



An
Bord
Pleanála

Inspector's Report ABP-303394-19

Nature of Application	Application for confirmation of Irish Water Compulsory Purchase (upgrade of Clarecastle sewerage treatment system) Order 2018
Location	Townlands of Clareabbey & Clarecastle, County Clare.
Planning Authority	Clare County Council
Applicant	Irish Water
Objectors	Brian Barry & Joan Hunter Barry
Date of Site Inspection	26 th March 2019
Inspector	Sarah Lynch

1.0 Introduction

1.1. Overview

- 1.1.1. This is an application by Irish Water for confirmation by the Board of a Compulsory Purchase Order ('CPO'), entitled Irish Water Compulsory Purchase (Clarecastle Sewerage Scheme) Order, 2018'.
- 1.1.2. The Compulsory Purchase Order relates to the compulsory acquisition of rights over land in the townland of Clareabbey, north of Clarecastle in County Clare and it is made pursuant to the powers conferred on Irish Water, which is designated as a water services authority, by sections 32 and 93 of the Water Services Act 2007, as amended.
- 1.1.3. One objection to the CPO has been received and an Oral Hearing to consider this objection was held on the 9th April 2019 in the Treacy's West County Hotel in Ennis. The report considers the details of the objections raised.

1.2. Purpose of CPO

- 1.2.1. The purpose of the CPO is to facilitate the undertaking of the development referred to as the Clarecastle Sewerage upgrade which would comprise of:
 - Upgrade existing MEICA equipment to Quay Road Pump Station.
 - 2.07km of 203 diameter rising main inclusive of fittings between Quay Road Pump Station and the existing Clareabbey Waste water Treatment Plant.
- 1.2.2. Irish Water states that the Clarecastle is identified as a coastal agglomeration in Ireland as having no or preliminary treatment only. The Clarecastle Sewerage Treatment Scheme project is required to comply with the Urban Wastewater Treatment Directive. To achieve this objective, it is necessary to discontinue the existing use of the Quay Road Pump Station, which currently discharges untreated wastewater to the River Fergus. New infrastructure is required to connect the Quay Road Pump Station to the existing Clareabbey Wastewater Treatment Plant, where the waste water will undergo secondary treatment prior to discharge to the River Fergus.
- 1.2.3. The proposed pipeline will be located within a defined corridor along the R458 for the initial length of 1.37km. The final 0.7km of rising main will be laid in lands in the

private ownership of 3 separate landowners. A permanent wayleave of 10 metres will be required across these lands. A temporary 10 metre wide wayleave will also be required across these privately owned lands to facilitate the construction works. One of the land owners is listed as Clare County Council, their lands are not included within the CPO process.

1.3. Accompanying documents

1.3.1. The application was accompanied by the following:

- Managing Director's Order authorising the making of the CPO, dated 11th December 2018.
- Compulsory Purchase Order and Schedule thereto, dated 11th December 2018.
- CPO Maps.
- Engineers Report, dated 10th December 2018, detailing the need for the scheme, confirming that the proposed work is in conformity with the planning and development objectives of the area, that the acquisition of the land is suitable and necessary for the purpose and recommending that a CPO be made.
- Planning report, detailing that the scheme is in compliance with National, Regional and Local planning objectives for the area.
- Route Appraisal Report, dated December 2018.
- Newspaper notice, published in the Clare Champion on the 21st December 2018.
- Copy of notice sent to landowners
- Certificate of service of CPO notices.

1.4. Format of CPO and Schedule

1.4.1. The CPO states that the wayleaves described in Sub Part A of Part 2 of the schedule are to be permanently acquired over the lands described in Sub Part B of Part 2 of the Schedule and that rights described in Sub Part A of Part 4 of the Schedule are to be temporarily acquired over the lands described in Sub Part B of Part 4 of the Schedule for the purpose of carrying out of the construction, works, services,

structures as defined in the Water Services Act 2007, facilities and other things as are necessary.

- 1.4.2. A permanent right of way as described in Sub- Part A of Part 3 is to be permanently acquired over the lands described in Sub -Part B Part 3 in order to pass and re-pass over the said ways for the purpose of ingress and egress to and from the public road at all times and for all purposes of and by all means in connection with the use and occupation by the company and its successors in connection with the Clarecastle Sewerage Scheme.
- 1.4.3. The lands described in the Schedule are stated to be lands other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.
- 1.4.4. Sub-Part B of each Part of the Schedule assigns an identification number to each plot of land and describes the quantity, type, townland, owner or reputed owner, lessee or reputed lessee and occupier of each plot, as relevant.

2.0 Site Location and Description

- 2.1. As noted above the CPO relates to lands in the townland of Clareabbey. The proposed pipe route which forms the basis for this CPO commences in the vicinity of the Quay Road Pump Station and travels in a north westerly direction along the R458 for c. 1.37km. It then leaves the public road and enters onto agricultural lands and continues in a northern direction turning sharply to the east and continuing along the outer perimeter of the agricultural lands which are bounded by the N85 to the north. The pipe reaches a tie in point c.0.7km from where it entered the agricultural lands and continues onto the Clareabbey Sewerage Treatment Plant to the east of the agricultural lands south of the N85.
- 2.2. The temporary wayleave is located directly east and south of the proposed permanent wayleave and follows the route of the proposed pipeline.
- 2.3. Clareabbey Monastic site is located to the north of the CPO site and is separated from the site by the N85. This site is a Recorded Monument (CL033-167). A further two recorded monuments are noted along the N85 to the north of the CPO route and

are identified as CLO33-166 which is described as an excavation and CL033-160 which is defined as a Burnt Mound.

3.0 Planning History

3.1. There is no recently recorded history for the lands affected by the wayleave. The proposed pipe is stated to be exempted development.

3.2. Policy Context

3.3. Clare County Development Plan 2017-2023

3.4. The site is zoned agricultural within the Clare County Development Plan.

3.4.1. Section 6.3.11 of the above plan acknowledges that the investment in infrastructure such as waste water is essential for future economic activity in the county and supports Irish Water in the delivery of this infrastructure.

3.4.2. Section 8.4 of the Clare Development Plan sets out the Councils policy in relation to water supply and waste water capacity. It is an objective of this plan, as outlined in objective CDP 8.24, to work closely with Irish Water to identify and facilitate the timely delivery of the water services required to realise the development objectives of the development plan.

3.4.3. Section 8.4.3 acknowledges that there are significant service and compliance issues in many existing wastewater systems in County Clare and it recognises that the maintenance, upgrading and provision of the county's wastewater drainage system is essential to accommodate future development requirements and to ensure the sustainable development and environmental protection of the county.

3.4.4. It is an objective of the plan as outlined in objective CDP 8.27 (a), 'to advocate the provision, by Irish Water, of adequate waste water services and capacity to accommodate the target population and employment potential of County Clare in accordance with the statutory obligations set out in EU and national policy'.

Ennis Municipal District Written Statement 2017-2023

3.4.5. It is recognised in Section 1.14.5 that future development of neighbourhoods in the Ennis area is dependent on the availability of supporting infrastructure. The upgrade of the wastewater treatment plants in the Plan area is critical in this regard. The

provision of appropriate services is vital to ensure environmental protection, quality of life for local residents and to create opportunities for residential and business development.

- 3.4.6. Objective V3(a)18 of this written statement seeks 'to facilitate the development of new, or upgrade of existing, wastewater treatment facilities to serve Ennis and Clarecastle and their environs subject to protection of the environment, and in compliance with the Habitats Directive and other environmental considerations'.

4.0 **Objections**

- 4.1. One objection was received from the landowners Brian Barry and Joan Hunter Barry. The issues raised can be summarised as follows:

- There are other better alternatives.
- An alternative has been proposed which the objectors believe to eliminate the permanent adverse effects on their lands.
- The only people using the proposed laneway are the objectors, their tenants, whom have an alternative means of access and Mrs Leyden who lives in a house along the laneway but whom does not currently reside there.
- The proposed route would irreparably damage the development potential of the lands.
- The location of the wayleave will significantly restrict the number of units or commercial properties that may be developed in the future.
- The location of the proposed pipe work will restrict and eliminate the establishment of new SME's.
- The proposed development will restrict the future potential of Clarecastle which is contrary to the provisions of the development plan.
- There is a considerable grass margin between the objectors' lands and the public road, is this not wide enough to accommodate the pipe.
- The objectors' site is a high-profile site fronting onto the main gateway into Ennis.

5.0 Oral Hearing

5.1. An Oral Hearing was held in Treacy's West County Hotel on the 9th April 2019. A digital sound recording was made of the Oral Hearing and should be consulted for a full representation of proceedings; however, a summary of the Hearing is included in Appendix 1 of this report.

6.0 Assessment

6.1. Overview

6.1.1. For the Board to confirm the subject CPO, it must be satisfied that Irish Water has demonstrated that the CPO "is clearly justified by the common good"¹. Legal commentators² have stated that this phrase requires the following minimum criteria to be satisfied:

- There is a community need that is to be met by the acquisition of the site in question,
- The particular site is suitable to meet that community need,
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable, and
- The works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan.

6.2. Section 93(1) of the Water Services Act 2007, as amended, states that "subject to sections 95 and 96, a water services authority may acquire land for the purpose of performing any of its functions under this Act, and section 182 (i.e. laying of cables, wires and pipelines with owner/occupier consent) and Part XIV (i.e. acquisition of land) of the Act of 2000 shall apply to a water services authority as it applies to a local authority".

¹ Para. 52 of judgement of Geoghegan J in *Clinton v An Bord Pleanála* (No. 2) [2007] 4 IR 701.

² Pg. 127 of *Compulsory Purchase and Compensation in Ireland: Law and Practice*, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath. Published by Bloomsbury Professional (West Sussex and Dublin, 2013).

- 6.3. The functions conferred on ‘water services authorities’ were transferred to Irish Water under section 7(1) of the Water Services (No. 2) Act 2013, and I am satisfied that Irish Water is entitled under legislation to seek to compulsorily acquire lands or interests in lands. Furthermore, I consider that the appropriate minimum ‘tests’ to be applied in determining whether or not to confirm the CPO should be those commonly utilised for Local Authority acquisition as outlined above. I would note that the Board has previously confirmed a number of CPOs in respect of land acquisition by Irish Water having applied these same ‘tests’, and I am not aware of any successful judicial review proceedings that would militate against their use in the context of compulsory acquisition by Irish Water rather than a Local Authority. It is of note that the objectors whilst raising issues in relation to the proportionality and need for the CPO stated that they had no issue with the legality of the process.
- 6.4. I will therefore address each of the four criteria in turn below, together with the issue of proportionality and other issues arising from the objection.
- 6.5. **Community Need**
- 6.5.1. Community need was set out by Irish Water within the documentation submitted with the CPO and at the Oral Hearing and can be summarised as follows:
- The proposed works include the construction of a rising main to connect the existing Quay Road Pump Station to the Clareabbey Waste Water Treatment Plant. These works are required to cease the current practice of discharging untreated wastewater to the River Fergus.
 - Works will allow for wastewater collected in the Clarecastle Agglomeration to undergo appropriate treatment at Clareabbey WwTP prior to discharge to the River Fergus.
 - The objectives of the scheme are to improve the existing water quality of the River Fergus which is currently rated as poor, protect recreational fishing and boating waters, enhance the environmental amenity of the Clarecastle area and provide for future development within the Clarecastle agglomeration.
- 6.5.2. I note that the objector did not challenge the fundamental community need outlined by Irish Water and that their concerns primarily relate to matters of route selection with respect to their lands, issues pertaining to the Appropriate Assessment of the proposed rising main and the licensing of the treatment plant were also raised.

6.5.3. Having reviewed the information submitted and having conducted an Oral Hearing, I am satisfied that the existing waste water treatment arrangements at the Quay Road Pump station represents aged infrastructure and is operating in a manner which is contrary to the provisions of the Urban Waste Water Treatment Directive. I am satisfied that there is a clear need for additional waste water infrastructure to meet existing and future demand in the Clarecastle Agglomeration and for improvements in treatment of water discharging to the River Fergus in order to improve water quality and comply with the requirements of the Urban Waste Water Treatment Directive. I am therefore satisfied that Irish Water has demonstrated a clear and pressing community need that would be met by the project that would be facilitated by the acquisition of rights over the lands in question, should the Board confirm the CPO.

6.6. **Suitability of Lands**

6.6.1. At the outset, the Board will note that Irish Water is not seeking to permanently acquire any lands. It is, however, seeking to acquire permanent wayleaves and temporary working areas along the proposed pipeline route, as well as a number of permanent rights-of-way.

6.6.2. The lands that are the subject of this CPO are currently used for agricultural purposes. Whilst I do not consider the lands to be of any particular sensitivity in terms of Development Plan designations, landscape character, value or scenic qualities, it is important to note at this juncture that the remains of the Clareabbey monastic settlement which is a recorded monument as specified in Section 2.3 above is located to the north of the lands beyond the N85 and the presence of 2 no. recorded monuments as also specified in Section 2.3 along the N85 to the north of the proposed route.

6.6.3. The proposed CPO site given the change in ground levels is well screened from the Clareabbey monastic settlement and it is of note that the pipeline will not encroach upon the existing monuments along the N85. The pipeline would be installed underground, with the surface reinstated thus leaving no visible structure on the landscape. The majority of the area within the immediate vicinity of the lands is relatively sparsely populated and is located at the edge of the Clarecastle settlement adjacent to the national primary route into and around Ennis. No residential dwellings are to be acquired.

- 6.6.4. With regard to land use zoning objectives, I have addressed this in Section 6.7 below, however in brief I consider that the proposed pipeline, as a utility installation, would be acceptable within the Agricultural zoning objective applying to the lands affected by the CPO.
- 6.6.5. As noted in Section 2.0 above, the proposed route generally follows the route of the R458 for a distance of 1.37km prior to entering the objector's lands. Irish Water have endeavoured to utilise lands that are already burdened by public infrastructure for the majority of the route which are consequently demonstrably suitable for such pipelines. In the area where the pipeline diverges from the public road it is proposed to do so as there is existing infrastructure within the public road verge along the N85 which leaves insufficient room for the proposed rising main. The proposed rising main will follow the same route as existing infrastructure but will be separated and encroach onto the objector's lands due to space limitations along this Section.
- 6.6.6. Having regard to the nature of the proposed pipeline project, the installation methodology as set out in the submissions given by Irish Water at the Oral Hearing, and noting the presence of an existing pipeline parallel to much of the proposed route, I am satisfied that the lands that are the subject of the CPO are suitable to meet the aforementioned community need.

6.7. Accordance with the Development Plan

- 6.7.1. As outlined in Section 4.1 above, the Clare County Development Plan 2017-2023 and the Ennis Municipal District Written Statement 2017-2023 contains numerous provisions that seek to support the provision of improved infrastructure, including water services, in order to facilitate economic and residential development in the county. This includes an objective (CDP 8.24A) to "work with Irish Water to identify and facilitate the timely delivery of the water services required to realise the development objectives of this plan".
- 6.7.2. A Key Challenge identified for the county as outlined within Section 8.4 of the County Development Plan is 'water supply and drainage issues', and the Development Plan states that the provision of effective wastewater disposal infrastructure is a critical requirement for the future economic development, quality of life and sustainable growth of the county.

- 6.7.3. Clare County Council recognises that, in order to ensure land use policy is sustainable and for Development Plan strategy to be realised, a coordinated and integrated approach to planning the provision of public utility services is crucial.
- 6.7.4. This is supported by objective CDP 8.27 which seeks to advocate the provision, by Irish Water, of adequate waste water services and capacity to accommodate the target population and employment potential of County Clare in accordance with statutory obligations set out in EU and national policy.
- 6.7.5. With particular regard to the lands that Irish Water are seeking to compulsorily acquire rights over, I note that they are zoned Agriculture, which are identified as lands within the Clare County Development Plan 2017-2023 as lands for the use of agricultural purposes and farming related activities. The lands are bounded to the north east by lands zoned as utilities, these lands have been specified within the plan as lands reserved for existing and future provision of key infrastructural services and the upgrading of existing services. The laying of a rising main would come within the 'utility installation' use class, in my opinion, which would be appropriate to the abovementioned land use zonings.
- 6.7.6. In conclusion, therefore, I am satisfied that the project that would be facilitated by the compulsory purchase order, should it be confirmed by the Board, would accord with the provisions of the Clare County Development 2017-2023 and that the acquisition of the lands or interests therein would not materially contravene any specific policies or objectives of the Plan.

6.8. Use of Alternative Methods

- 6.8.1. The use of alternative methods of meeting the community need was addressed by Irish Water in terms of the various pipeline route options that were considered. Given the nature of the community need (i.e. the need to cease the discharge of untreated water entering the River Fergus and the need to divert this discharge to the Clareabbey waste water treatment plant) and the fixed tie-in points at the start and end of the route, Irish Water faced constraints in terms of the alternative routes that were available. Constraints also existed in terms of existing residential, commercial and recreational developments at various points along the route.
- 6.8.2. The various route options considered were set out the in the Route Selection Report submitted with the application as well as the submission by Mr Gary McCormack

(RPS Consulting Engineers, on behalf of Irish Water) and Mr Joseph Kennedy (Irish Water's Asset Delivery Infrastructure Regional lead South Region). In selecting an efficient route for this rising main, every effort was made to locate the route in lands which are either publicly owned, maintained, managed or dedicated to the public use such as public roads or lands in public ownership.

6.8.3. Mr Gary McCormack in his evidence stated that there is no direct connectivity along the public road network between Quay Road PS and the Clareabbey WwTP. Access to Clareabbey WwTP is provided for from a lane connected to the R458. It was stated by Mr Gary McCormack that the first 60 metres of this lane provide for two-way traffic and the remainder of the lane facilitates one-way traffic. This lane is not in public ownership and is in shared ownership with multiple landowners. It was stated that there are no routes to the WwTP which are entirely on public lands. Any route would therefore pass through third-party lands.

6.8.4. Three route options were considered by Irish Water and can be described as follows:

- Route 1 – Along the existing access lane to the Clareabbey WwTP.

This route commences at the Quay Rd PS, travelling north west through the Clare GAA County Board grounds. The route then continues north, then north west through the GAA carpark grounds for 210 metres, before turning northeast to follow the route of an existing private laneway for 530 metres to ultimately connect to the Clareabbey WwTP at its western boundary.

This route was considered to be unsuitable due to the narrow width of the lane and the need to maintain daily access to an existing dwelling, agricultural lands and the WwTP during construction. Concerns were raised regarding the constructability of the infrastructure given the narrow width of the lane and the proximity of an existing high masonry block wall to the GAA grounds.

- Route 2 – This route follows the R458 for approximately 1.37km to the location of the existing Kiladysert PS located on the eastern side of the R458. The route then continues north, then north east through agricultural greenfield lands for approximately 700 metres to follow the route of the base of the N85 road embankment, to ultimately connect to the Clareabbey WwTP lands along its northern boundary. This was identified as the preferred option.

- Route 3 – Travels east along the R458 from the Quay Road PS for approximately 260 metres. The route then continues northwards through lands zoned as open space adjacent to the River Fergus alongside the OPW flood protection embankments for approximately 1,010 metres before turning north west to travel parallel to the route of the existing railway tracks for approximately 300 metres to ultimately connect to the Clareabbey WwTP lands along its southern boundary.

Concerns were raised within both the Route Selection Report submitted and by Mr. Joseph Kennedy and Mr. Gary McCormack in relation to the proximity of the infrastructure to the River Fergus, the constructability of the infrastructure and risk due to probable poor ground conditions. Concerns were also raised in relation to future access and potential for archaeology in the immediate vicinity.

6.8.5. On completion of scoring for each of the route options under selected criteria, a decision analysis technique referred to as the ‘The Analytical Hierarchy Process’ was used to determine the overall preferred route for the rising main. The analysis completed indicated Route 2 to be the preferred route.

6.8.6. As stated by Mr Gary McCormack within his submission to the Oral Hearing a number of benefits arose in selecting the preferred route which include;

- the location of the route along the northern boundary of the Clareabbey WwTP where inlet works to the WwTP are located. This removes the requirement to route the rising main through an already congested WwTP to discharge to the inlet works.
- The route provides for an option for future consolidation of Clarecastle Agglomeration allowing for the Kildysart Cross PS to connect directly to the Clareabbey WwTP.

6.9. **Alternative routes proposed by objector**

6.9.1. Alternative routes were proposed by the objectors within their written submission and during the hearing proceedings as follows:

- (a) Along the existing grass margin at the base of the embankment of the N85 from the R458 indicated as route A-B on the map submitted with the objector’s submission.

- (b) Along the existing lane marked X-Y on the map submitted with the objector's submission.
- (c) The first route proposed by Mr. Michael J Duffy during proceedings travels to the rear of the existing Centra Shop within Clarecastle and passes along a laneway to the north east of this shop until it reaches green fields. At this point it travels north to the Clareabbey WwTP.
- (d) The following 2 no. options proposed by M. Duffy during proceedings, travel along the R458 and enter greenfield lands at two separate points then following the route of the existing gas main before turning in a northwards direction to the Clareabbey WwTP

6.9.2. Response to route (a)

6.9.3. It was contended by Irish Water that there are existing utilities within this grass margin such as power lines, storm water drains, and two public water mains and the width of the verge is limited and does not provide for the required separation distances needed to facilitate the proposed rising main. The narrow width of this verge would also require machinery to travel over existing services increasing the risk of damage to these services which would have serious implications for the water supply to Clarecastle and Ennis.

6.9.4. Response to route (b)

6.9.5. This was deemed to be unacceptable for the reason specified in Section 6.8.4 above.

6.9.6. Response to route (c)

6.9.7. Mr Joseph Kennedy responded to this option and stated that the acquisition of lands from the Centra car park was not appropriate given that it was the only such shop in the village and is extremely busy. The northern Section of the route would pass over/under existing gas pipeline which is national infrastructure and would not be acceptable from an operations perspective and would give rise to significant health and safety issues.

6.9.8. Response to route (d)

6.9.9. Joseph Kennedy also responded to these options and stated that such works adjacent to an existing gas main which is national infrastructure, as mentioned

above, raised issues in relation to both health and safety during construction and the integrity of the gas infrastructure. It was further noted that these options would warrant more in-depth consideration but were considered at the outset of the project and given the health and safety concerns were discounted at an early stage.

6.9.10. Having regard to the proximity of the River Fergus to the first route proposed by the objector, the underlying geological conditions in the area, the existence of a gas pipe within the path of three of the routes proposed by the objector and the constraints of both the existing access laneway to the Clareabbey WwTP and the space limitations within the existing grass verge along the N85 I consider that the objectors proposed alternatives are not demonstrably preferable to the route chosen by Irish Water. The proposed rising main will encroach onto the edge of the objector's lands for a distance of 0.7km and will result in a temporary wayleave of 10 metres in addition to a permanent wayleave of 10 metres and a limited permanent right of way to allow for access from the public road.

6.9.11. Whilst the chosen route will undoubtedly impact the objector's lands I consider that the proposed route represents a reasonable and proportionate proposal to meet the identified community need. I further consider that a relatively robust route selection process was undertaken by Irish Water, noting that they faced numerous constraints on the alternatives available due to issues such as geology, width of laneway proximate to the Clareabbey WwTP, the presence of the existing gas pipeline to the south of the Clareabbey WwTP, the restricted width of the existing grass verge at the base of the embankment bounding the N85 to the south and the presence of existing utilities within it, the requirement to meet fixed tie-in points and the presence of existing development at various locations.

6.9.12. Having reviewed the information submitted by Irish Water, the objections made and having inspected the lands and conducted an Oral Hearing, I do not consider that there is a demonstrably preferable method of meeting the identified community need.

6.10. Proportionality and Necessity of Level of Acquisition Proposed

6.10.1. The CPO is based upon a corridor width of 20m, which comprises a 10m wide permanent wayleave and a 10m wide temporary working area. The layout of this pipeline together with a justification for its width is provided within the Route Appraisal Report provided by RPS on behalf of Irish Water.

- 6.10.2. The 10m width of the permanent wayleave is stated to be necessary to accommodate a large diameter pipeline and to facilitate required separation distances and for future access for repair, renewal or maintenance, while the 10m width of the temporary wayleave is stated as being necessary to facilitate the pipeline construction, and to avoid damaging existing utilities proximate to the site.
- 6.10.3. Having regard to the diameter of the proposed pipeline (203mm), the 300mm separation distance required from other utilities, the extent of excavations and stockpiling that will be required and the need to mitigate the risk of accidental damage to the pipeline, given its local and strategic importance in terms of catering for current and future waste water from the Clarecastle area, I consider the proposal for a 10m wide permanent wayleave to be reasonable.
- 6.10.4. Having reviewed the information submitted by Irish Water and the objectors and having inspected the lands and conducted an Oral Hearing, I am satisfied that the width and extent of the proposed permanent wayleaves, rights-of-way and temporary working areas are necessary and proportionate in the context of meeting the identified community need.
- 6.11. Additional Issues Raised by Objector
- 6.11.1. Availability of documents to the Public
- 6.11.2. Mr. Casey on behalf of the objector queried the availability of the CPO documents to the public at the offices of Clare County Council. It was stated by Mr. Michael Cooke on behalf of Irish Water that the documents were lodged with the Council and put on display for the public to inspect. Mr. Casey insisted that Mr. Michael J Duffy attended the offices of Clare County Council and was unable to inspect the CPO documents.
- 6.11.3. An employee of Clare County Council was present and available to provide information in relation to the availability of documents in relation to the CPO to the public. Mr. Casey declined to have the employee provide such evidence and requested that this particular issue be noted.
- 6.11.4. Irish Water rebutted and stated that documentation was submitted directly to Mr. Casey regarding the proposed CPO.
- 6.11.5. Capacity at Clareabbey WwTP

- 6.11.6. Issues were raised in relation to the existing capacity of the Clareabbey WwTP and reference was made to a previously approved planning application to carry out upgrade works to the plant. Mr. Casey and Mr. Duffy on behalf of the objector questioned as to whether these works would increase the capacity of the treatment plant sufficiently or at all in order to cater for the additional loadings proposed to be diverted from the Quay Road PS.
- 6.11.7. The objector's representatives as aforementioned were not of the opinion that the proposed works would increase the capacity of the plant and therefore questioned the validity of the proposed diversion from Quay Rd. PS.
- 6.11.8. Mr. Joseph Kennedy on behalf of Irish Water stated during proceedings that the proposed works permitted to the Clareabbey WwTP would increase capacity of the system and that the diversion of waste from the Quay Road PS was required by the EPA in order to cease the discharge of untreated waste water and to improve the water quality of the River Fergus which is classified as poor.
- 6.11.9. Having reviewed the information submitted by Irish Water, the objections made and conducted an Oral Hearing as stated above in Section 6.5.3 I am of the opinion that there is a clear and pressing need for the proposed rising main in order to cease the current discharge of untreated water to the River Fergus.
- 6.11.10. Planning Status of the Project
- 6.11.11. The objectors' Engineer queried the planning status of the proposed pipeline development and also raised the issues of Environmental Impact Assessment, Appropriate Assessment and the de-exemptions under article 9 of the Planning and Development Regulations 2001, as amended ('the Regulations').
- 6.11.12. Irish Water stated at the Hearing that the CPO proceedings do not constitute a plan or a project for which development consent is sought that would engage the provisions of the EIA Directive or the Habitats Directive and relates solely to the acquisition of interests in land. I concur with Irish Water's position, as articulated at the Hearing, that the planning consent process is separate to the CPO process. This application for confirmation of a CPO relates solely to the acquisition of interests in land and should the Board confirm the CPO, this will not result in any form of consent for development.

6.11.13. It is therefore Irish Water's responsibility to ensure that they obtain any necessary permissions or consents prior to undertaking the development which the CPO is intended to facilitate. I consider that they have provided sufficient information regarding the nature of the proposed rising main to allow the Board to consider the merits of the CPO, and the community need that it would serve, and I do not consider that the issue of planning consent, should it be necessary, places any constraint on the Board's consideration of the case.

6.12. **Conclusion**

6.12.1. In conclusion, I am satisfied that the process and procedures undertaken by Irish Water have been fair and reasonable, that Irish Water has demonstrated a pressing community need that would be facilitated by the acquisition of wayleaves and rights in respect of the lands identified in the Schedule and drawings submitted to the Oral Hearing, that said lands are both suitable and necessary to meet the community need and that the extent of acquisition is proportionate to the objective being pursued. I therefore consider that the proposed acquisition of permanent wayleaves, permanent rights-of-way and temporary rights relating to the working areas would be in the public interest and the common good and would be consistent with the relevant provisions of the Clare County Development Plan 2017-2023 and the Ennis Municipal District Written Statement 2017-2023.

6.13. **Recommendation**

6.14. I recommend that the Board confirm the Compulsory Purchase Order submitted at the oral hearing held on the 9th April 2019, based on the reasons and considerations set out below.

6.15. **Reasons and Considerations**

6.15.1. Having considered the objection made to the Compulsory Purchase Order, and not withdrawn, the report and recommendation of the Inspector who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the Compulsory Purchase Order, and having regard to the following:

- (a) The deficiencies of the existing discharge point at Quay Road, Clarecastle in discharging untreated water directly into the River Fergus;

- (b) The strategic nature of the scheme in the context of providing increased capacity to cater for existing and future development in the Clarecastle Agglomeration;
- (c) The improvements of water quality within the River Fergus resulting from the scheme;
- (d) The community need, public interest served and overall benefits to be achieved from the proposed development;
- (e) The chosen route alignment for the Clarecastle rising main which constitutes a design response that is proportionate to the identified need;
- (f) The policies and objectives of the Clare County Development Plan 2017-2023 and the Ennis Municipal District Written Statement 2017-2023;
- (g) The submissions and observations made at the Oral Hearing held on the 9th of April 2019;

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

Sarah Lynch
Planning Inspector

6th May 2019

7.0 APPENDIX 1: ORAL HEARING SUMMARY

Case Reference: ABP-303394-18

Development: Application for confirmation of Irish Water Compulsory Purchase (upgrade of Clarecastle sewerage treatment system) Order 2018

Venue of Oral Hearing: Treacy's West County Hotel.

Date: 9th April 2019

Commencement Time: 10:00

7.1. Attendees

7.1.1. Representation on behalf of each Party was as follows:

(e) Irish Water:

- a. Damien Keaney BL – Barrister
- b. Michael Cooke – Land and Way leaves Specialist
- c. Joseph Kennedy – Asset Delivery Infrastructural Regional Lead
- d. Gary McCormack – Engineer RPS Ltd
- e. Valerie Brennan – Planner RPS Ltd

(f) Objectors:

Brian & Joan Barry

- a. Michael Duffy – Engineer
- b. David Casey – Solicitor
- c. Niall Casey – Solicitor

7.2. Submission of Irish Water

7.2.1. Mr. Keaney made an opening statement which can be summarised as follows:

- Purpose of CPO.
- Advertisement of CPO.
- Description of development for which CPO is required.
- Outline of objection received.
- Substantive law pertaining to CPO
 - Irish Water is responsible under the Water Services Act 2007 for the provision and development of water services.
 - Pursuant to subsection 93(1) of the 2007 Act, Irish Water, as a water services authority, may acquire land for the purpose of performing any of its functions under the Act.
 - That subsection also provides that section 182 (including laying of pipelines) and Part XIV (acquisition of land) of the Planning and Development Act 2000, as amended, apply to Irish Water, thereby providing for a power of compulsory purchase.
 - Section 213 of the 2000 Act is also applicable.
 - General principles for land acquisition are established in case law.
- Summary of witness statements for Irish Water.

7.2.2. Mr. Michael Cooke then read from a written statement which can be summarised as follows:

- Summary of Irish Water's Compulsory Purchase Order process and specific dates in relation to the scheme was given.
- 16th April 2018 – Introduction to Project letters were issued to all landowners.
- 3rd September 2018 – 60 day letters sent to landowners.

- List of documents required to make CPO were outlined.
 - 14th December 2018 CPO documents were placed on display in Irish Water offices in Dublin and Clare County Council offices and pack sent to landowners.
 - 21st December 2018 Public notices were published in Newspapers.
 - 7th January 2019 CPO file submitted to ABP.
- 7.2.3. Mr Casey put questions to Mr. Cooke in relation to the availability of documentation relating to the CPO within Clare County Council. Mr. Cooke stated that his colleague placed it on display in the Council offices.
- 7.2.4. Mr Keaney stated that there was an employee present from Clare County Council whom could confirm that the documents were available but Mr. Casey refused and wished to have the issue noted for the record.
- 7.2.5. Mr. Joseph Kennedy then read from a written statement which can be summarised as follows:
- Background to the scheme was outlined
 - EPA Report – Focus on Waste water treatment in Ireland 2013 identified a number of agglomerations where untreated sewerage is discharged directly to receiving waters and included Clarecastle.
 - The River Fergus is a designated Salmonid and has a poor water quality designation.
 - Description of the scheme was provided.
 - Development potential of these lands is not considered to be overly burdened. The way leave can be incorporated into any development.
 - The main points of the objection were outlined and responses provided to each point as outlined within Section 6.8 & 6.9 above.
 - It was stated that Irish Water will meet with the landowner to discuss any future development proposals and how best to incorporate the CPO lands within it.
- 7.2.6. Mr. Gary McCormack then read from a written statement which can be summarised as follows:
- Details of the project were outlined.

- Route selection as outlined in Section 6.8 above were outlined and the methodology employed to determine the preferred route was detailed and the route selection criteria was outlined.
- Map of three potential routes was displayed.
- Details of the objection were outlined and a detailed response as to why these routes were not considered appropriate was given.
- It was concluded that the preferred route is considered to be the best option for the proposed development.

7.2.7. Mr. Casey then asked questions in relation to both Mr. Kennedy's and Mr. McCormack evidence as follows:

- Query in relation to the operating capacity of the Clareabbey WwTP,
- Mr Kennedy stated that it is operating at capacity at the moment, but permission has been permitted for upgrade. This will be implemented parallel to rising main.
- Query in relation to site inspection on 10th May 2018, this was stated to be carried out by EPA.
- Query in relation to Irish Gas pipeline, this could be used to locate proposed rising main.
- It was responded by Mr. Kennedy that this would not be suitable as this route does not provide direct access and is a pressurised main. The objective of IW would be to stay on public road.
- Question in relation to number of landowners for each option was raised and responded to. 9 landowners were noted for route 1.
- Query in relation to requirement of planning permission, it was responded by Mr. Kennedy that the proposed development is deemed to be exempt development.
- Query in relation to the matrix for deciding route and ground conditions. Mr. McCormack explained that the site investigations report is currently being complied.

7.2.8. Mr. Duffy then asked questions which can be summarised as follows:

- Query in relation to definition of appropriate treatment and licencing of the WwTP facility and the requirement of the upgrade to Clareabbey WwTP. Mr Kennedy stated that the Urban Waste Water Treatment Directive outlines what appropriate treatment is defined as and the existing situation in Clarecastle is unacceptable and requires upgrade, he specified the recommendations of a report carried out by Jennings O'Donovan Consulting Engineers.
- Query in relation to capacity provided for under the recent planning permission, Mr. Kennedy responded that storm storage at the plant is compromising the capacity of the WwTP and the upgrade will therefore improve the situation.
- Discussion relating to budgetary constraints of projects.
- Further discussion in relation to the health and safety of working in proximity to a main gas pipeline.
- Would IW object to future planning application, Mr. Kenney responded that any future application will require consultation with IW.
- What type of access is required – Mr. Kennedy responded that no structures can be built on the wayleave.
- Query in relation to the tying in of Kildysart cross, Mr. Kennedy stated that the infrastructure of this route is not suitable.

7.2.9. Valerie Brennan read from a written statement which can be summarised as follows:

- Grounds of objection were specified.
- Zoning objective of site was outlined.
- Sufficient quantum of lands zoned within Ennis for residential development.
- Proposed CPO is located so as not to overly impact the lands
- Proposed CPO satisfies minimum tests for common good.

7.2.10. Mr. Duffy then put questions to Ms. Brennan in relation to AA. Inspector stated that AA does not arise in the case of CPO.

- Mr. Duffy provided his evidence which can be summarised as follows:
- Alternative routes proposed as outlined above in Section 6.9
- Discussion relating to Habitats Directive and EIAR requirement.

- It was stated by Mr. Duffy that he considers that the project requires planning permission.
- Mr. Duffy read points from the IW submissions.

7.2.11. Mr. Kennedy and Mr. McCormack responded to alternative proposed and outlined why they considered these options not be viable.

7.2.12. Mr. Keaney outlined that that the CPO proceedings do not constitute a plan or a project for which development consent is sought that would engage the provisions of the EIA Directive or the Habitats Directive and relates solely to the acquisition of interests in land. He made reference to relevant legislation in support of his response.

7.2.13. I then read a closing statement, and the Oral Hearing closed at 16.46.