr Keane objected on the grounds that the option was of a better nature. He stated that the case referred to required there to be a demonstrably superior option across a range of factors. No evidence that this is the case. Notes that no challenge was made to that process. Board is required to test certain matters and in the absence of any evidence that this is a hopelessly inadequate route. Inspector noted the that modified option of Mr Francis was not presented to the Board. Mr Browne sought to find out on what grounds his modified option received a score of 10 and the chosen option received a score of 16. Mr Browne said that it is a relevant consideration for the Board to take into account. Mr Daly stated that the modified option did not perform as well under safety or economy as it involved more complicated

movements. Performed poorly under economy. Mr Daly confirmed that there was a cost-benefit analysis done for each of the 6 no. options presented to the Council, but he could not definitively state if this was done for Mr Francis modified option.

Mr Browne asked if **EIA screening report** was available to the public. Asked if the seven upgrades on the N6 were all subject to an overall assessment, Mr Daly stated that he did not know, that he could not answer for Galway City as a whole. Mr Keane objected stating this was not the forum to challenge the Part 8 and the function of the Board. Mr Browne asked if cumulative impacts were assessed. Mr Keane objected to the use of the CPO as a re-airing of issues of relating to the Part 8. Mr Browne stated that there if a defect in the screening of the EIA it is incumbent on the Board to remedy this. Mr Daly stated that cumulative impacts were assessed, but was not aware of the details of those projects. Mr Browne asked if mitigation measures were assessed as part of the AA. Mr Daly stated that he believed that they were not, but he did not write the report.

Mr Matthew Steele for Mr John Francis sought to question the City Council about section 2.1.1 and 2.1.2 of Mr Eamon Daly's evidence at the hearing. He stated that the existing roundabout has an average collision rate of 1.2 collisions every year. Reduction in 30% so less than 1 collision per year. When upgraded to junctions, other roundabouts showed no significant reduction in collisions. The City Councils position is the cost-benefit analysis shows a significant reduction but an analysis of the TFI suggests otherwise. His submission is that there is a flaw within the Councils cost-benefit analysis. Responding to this. Mr Eamon Daly stated that as the overall number of collisions at the roundabout is low, the reduction will also be low. He stated that the greatest benefit will be seen in the travel time savings.

Mr Steele then questioned the Mr Daly about the data used in the models. He noted that there are two different data sets for collision rates: the RSA and TII. His analysis of the TII collision rates for 2014-2016 after replacement of roundabouts with junctions showed no difference in the number of collisions. He submitted that the proposed upgrade would be unlikely to see a safety benefit in terms of collision

rates. Mr Steele then noted that higher speeds on signalised junctions versus roundabouts led to more significant collisions. This suggest that the benefit to cost ratio of the Council is flawed. Responding, Mr Daly confirmed that both RSA and TII safety rankings were taken into account. In terms of the safety benefits if the accidents are low the benefits are low. The majority are savings are reduced travel times on the network as a whole. The proposed scheme would improve the area for pedestrians and cyclists, given that the existing facilities are below standard. He stated that while collision rates are low there are a large number of near misses. The nature of collisions at junctions changes to side-swipes. Mr Steele questioned the comprehensiveness of the Vissam model used by the City Council. He queried whether it included the junctions on either side and whether it included rat-running through Tirellan. If it doesn't, the time savings won't be realised as latent demand. He submitted that the traffic analysis demonstrating the adequacy of the scheme is flawed as it hasn't taken account of the diversionary effect of the scheme. Noting that he did not have all the information Mr Daly stated that he was aware that it did take in the N84, N6 and Bodkin junction. Mr Steele interjected stating that it doesn't include link through Tirellan Heights and therefore was seriously flawed.

Submission of Mr John Francis Has been a nearly ten-year process that has been extremely stressful. Acknowledges that signalisation is needed but just wants equity – one side of the junction is being dealt with unfairly. Notes that this is the 4th CPO of family lands and it is extremely unfair. Traffic in the city is a problem. This is two-part process, Councillors fixed the mistake of the first process in the second scheme. Only one consultation, after they were that side-lined.

Inspector confirmed that EIA report and Screening report are not on the public file. They were requested by the Board

Inspector stated that **Ms. Caroline Phelan Senior Planner**, Galway City Council stated that the green designation shown on the zoning map is a specific objective from the GTS and refers to a primary cycle network.

Mr Gus McCarthy clarified that the alternate access to Mr Lohan's – is on party of Appendix A of the document submitted this morning.

Niall Rooney – Thanks the Board

Peter Cunnane – UTMC, would like to know the relevance of this to the whole thing. Has been in the centre on two occasions. And it hasn't been manned. Unmanned for a considerable amount of time. Question is what its purpose is other than as a centralised computer control centre. No facility to intervene in the system – it is overrated as a reason to change the system.

In response **Mr Daly** – doesn't work in the traffic control centre. Systems links all the lights on the network. It is a computerised system that actively monitored. It doesn't need to be manned all the time. It can be manually altered as well. Mr Cunnane stated that the lights are not currently coordinated with each other and unless they are there is no change of improving traffic. Mr Daly believes that the system can coordinate all the lights. Mr Cunnane question the model shown on the Council website – is it used the model used. Peak hour traffic shows a green light for the Coolough Road, no traffic comes in the N84. This is not a true reflection. Mr Daly states that model indicates that the model shows queuing at that junction and that there will be queuing. **Mr Cunnane** stated that the model is flawed and couldn't reflect reality. Mr Cunnane notes that the emphasis has shifted from getting traffic flowing on the N6 and safety, yet the rate of accidents is quite low. Mr Daly - yes accident rate is low, but it is still not safe for pedestrians and cyclists. Mr Cunnane – people won't wait for the green pedestrian light as its too long. These extra crossings won't increase safety.

Kirwan Action Group – Dónal Horan: if the controls aren't there to link and make decisions on the flow of traffic it's a useless system. Model shows junctions being cleared but this is not reality. The timings don't add up. There is just too much traffic.

Mr Daly responded that the signal timings are not cast in stone. There is scope to set and alter the timings to allow the best traffic flow.

Shane Foran – the issue of collision rates has to be related back to the number of people using the junction. The cost-benefit analysis should take account the environmental savings for people. No value placed on the timings of people. Mr Daly responded stated that the analysis referred to vehicle time savings only. Mr Foran said time savings are not shared among different modes of transport. Removing the roundabout will increase the severity of collisions. Derogation from DMURS - the slip road into the Coolough link road is not controlled by lights. Mr Daly confirmed that lights are on the other junction. Mr Foran asked what traffic measures are proposed. Mr Daly noted the proposed mitigation for cycle facilities – a raised area and extension of the cycle lane. Mr Foran stated that that proposed development will force cyclists onto the road or the footpath. A convergence of desire lines at the Hotel – a zebra crossing is needed. **Mr Daly** stated that the Road Safety Audit has suggested some improvements and offered to meet with the cycling groups.

Barry Egan on behalf of Collins Family: Can the Inspector recommend when the decision on which the Part 8 is based is flawed. Inspector answered regarding on the CPO only. Mr Egan asked why the Council has not responded to the Collins submission and has not given a reason. Mr Egan asked who is promoting the project. **Mr Esmonde Keane** stated that Galway City Council made the CPO and applied to the Board for confirmation.

Shane Collins: stated that the office of the UTMC is un-manned. Showed print-out of the traffic model of Option 3B shown to the Council – it omits the two Collins entrances. Asked how they will be considered. **Mr Daly** referred to a single actuated traffic light at the junction / entrances – shown on the Part 8 planning drawings. This is not shown on the model as it is an on-demand sequence. Inspector noted that traffic signalisation is not part of the CPO. Mr Collins noted that footpaths and cycle lanes are on two different levels and asked what traffic light would apply to the cyclists. Mr Daly stated that details are to be agreed at a later stage, including the requirement for cyclists to stop at lights.

Mr Esmonde Keane stated that the City Council had no questions of any parties.

Mr John Francis stated that Tirellan residents have no voice in the process as they are renting the properties. They will realise when they see construction. Process is extremely unfair. Sandy road is in existence from a CPO of the Francis family. This will be closed at the top. The Liosban / Sandy road is getting enhanced access from this development. Notes that roundabouts work very well. Notes that he is the landowner with the largest acquisition. The scheme has to be fair, but it is not.

Closing Statements

No closing statement from **Ms Pauline Kelly**

Mr David Browne – thanks the Board. stand over their submission and their legal arguments

Kirwan Action Group – a lot of hardship but it remains a fact that the Headford road is a not a good place to cycle. Need to incentivise cycling on the rest of the road network or junction won't succeed.

Collins Family – no statement.

Closing Statement – Galway City Council:

Thanks the public and the Board for a very constructive and informative hearing. The lack of safety on roundabouts as noted by the expert of the Kirwan Action Group is acknowledged. This is matter in which there are significant concerns for cyclists and pedestrians, in addition to the significant tail back that occurs at this junction. All of those were considered as part of the Part 8 process, it included the screening in relation to AA and EIA. In relation to the submission made by Mr Francis the position is that the Board considers whether it is a disproportionate interference with private property rights. The Council in this case, has sought to minimise the amount of land being taken. There is a small amount being acquired for this significant upgrade. The position is in relation to the Lord Ballyedmond case raised earlier, it was noted that Mr Francis has not either today or in any of the written submission suggested that

there is any better alternative than that which the Council has proposed. The judgement from Judge Clarke makes it perfectly clear that the Board is not to take into account the possibility that some other alternative in respect of which the Board has no evidence before it, could possibly have been argued to be something that was better. The councils position involves a series of assessments of the environmental impact on human beings and the interference that it gives rise to the individual in this case. What is being proposed accords with the Part 8 process which has been the subject of public consultation, was properly considered and went before the Council members to vote on. That decision is valid. The decisions raised by the Objector consist of decisions largely relating to EIA. That is not the case here. There is no evidence that the screening for EIA and AA prior to the process was invalid. It appears that submission of Mr Francis is that were it to be the case that there had been defects that the Board could not approve the scheme. That is a matter outside the jurisdiction of the Board at this stage and the only the challenge to the part 8 process section 50 of the PDA is by way of judicial review. The time periods for any such action in accordance s50 subsection (6) and (7) is 8 weeks subject only to a potential extension where matters were outside the control of the applicant and the applicant could not have known of same. There is no suggestion that this is the case here. The arguments of Mr Francis are based on supposition and relate to a different stage in process of development consent. That is outside the determination of the Board. The case relied on by Mr Browne refers to a case before the Board for development consent. That does not apply in this case. Mr Keane confirmed that this was a response to the argument raised by the party and this is not a new issue. Solely to the case law that was referred to. No new points being introduced. The board has been asked to approve a CPO with or without modification. It does not allow for the imposition of matters relating to environmental impacts such as conditions relating to the timing of lights. It is the Councils submission that clearly that the lands have been established to be necessary for the scheme. The scheme has been confirmed as being in accordance with the proper planning and sustainable development of the area, the scheme accords with the

development plan for the area in question, the suggestion on behalf of Mr Lohan that an alternative entrance should be provided its outside the scope of the Board and would require the acquiring of lands from the Councils relates to land outside the scheme. This cannot be ordered by the Board. The scheme is in the public interest: it involves a balancing the interests of the property owners in question. Bearing in mind the constitutional entitlement to property, which is confirmed by the European Convention on Human rights, is not absolute. These rights must yield to the public interest. There is a significant public interest in proceeding with this scheme as a matter of urgency. Council is conscious that property owners will be discommoded but compensation does not take away from the fact that there may be significant interference in the interim leading to an improvement in the future. The sacrifices made by the public is acknowledged.

Mr Browne replied – the Lord Ballyedmond case – we had put forward another alternative by the Council. The Holohan case deals with the consideration of alternatives in EIA relating to a road project in Kilkenny. Relates to screening stage. Article 5(3)(d) affirms that there is a requirement to look at the alternative proposed by stakeholders and not just the Council. A recent European case law in the application of the EIA directive affirms that there is an obligation on the member state and public bodies and state authorities to remedy any defects in the EIA process even where development consent has been granted. Case law (Michael Wyems v ABP 2003 decision must be read in the context of recent case law. That can involve the revocation or suspension of a development consent already granted.

Shane Foran – observations about speeding should be on record. It is not a frivolous use of the hearing. Mr Keane responded stated that the concerns raised were absolutely bone fide and useful for the Council and the Board to hear.

Inspector closed the Hearing.