



An  
Bord  
Pleanála

## Inspector's Report ABP304080-19

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| <b>Development</b>             | Compulsory Acquisition of Lands for pumping station, rising main, gravity sewer and wastewater treatment plant and new riverine outfall.         |
| <b>Location</b>                | Inchigeelagh Village, Co Cork.   |
| <b>Planning Authority</b>      | Cork County Council.   |
| <b>Applicant</b>               | Irish Water.   |
| <b>Type of Application</b>     | Notice of Compulsory Purchase Order under Water Services Act 2007-2013, Planning and Development Act 2000 (as amended) and the Housing Act 1966. |
| <b>Objectors</b>               | Stephanie Murnane & Alan O Brien   |
| <b>Date of Site Inspection</b> | July 2 <sup>nd</sup> , November 18 <sup>th</sup> & 19 <sup>th</sup> , 2019.  |
| <b>Inspector</b>               | Paul Caprani.  |

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## 1.0 Introduction

### 1.1. Overview

- 1.1.1. Irish Water is seeking confirmation by the Board of a CPO entitled “Irish Water Compulsory Purchase (Inchigeelagh Sewerage Scheme) Order, 2019.
- 1.1.2. The Compulsory Purchase Order relates to the compulsory acquisition of rights over land including permanent acquisition of lands, wayleaves over land, temporary working rights and rights of way in various parcels of land, to provide a new wastewater treatment plant and associated infrastructure in the village of Inchigeelagh County Cork. The confirmation of the CPO is made pursuant of the powers conferred on Irish Water, which is designated as the Water Services Authority under the provisions of Section 31, 32 and 93 of the Water Services Act 2007, as amended.
- 1.1.3. One objection was received in respect of the CPO from Stephanie Murnane and Alan O Brien, of No. 17 Cois na Coitle, a residential estate in Inchigeelagh. The Board should note that, Irish Water submitted modifications to Plots no.’s 10,11, and 12 (see section 1.5 of this report) at the outset of the oral hearing and the objector’s have indicated that should these modifications be accepted by the Board, there would be no objection to the proposal. However, the initial objection lodged was not withdrawn on the basis that the Board may not accept the modifications sought by Irish Water. A separate objection on behalf of Andrew Donovan was withdrawn on November 14<sup>th</sup> 2019. This report therefore considers the issues raised in the objections submitted to the Board and more generally, the application to acquire lands.

### 1.2. Purpose of the CPO

- 1.2.1. According to the documentation submitted with the application, the purpose of the CPO is to:
  - Eliminate untreated wastewater discharge from the agglomeration of Inchigeelagh into the River Lee which runs through the Village.

- To provide a level of treatment that complies with general environmental regulations pertaining to wastewater and to ensure that any wastewater treatment facility has adequate capacity to cater with future population expansion.
- The improvement in wastewater treatment derived from the proposal will improve water quality in the River Lee.
- To effectively manage high flows during stormwater ingress in order to comply with current guidelines and best practice in relation to stormwater flows.
- The proposal will facilitate the future economic and social development of the village in terms of future growth.

### 1.3. **Accompanying Documents**

1.3.1. The application was accompanied by the following documentation:

- The Compulsory Purchase Order signed and sealed by the Managing Director and the Company Secretary of Irish Water dated March 7th, 2019.
- A CPO Map indicating the lands to be acquired for:
  - Permanent acquisition.
  - Permanent wayleaves.
  - Rights of way.
  - Temporary working areas.
- An Engineer's Report detailing the proposal and stating that it is in accordance with local planning policy and that the acquisition of the lands is suitable and necessary for the purpose of the CPO.
- Public notices published in the Southern Star Newspaper dated 23<sup>rd</sup> of March, 2019.
- A WWTP and Pumping Station Options Report prepared by ARUP Byrne Looby.
- Sample copy of the notices sent to various landowners.
- Certificate of Service of CPO notices.

#### 1.4. **Format of CPO Schedule**

- 1.4.1. Part 1 of the Schedule specifically sets out the lands to be the subject of permanent acquisition. It involves three plots (Plot no.'s 16, 20 & 26).
- 1.4.2. Part 2 of the Schedule sets out lands to be acquired for permanent wayleaves; It involves a total of 4 plots (Plots 10, 22, 24, & 25).
- 1.4.3. Part 3 sets out the requirements for permanent rights of way. A total of 2 plots are required for this purpose (Plots 15 & 25).
- 1.4.4. Part 4 sets out details of the proposed temporary works areas required to facilitate the works. A total of 8 separate plots are required (Plots 11, 12, 14, 17, 19, 21, 23, & 27).

#### 1.5. **Modifications to CPO**

- 1.5.1. Irish Water informed the Board at the outset of the oral hearing, that it wishes to seek some modifications to the permanent wayleave and temporary working areas located with the lands between the residential estate of Cois Na Coilte and the proposed waste water treatment plant. The changes relate to modifications of alignment and area to plot numbers 10, - (permanent wayleave) and plots numbers 11 & 12 (temporary working areas). Under the modifications sought, it is now proposed to align the wayleave and temporary working areas to the east of the temporary WWTP serving the Cois Na Coilte residential estate, thereby obviating the need to acquire the private rear garden of No.17 Cois Na Coilte. The modifications are indicated on a new map contained in Tab 12 in the folder attached to this file and submitted by Irish Water at the Oral Hearing.<sup>1</sup>
- 1.5.2. All the proposed changes are located within the confines of the one land owner, who was not an objector to the original CPO. A letter is contained on file from the owner of the lands (JMT and Associates Ltd), stating that there are no objections to the proposed modifications<sup>2</sup>.

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<sup>1</sup> For comparison of the original CPO of lands and the modified CPO see P10 & 11 of the Statement of Evidence by Seamus Glynn submitted at the oral hearing.

<sup>2</sup> The letter from Jeremiah Keohane is contained in Tab 10 of the folder attached to this file.

## 2.0 Site Location and Description

- 2.1. Inchigeelagh is a small picturesque village to the west of Cork City approximately 15 km south-west of Macroom. The village is located on the River Lee and is centred on the junction of the R584 which runs east-west through the village and the R3404 which runs north-south over the River Lee. The village has a population of c.150 people according to the 2016 census. Most of the settlement fronts onto the main roads within the town. A linear settlement pattern predominates along these roadways. One small residential estate, Cois na Coilte is located on the eastern environs of the town. The River Lee flows in an east-west direction to the south, and roughly parallel to the main road. A large undeveloped area is situated between the R584 and the River Lee. This area is currently used for pasture and is bounded to the east by the Cois na Coilte development. A cemetery, the rear of houses and a woolen textile factory are located to the north of these undeveloped lands, all face onto the R584. The rear boundaries of commercial, residential and institutional uses (including a national school) back onto the western boundary of the undeveloped lands. These uses face onto the L3404. The River Lee runs along the southern boundary of the lands. The undeveloped lands gently undulate and incorporate falls to the east and west from the central area.
- 2.2. In terms of existing sanitary facilities serving the village, the documentation submitted with the CPO application indicates that there is little or no wastewater treatment within the agglomeration. There is an existing combined foul/stormwater/groundwater culvert which runs westwards along R584 before turning south along the L3404. It serves the roadside development fronting onto these two thoroughfares. It discharges untreated effluent into the River Lee on the eastern side of the Bridge which traverses the River on the southern environs of the village.
- 2.3. A smaller combined sewer serves the small cluster of buildings which forms the southern edge of the village located to the south of the river. This sewer discharges untreated effluent on the southern bank of the river. This element of the existing infrastructure is not to be incorporated into the scheme currently before the Board.
- 2.4. The final element of the existing infrastructure relates to a temporary wastewater treatment plant which is located to the immediate south of the Cois na Coilte

development. This wastewater treatment plant is private and was constructed specifically to serve the development referred to. The treatment plant is not being maintained by the developer and is currently relying on Cork County Council for upkeep and maintenance.

### 3.0 **Proposal**

- 3.1. It is proposed to provide a new wastewater treatment plant to the south-east of the village capable of providing secondary treatment for the Inchigeelagh agglomeration. The new WWTP will be located, approximately 400 m east-south-east of the cross roads within the village and to the immediate south west of the Cois Na Coillte residential estate, adjacent to the existing WWTP. A new pumping station with a rising main is to be located on the north bank of the River Lee to the east of the bridge and will be required to convey flows from the existing main catchment within the village to the WWTP for treatment. The existing outfall serving the main catchment will be extended to connect with the proposed pumping station. The station will pump flows via a rising main along the northern bank of the Lee to the WWTP c. 300m to the east for treatment. The proposed site for the WWTP, being in such close proximity to the existing temporary WWTP, will enable the transfer of effluent from the temporary facility to the to the new facility by way of a gravity sewer extension and connection. The temporary WWTP will subsequently be decommissioned. The third catchment in of the village to the south of the River Lee will continue to discharge wastewater into the River Lee untreated.
- 3.2. The WWTP will be designed to cater for a PE of 292 over a 10-year horizon but the WWTP site will be of a sufficient size to cater for an ultimate PE of 450 over a 30 year horizon.
- 3.3. Treated wastewater from the WWTP will discharge via a newly constructed effluent outfall pipe in the River Lee, at a point east of the WWTP.
- 3.4. The pipework and wayleaves and infrastructure etc associated with the preferred option comprises of:

A 15 m long 225 mm diameter gravity sewer to reroute the existing combined sewer to the proposed pumping station to the east of the bridge.

A below ground pumping station (Bridge PS) with 25.3 m<sup>3</sup> stormwater capacity to be located on the north bank of the River Lee, to the immediate east of the Bridge.

310 m long, 125 mm diameter rising main to convey flows the Bridge pumping station to the WWTP.

110m of 225 mm diameter gravity sewer to convey flows from the Cois na Coillte WWTP.

A WWTP providing secondary for a PE of 292 people.

50m long of 220 mm diameter outfall pipe to convey treated effluent from WWTP to the riverine outfall within the River Lee.

#### **4.0 Planning History**

- 4.1. The only planning history relating to the subject site concerns the construction of a garden and home centre to include a two-storey main building and an partially roofed outdoor display area for plants and landscaping (Reg. Ref. 07/11387). This planning permission was never implemented and has since withered. Details of planning applications made on adjoining lands are set out in the witness statement submitted at the oral hearing by Majella Keating.

#### **5.0 Planning Policy Context**

##### **5.1. Cork Co. Development Plan**

- 5.2. The lands to which the CPO relate are governed by the policies and provisions contained in the Cork County Development Plan 2014-2020. The plan contains a number of policies and objectives relating to the provision of infrastructure and these are set out below.
- 5.3. In terms of water services, a key aim of the plan is to prioritise the delivery of water services infrastructure, in consultation with Irish Water, to ensure that the aims and objectives of the plan can be delivered in a timely and efficient manner.
- 5.4. The plan goes on to state that the challenge will be to match water services infrastructure provision in the main towns to the population targets identified for them



so that the planned growth and development is not inhibited by any lack of adequate water services infrastructure.

- 5.5. In general, water supply and wastewater facilities need to be improved throughout the county both to serve the existing communities and to accommodate planned growth.
- 5.6. Policy WS2-1 seeks to prioritise the provision of water services infrastructure in the gateways, hubs and main towns to complement the overall strategy for economic and population growth while ensuring appropriate protection of the environment.
- 5.7. All settlements where services are not meeting current needs are failing to meet existing licensed conditions, and where these deficiencies are either (a) interfering with the Council's ability to meet the requirements of the Water Framework Directive or (b) having negative impacts on Natura 2000 sites; development may only proceed where appropriate wastewater treatment is available which meets the requirements of environmental legislation, the Water Framework Directive and requirements of the Habitats Directive.
- 5.8. Policy WS3-1 specifically relates to wastewater disposal. It requires that all development in main settlements connect to public wastewater treatment facilities subject to sufficient capacity being available which does not interfere with the Council's ability to meet the requirements of the Water Framework Directive and Habitats Directive. In settlements where no public wastewater system is either available or proposed, or where a design, capacity or licensing issues have been identified in existing plants, new developments will be unable to proceed unless adequate wastewater infrastructure is provided.

5.9. **Blarney-Macroom Municipal District Local Area Plan 2017**

- 5.10. The village of Inchigeelagh is located within the above Municipal District. The following policies are of relevance to the current application CPO before the Board.

Section 2.4 .10 states that, notwithstanding the level of growth provided for in the villages, the water services infrastructure needed to deliver this level of growth is not always in place as indicated by Table 2.3. In general, the council's approach to this is that where Irish Water already have water services infrastructure in a town or village then Irish Water would need to upgrade that

infrastructure as necessary to meet the demands of current and future customers in the settlement. Irish water has indicated that, when they are upgrading the water services infrastructure in a settlement, they will take account of future development needs.

Section 5.1.2 of the LAP states that “it is the strategic aim of Cork County development plan to encourage and facilitate development at a scale, layout and design that reflects the character of each village where water services and wastewater infrastructure is available and to support the retention improvement of key social and community facilities within villages including improved provision of interurban public transport” .

Objective DB-01 states that within the development boundary [of Inchigeelagh] encourage the development of up to 60 additional dwelling units during the plan period. In order to secure sustainable population growth proposed and sustainable water and wastewater infrastructure that will help secure the objectives of the Water Framework Directive and to protect the Gearagh SAC on SPA, need to be provided where not already available, in advance of the commencement of discharges from the new development permitted in this settlement.

The village has a development boundary<sup>3</sup> and while there are a number of lands use zoning specific objectives within the village, there are no specific zoning objectives relating to the WWTP site. The proposed pumping station site (plot 26) is located in an area designated as open space. Plot no. 16 (permanent acquisition) and Plot 19 (temporary working area) traverse lands that have the specific zoning objective C-01 ‘to allow for the expansion of the graveyard’.

## 6.0 **Objection**

- 6.1. One objection was received in relation to the proposed CPO, this objection was submitted by Stephanie Murnane and Alan O Brien<sup>4</sup>. The objectors are the owners of the closest house to the site to the proposed WWTP Site – no. 17 Cois na Coillte.

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<sup>3</sup> For details of the development boundary see appendix 2 of Majella Keating’s submission.

<sup>4</sup> Only Ms Murnane was in attendance at the Oral Hearing.

- 6.2. A separate objection submitted by Andrew Donovan was subsequently withdrawn 5 days prior to the oral hearing.
- 6.3. Background to the Current Objection.
- 6.4. Although not specifically referred to in the grounds of the objection, the Board should be aware that the area of land owned by the objectors extends beyond the rear boundary of the back garden depicted on the maps submitted with the CPO application. It was apparent from my site inspection and from the photographs attached this report, that the rear garden of the objector's property has been extended beyond the boundary wall of the back garden and now includes a rectangular area adjacent to the rear boundary demarcated by a wooden fence.
- 6.5. It appears but the boundary fence was not in place at the time Irish Water carried out its initial survey and land ownership search. It was subsequently pointed out to Irish Water that the lands associated with plots 10, 11 and 12 were in separate ownership. It was on this basis that Irish Water served notice on the occupants of no. 17 Cois na Coilte and the objection was subsequently submitted.
- 6.6. Grounds of the Objection
- 6.7. The objection is made on the basis that the noise impact arising from the WWTP during both the construction and operational phase would be unacceptable, given the plants close proximity to the objectors dwelling.
- 6.8. Concerns are also expressed regarding the unsightly nature of any proposed WWTP given its close proximity to the objector's property.
- 6.9. The grounds of objection also stated that neighbours would also be adversely affected by the construction of this infrastructure, and for this reason also objection to the proposal. Attached to the objection is a petition from residents of the Cois Na Coillte estate supporting the objector.
- 6.10. The Board should note that during the proceedings of the oral hearing, Ms Murnane stated that if the modifications to Plots 10, 11 & 12 were accepted by the Board, there would be no objection to the acquisition of lands for the CPO. The objection however was not withdrawn at the hearing.

## 7.0 Oral Hearing

7.1. An Oral Hearing was held in respect of the application to confirm the CPO and the Castle Hotel Main Street, Macroom County Cork on Tuesday November 19<sup>th</sup> 2019. A digital recording of the proceedings of the hearing are available to the Board. Copies of all the submissions read into the record of the hearing are contained on file<sup>5</sup>. A summary of the proceedings of the oral hearing is included as Appendix 1 of this report.

## 8.0 Assessment

### 8.1. Overview

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”. Case law has determined that, in order to satisfy the common good, the following minimum criteria are required 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 the community need.
- Any alternative method of meeting the community need have been considered but are not demonstrably preferable.
- The works to be carried out should accord or at least not be in material contravention of the policy and objectives contained in the statutory development plan relating to the area.

The proposed development is assessed in the context of the tests set out above prior to addressing the specific issues raised in the objections lodged.

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<sup>5</sup> No written submission was submitted by the Objector during the proceedings of the hearing.

## 8.2. Modifications Sought

The modifications which were presented to the planning inspector at the oral hearing are relatively minor in nature and solely relate to the lands of the JMT Ltd<sup>6</sup> and involve the realignment of plots 10, 11 & 12 to the east of the temporary WWTP serving the Cois Na Coillte development. The modification sought result in the newly acquired rear garden of the objectors being unaffected by the CPO order. The objectors have also indicated that the modifications are acceptable and that they would no longer have an objection to the CPO subject to the Board agreeing the modifications (although the objection was not withdrawn). This landowner to which the modifications relate did not lodge an objection to the CPO application notwithstanding the fact that the CPO 'Pack was served on the owner on October 4<sup>th</sup> 2019, (see footnote below for further details). The modifications result in a relatively minor relocation of the plots from the west side of the existing WWTP to the east side and also result in relatively minor modifications of areas associated with the plots. They do not affect any other landowners other than the owner of the lands who has not lodged an objection to the modifications sought. The modifications sought are in my view acceptable and do not have any significant impact on the legal tests that the Board must satisfy itself in confirming any Order and obviate to a significant extent the objector's concerns in relation to the CPO.

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<sup>6</sup> Information provided at the oral hearing by Damien Keaney BL stated that JMT Ltd was dissolved in September 2017 having apparently being struck off the Company's Office Register for failure to file annual returns. In such circumstances the property is vested in the Minister for Finance Public Expenditure and Reform in accordance with the State Property Act of 1954. Accordingly, the CPO was originally served on the Minister in respect of plots 10, 11 and 12 as the named owner of the land in question. However, JMT Ltd was restored to the Register on the 31st of July 2019 and upon becoming aware of this, Irish water served the CPO pack on JMT on the 4th of October 2019 giving it until the 15th of November 2019 to make an objection to the Board. No objection was received within that time frame. The schedule submitted at the oral hearing reflects the above ownership changes. See tab 11 of folder submitted at the oral hearing.

If the Board accept the modifications sought by Irish Water, I reiterate that Ms Murnane would have no objection to the proposal overall. That is to say that the objector would be generally satisfied with the proposal subject to the modifications being accepted by the Board. However, as the objection has not been withdrawn, the Board in my opinion is still obliged to assess the application in the context of the tests set out that the proposal meets the exigencies common good, and if the Board does not accept the modifications as proposed, it is required to assess the proposal in the context of the objections raised.

### 8.3. **Community Need**

- 8.3.1. The community need for the project was set out by Irish Water in the documentation submitted with the CPO and also with the witness statements at the oral hearing and can be summarised as follows.
- 8.3.2. Currently the Inchigeelagh agglomeration does not have the benefit of adequate wastewater treatment prior to discharge of effluent into the River Lee. Untreated wastewater is currently being collected within three separate catchments within the village. Two of the catchments discharge untreated effluent into a combined sewers which discharge directly into the River Lee. A separate catchment serving the Cois Na Coillte residential estate discharges into a temporary WWTP which is not being maintained by the developer.
- 8.3.3. There is a requirement under the Water Framework Directive and the Urban Wastewater Treatment Directive that any wastewater being discharged into receiving waters be the subject of 'appropriate' treatment. In the case of agglomerations of less than 10,000 persons, primary treatment of effluent, as a minimum requirement, must be provided (as per Article 7(a) of S.I. 254 of 2001). In this instance Irish Water have considered it appropriate to treat the effluent to secondary standard prior to discharge. There is a legal requirement therefore, that any municipal wastewater generated within a designated agglomeration is required to be treated at least to primary level in order to comply with legal requirements set out in the said Regulations. The specific level of treatment required for any discharge of effluent into receiving waters will be further determined by way of a planning application to

ensure that any wastewater treatment facility complies with other relevant legislation including the Surface Water Regulations (S.I. 272 of 2009). Any such compliance will be the subject of subsequent assessment and is not a matter for this CPO application. For the purposes of confirming the CPO or otherwise, the Board however should be cognisant of the legal requirements set out under the Urban Wastewater Treatment Regulations which necessitates some form of treatment prior to discharge. The provision of a wastewater treatment plant and associated infrastructure therefore constitutes a legal requirement which must be adhered to.

- 8.3.4. There are no designated Shellfish Waters, Bathing Waters or designated 'sensitive' waters as specified under the 3<sup>rd</sup> Schedule of the Urban Wastewater Treatment Regulations located in proximity to the existing outfall. The Nearest Natura 2000 sites are situated approximately 9 to 11 km downstream on the River Lee, namely The Gearagh SAC (Site Code 00108, approximately 9 km downstream and The Gearagh SPA Site Code 004109, approximately 11 km downstream). There can be little doubt however that the provision of an appropriate wastewater treatment plant and associated infrastructure will improve water quality within the River and can also facilitate the planned residential expansion within the development boundary of Castletownshend by way of encouraging the development of up to 60 additional dwelling units during the plan period. The provision of appropriate wastewater treatment will facilitate future potential development of the area and attract new residential and employment opportunities.
- 8.3.5. Finally, in relation to the community need test, I note that the objector did not challenge the confirmation of the CPO on the basis of community need. The concerns raised were primarily in respect the impact of any WWTP structure on the amenity on residents in the Cois na Coillte housing estate.
- 8.3.6. Having reviewed the information submitted and having conducted an oral hearing, I am satisfied that there is a need for a wastewater treatment plant to meet existing and future demand in the Inchigeelagh agglomeration in order to improve water quality and satisfy legal requirements in respect of wastewater treatment. I am therefore satisfied that Irish Water have demonstrated a clear and pressing community need that would be met by the project and would be facilitated by the acquisition of rights over the lands in question, should the Board consider it appropriate to confirm the CPO.

#### 8.4. Suitability of Lands to Serve Community Need

- 8.4.1. The Board will note, that of the 17 plots which are subject to the CPO, only three plots (plot no's 16, 20 & 26) are to be permanently acquired. Plot 20 is sought to facilitate the wastewater treatment plant whereas Plot no. 16 is to provide permanent access to the plant and plot 26 is sought to facilitate the pumping station. All other plots are for the purposes of permanent wayleaves, permanent rights of way and temporary working areas.
- 8.4.2. The land which is sought to be acquired in the form of permanent acquisition, wayleaves rights and rights of way etc. comprise linear tracts of mainly agricultural land, some scrubland, small sections of laneways running along the sides of dwellings etc. No buildings are to be acquired or demolished to facilitate the CPO. Lands to be permanently acquired comprise of a rectangular plot of land in the south-eastern eastern corner of a field amounting to 0.2.904 ha. The area to be acquired for the pumping station amounts to 400 sq. m.
- 8.4.3. The Board will note that no objections were received in relation to any of the plots sought to be acquired for the pumping station, or wayleaves/temporary working areas associated with the laying of the pipes. The sole concern relates to the proximity of some of the houses in Cois na Coillte with the WWTP, and the use of the rear garden of no.17 as a permanent wayleave and temporary working area. However I reiterate that the modifications sought would allay these concerns
- 8.4.4. Local topography was an important consideration in determining a suitable location for the WWTP. The catchment area of the agglomeration falls in a south/south-easterly direction towards the River Lee. Given the topography of the lands and the fact that two separate catchment areas are required to be intercepted and treated. At the very minimum one pumping station would be required. It is in my view desirable that the WWTP would be located where it is not necessary to provide a second pumping station and rising main in order to pump effluent from the Cois na Coillte estate to the WWTP. The location of the preferred site for the WWTP allows for a gravity connection between the estate and the WWTP. The fact that the new WWTP will also replace the existing temporary plant is also beneficial.
- 8.4.5. Apart from the site's suitability from a topographical point of view, the Board should also note that the infrastructure to be developed is located outside designated



Natural Heritage and Natura 2000 sites, outside Flood Risk Zones and an appropriate distance from both residential receptors and archaeological features. The proposed wastewater treatment plant is located within the development boundary on lands currently used for agriculture.

- 8.4.6. Plot 16 traverses lands which is zoned for community / utility uses. A specific objective in the local area plan seeks that these lands would facilitate an extension to the existing graveyard. The zoned land in question has been subdivided and it is anticipated but the first phase of the graveyard extension would take place in the eastern portion of the zone lands which are outside the lands to be acquired for the purposes of the CPO. The suitability of providing new access serving the wastewater treatment plant which traverses land zoned for a graveyard could be somewhat incongruous. Although it is not anticipated that this access would be heavily trafficked. Furthermore, Irish water have indicated that the lands which are to be traversed for the purposes of providing access to the wastewater treatment plant will not be developed as a graveyard in the short term. Any expansion to the graveyard in the shorter term will take place within the rectangular plot of land between no. 17 Cois na Coillte and the proposed access road. Irish water has also indicated that in the longer term, any access road serving the wastewater treatment plant could be realigned to facilitate the long-term expansion of the graveyard in question.
- 8.4.7. I am satisfied that the lands which are the subject of the CPO, are suitable to meet the aforementioned community need and are suitable on the basis that the lands to be acquired take advantage of the existing topography of the area in order to maximise gravity flows. Furthermore, the location of the WWTP is suitably situated so as to less likely impinge on residential, ecological, historical or archaeological amenities of the area.

## 8.5. **Compliance with Development Plan**

- 8.5.1. As outlined in the section above entitled “Development Plan Policy”, the Cork County Development Plan and the Blarney-Macroom District Local Area Plan contain numerous policy statements which support the provision of improved infrastructure, including water services infrastructure, in order to facilitate the development in the county and in the local area. The various policies and objectives which support the generality of the proposal are referred to in the original documentation submitted with

the CPO application as well as the statement of evidence of Ms. Majella Keating at the oral hearing.

- 8.5.2. The core strategy in Section 2.2.33 of the County Development Plan notes that the critical issue in securing the level of development set out in the development plan in the coming decade concerns the delivery of essential transport and water services infrastructure. Therefore, the County Development Plan has prioritised the provision, and where appropriate, the upgrading of treatment plants, and the Council will work with Irish Water to ensure that these works are implemented in a timely manner if delays to planned development are to be avoided. Policy 3-1 specifically relates to wastewater disposal, this requires that development in all main settlements connect to the public wastewater treatment facilities subject to sufficient capacity being available. Objective 12.1.g seeks to ensure that development would not have an unacceptable impact on water quality and quantity including surface water, groundwater, designated source protection areas, river corridors and associated wetlands estuarine waters, coastal and transitional waters.
- 8.5.3. With regard to relevant policies contained in the Blarney-Macroon District Local Area Plan, the plan clearly states in section 2.4 of the plan that notwithstanding the level of growth provided for infrastructure, the water services infrastructure needed to deliver this level of growth is not always in place as indicated by Table 2.3. In general, the Council's approach to this is that where Irish water already had water services infrastructure in a town or village then Irish Water will need to upgrade that infrastructure as necessary to meet the demands of current and future customers in the settlement. Irish water has indicated that when they are upgrading the water services infrastructure in a settlement, they will take into account future development needs.
- 8.5.4. Section 5 point 1.2 of the plan states it is a strategic aim of the Cork County Development to encourage and facilitate development at a scale, layout and design that reflects the character of the villages where waste services and wastewater infrastructure is available and to support the retention and improvement of key social and community facilities within villages including the provision of inter-urban public transport.

- 8.5.5. The overall vision for Inchigeelagh is to protect the viability of existing services by promoting small scale development in tandem with the provision of infrastructural services to encourage high-quality amenities and facilities and the development of the tourism and leisure economy. The local plan for Inchigeelagh indicates that an additional 60 dwelling houses will be provided within the settlement during the period of the plan.
- 8.5.6. Finally, objective DB-01 notes that in order to secure sustainable population growth proposed, appropriate sustainable water and wastewater infrastructure will help secure the objectives of the Water Framework Directive and protect the Gearagh SAC and SPA.
- 8.5.7. It is clear therefore, that any modest development objectives are predicated on the provision of water and wastewater infrastructure in the village of Inchigeelagh.
- 8.5.8. On the basis of the overarching statements contained in the county development plan with regard to the improvement in water quality and the need to upgrade and improve waste water treatment facilities in Cork County in order to cater for new development, together with various statements in the District Local Area Plan which base any future expansion of the village on the provision/upgrading of wastewater treatment facilities, it is my conclusion that the CPO fully accords with the policies and provisions contained in the county and local development plan.

## 8.6. **Consideration of Alternatives**

- 8.6.1. Irish Water has submitted with the CPO application, a Route and Site Selection Report. Alternatives were considered in relation to:
- The location of a wastewater treatment plant.
  - The location of the outfall.
  - The location of the pumping station.
  - The selection and location of wayleave routes.

## Wastewater Treatment Plant Location

Irish Water identified three potentially suitable land parcels on which to locate a wastewater treatment plant. Two of which are located in the large field to the north of the River Lee and the south of the R584. Option 1 (sometimes referred to as site no.1 in the documentation submitted) is the preferred option and is located in the south-eastern corner of the field adjacent to the Cois na Coillte housing estate and the existing temporary WWTP.

The second option is located within the same field between 150m and 200m to the south-west of the preferred option, to the immediate north of the River Lee.

The third option was located at the north-eastern corner of the village on a greenfield site adjacent to the R584 on the approach road from Macroom. This site is located about 700 m west of the village centre. When asked about other locations including a site to the south west of the Main Street, during the oral hearing, Irish Water indicated that the undeveloped lands to the south-west of the town are located in a flood plain and therefore would be unsuitable. For this reason, it was ruled out at preliminary stage.

The three options referred to, were the subject of more intensive investigations and were assessed in more detail in the context of various potential constraints including:

- Planning Policy
- Environmental impact (including impact on Natura 2000 sites/ designated waters/Invasive alien species/archaeology/noise & vibration etc).
- Topographic and technical constraints (constructability/health and safety/land requirements).
- Cost (capital and operational).
- Sustainability (energy
- Natural Heritage Designations and Ecology.

Each of the wastewater treatment plant locations were assessed and compared against each other with regard to planning policy, environmental impact, constructability, health and safety sustainability and energy use and cost (both construction and operational cost).

A scoring matrix was produced for each of the options. The assessment undertaken indicated that option 1 was considered to be marginally preferable to option 2, primarily on the basis that option 2 primarily on the basis that option required only one pumping station, whereas options 2 & 3 required two pumping stations and for this reason scored less well, particularly in terms of cost and sustainability. Option three also scored poorly on the basis it would involve greater lengths of rising main and significant works on the R584 therefore creating greater disruption and this option would give rise to additional costs in terms of land acquisition, construction and maintenance.

On the basis of the exercise undertaken, I am satisfied that the applicant has in this instance investigated and evaluated reasonable alternatives in providing wastewater infrastructure to serve the village on Inchigeelagh. I am further satisfied that of the alternatives investigated, none of the options are demonstrably preferable to the option chosen by Irish Water.

## **8.7. Proportionality and Necessity for the Level of Acquisition Proposed**

- 8.7.1. One of the tests as set out in '*Planning and Development Law*' (Garrett Simons – Second Edition) requires consideration of whether the measures proposed under a Compulsory Purchase Order will have an excessive or disproportionate effect on the interests of the affected persons. Irish Water have indicated that the plot area required to be acquired for the WWTP and associated infrastructure amounts to more than 0.2904 ha. The land take in this instance, is both modest and proportionate in my view, particularly as it is proposed to provide secondary treatment at the plant. Irish Water has sought larger plots (admittedly for plots intended to serve larger population catchments) where it is proposed to provide primary treatment only. In this respect I consider the acquisition to be proportionate and not excessive in the context of the infrastructure to be provided. Finally, in relation to this matter I note the size and scale of the land-take proposed was not mentioned as an issue in the grounds for objection.
- 8.7.2. The land take for the proposed pumping station is modest at 0.04 ha. This cannot be considered excessive and can be considered proportional to the requirements of Irish Water for such infrastructure. Similarly lands required in the form of wayleaves and temporary working areas along the proposed route of the rising mains and the

gravity mains cannot be considered excessive in the context of the laying of pipes and maintenance works required to be undertaken as part of carrying out the works proposed.

- 8.7.3. Having reviewed the information submitted, I am satisfied that the overall size and scale of the proposed lands to be acquired permanently, for wayleaves, for rights of way and for temporary working areas are necessary and proportionate in the context of meeting the identified community need.

#### **8.8. Additional Issues Raised by the Objector**

- 8.9. The principle objection raised by Ms Murnane relates to the provision of a WWTP in such close proximity to No. 17 Cois na Coillte. The issues raised in essence relate to amenity issues associated with the treatment plant itself rather than the compulsory acquisition of the lands. Notwithstanding this, indicated during the proceedings of the oral hearing stated that many of the concerns were allaying particularly in terms of the overall height and scale of the development. While no formal application has been lodged in respect of the WWTP, Irish Water did indicate during the proceedings that any proposed structures on site would not exceed 3 meters in height. The objector expressed satisfaction with this.

- 8.10. Furthermore, the modifications sought by Irish Water at the oral hearing will result in the avoidance of acquiring lands from the objector. If the Board confirm the modifications sought, which I recommend it does, the basis of the objection would fall. It is only in the case that the Board reject the modifications sought that the basis of the objection can be sustained.

- 8.11. Finally in relation to this matter, the objector has expressed satisfaction with the modifications sought by Irish Water.

#### **9.0 Conclusions and Recommendations**

Arising from my assessment above I consider that An Bord Pleanála should confirm the CPO before it with the slight modifications sought by Irish Water by way of the revised drawings and Schedule submitted to the planning inspector at the oral hearing, based on the reasons and considerations set out below. I am satisfied that the process and procedures undertaken by Irish Water are reasonable and that Irish

Water has demonstrated the need for the acquisition of lands, wayleaves, and rights of way and lands for temporary construction and that the lands wayleaves, rights of way and lands for temporary construction being acquired are both necessary and suitable. I consider that the proposed acquisition of the said lands, wayleaves, rights of way and temporary construction rights would be in the public interest and the common good by providing necessary wastewater infrastructure and improving the water quality in the River Lee and that this would be consistent with the policies and objectives of both strategic and statutory planning policy and in accordance with the Water Framework Directive.

In summary, I am satisfied that the lands, wayleaves and rights of way in question are required by the Irish Water for the purposes of performing its statutory functions to improve water and wastewater infrastructure. I recommend that the Board confirm the CPO subject to the slight modifications sought.

### **DECISION**

Confirm the above Compulsory Purchase Order based on the reasons and considerations set out below.

### **REASONS AND CONSIDERATIONS**

Having considered the objections made to the compulsory purchase order and the report of the person who conducted the oral hearing into the objections, and having regard to the provisions of the Water Framework Directive (2000/60/EC), the Urban Wastewater Treatment Directive (91/271/EEC), the current Cork Co. Council Development Plan 2014-2020, and the Blarney- Macroom District Local Area Plan, it is considered that the acquisition of lands, wayleaves, rights of way and temporary working areas by Irish Water is necessary for the purposes stated in the Order and the objections cannot be sustained having regard to the said necessity.

## **SCHEDULE**

The compulsory purchase order shall be modified in accordance with details provided in the documentation submitted to the Board at the Oral Hearing on the 19<sup>th</sup> Day of November 2019 as follows and specifically the realignment of Plot Numbers 10, 11 and 12 as indicated on Drawing IW/10015227/CWL/002 Rev 6.

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**Paul Caprani**

**Senior Planning Inspector**

25<sup>th</sup> November 2019



## Appendix 1

### Proceedings of Oral Hearing

An oral hearing was held in the Castle Hotel, Macroom, Co Cork on the 19th November 2019. The following people were in attendance:

#### Appearing on behalf of Irish Water

- Damien Keaney, BL.
- Padraic Murray, Solicitor.
- Kieran Thornton.
- Seamus Glynn.
- Majella Keating.
- Matthew Collins.
- Tracey Horan.

#### Appearing on behalf of the Objector

- Ms Stephanie Murnane

The hearing commenced at 10 a.m. after the introductory statements by the Planning Inspector. Irish Water were requested to make its formal submission to the hearing.

Mr. Keaney introduced himself and his team and stated that Irish Water will be calling on a total of 5 witnesses at the hearing. He also set out details of the modification of the CPO. It was suggested that the evidence of Ms Horan which related to details of engagement with the objector may not be necessary as there has been no engagement with the objector or the residents of Cois na Coillte.

Mr. Keaney then called upon Mr. Seamus Glynn to set out his brief of evidence.

#### Witness Statement of Mr Glynn

Mr. Glynn is Irish Water's Infrastructure Programme Regional Leader for the southern region and has been involved in the advancement of the design and tendering for the Inchigeelagh Sewage Scheme Project. Mr. Glynn set out the existing situation and the need for the scheme. It notes that the existing sewage

infrastructure in Inchigeelagh comprises of 3 separate catchments, two of which discharge untreated wastewater/ to the River Lee through two separate outfalls located on the north and south banks of the River Lee. A packaged treatment plant serves the Cois Na Coilte residential estate in the north-east of the town. This plant discharges effluent to a percolation area adjacent to the River Lee. This temporary plant is currently being maintained by Cork Co Council.

The submission goes on to describe the proposed scheme making reference to the proposed new pumping station, rising mains, gravity sewers, wastewater treatment plant and proposed riverine outfall. It is stated that any new wastewater treatment infrastructure will provide treatment to a standard to ensure compliance with Irish and EU Regulations. It is stated that the Compulsory Purchase Order is necessary as the lands identified in the site selection report to implement the preferred scheme is not in the ownership of Irish Water. The proposal, it is argued is fully in accordance with the public interest.

Finally, Mr. Glynn's submission set out details of the proposed modifications submitted at the oral hearing which obviates the need to acquire the objector's lands. Details of the proposed modifications are set out on page 10 &11 of Mr. Glynn's submission. In conclusion, Mr. Glynn states that the project is necessary to end the discharge of untreated wastewater into the River Lee and that the proposal will fulfil a community need. It is also stated that the CPO before the Board facilitates the most appropriate alternative to provide wastewater treatment facilities and the proposal will not be in material contravention of the provisions of the statutory development plan.

#### Brief of Evidence by Kieran Thornton

This brief of evidence sets out details of the project background and objectives together with the proposed works to be undertaken. It details each of the plots which form part of the CPO and the nature of the use of the proposed acquisition.

The submission sets out details of the route selection for the proposed sewage scheme and makes reference to the evaluation undertaken for the pumping stations and the wastewater treatment plant sites. It notes that three options were considered. (a) The preferred option (b) a separate option approximately 200 metres west of the preferred option within the same field and (c) a greenfield site to the

south of the R584 to the north-east of the village. The three options identified were compared and assessed under the following criteria:

- Planning Policy.
- Environmental Impact (Potential Impact on Natura 2000 Sites/Designated Waters/Evasive Alien Species/Archaeology and Cultural Heritage/Traffic, Noise and Air Quality).
- Technical Considerations (Constructability/Health and Safety/Land Requirements).
- Cost Implications (Capital Cost/Operational Cost).
- Sustainability (Construction Energy Requirements/Operational Energy Requirements).

The scoring of each of the options is set out on a Table in paragraph 55 of the submission. Option 1 scored a total of 23 from 25 whereas Option 2 scored a total of 22 from 25 and Option 3 scored a total of 17 from 25. A significant factor in the comparison of options related the fact that option 1 required only one pumping station whereas both other options required 2 pumping stations. Option 3 also scored poorly due to the amount of rising main which was required and that it would also involve significant works on the public road.

Finally, the submission addresses concerns outlined in the objection by the residents of No. 17 Cois na Coilte. With regard to the impact on amenity arising from the WWTP, it is stated that these are not matter for the CPO application. All potential impacts arising from the WWTP will be adequately addressed in any subsequent planning application made to the Board.

By way of conclusion the brief of evidence states that Irish Water is satisfied that all reasonable alternatives have been fully considered and that no alternative routes were demonstrably advantageous.

### Brief of Evidence by Majella Keating

This brief of evidence specifically related to planning policy. The submission outlines the project and site description before detailing the planning history for both the site and lands surrounding the site.

The evidence goes on to detail relevant policies and objectives contained in the Cork County Development Plan 2014. Reference is made to various policies contained in the Plan in relation to infrastructure, specifically highlighting relevant policies in relation to water services, water infrastructure, wastewater disposal and the need to protect water quality. The submission goes on to detail county development plan policies in relation to the economy and employment. Details of the policy statements contained in the plan relating to the land use zoning are also set out.

The submission goes on to detail specific objectives contained in the Blarney-Macroom Municipal District Local Area Plan 2017. Reference is made to the strategy for the water services provision and the various statements contained in the Plan which relate to the upgrading of water services infrastructure. The submission notes that the WWTP is located outside the development boundary for Inchigeelagh. The pumping station is located in lands zoned for open space. Lands to the immediate north of the WWTP is zoned Community/ Utility, with the specific objective of extending the Graveyard within the village. The proposed access to the WWTP traverse these zoned lands. Reference is made to the Local Plan objectives including the provision of 60 additional dwelling units within the plan period. The submission also addresses the issues raised in the grounds of objection.

The submission concludes that the proposal is fully in accordance with the policies and objectives with the Cork County Development Plan and is not a material contravention of the said Plan. Appendix 1 sets out details of strategic planning policy and includes references to various strategic land use planning documents which are relevant to the CPO application. Appendix 2 sets out the details of the development boundary for Inchigeelagh as contained in the Blarney Macroom LAP.

### Statement of Evidence by Mr. Matthew Collins

The statement of evidence from Mr. Collin sets out details of the summary of Irish Water's Compulsory Purchase Order. It sets out chronological details together with specific dates in relation to the Inchigeelagh Sewage Scheme. It notes that the scheme was initiated in December, 2017 with '60 day letters' to landowners together with a CPO Pack issued to the various landowners on 20<sup>th</sup> August, 2018. The Engineer's Report was signed on 30<sup>th</sup> January, 2019 and the Managing Director's Order was signed on the 7<sup>th</sup> March, 2019. The CPO documents were signed on 14<sup>th</sup> March, 2019 and the Compulsory Purchase Order "Pack" was issued to landowners and occupiers of land on 19<sup>th</sup> March, 2019<sup>7</sup>. Details of the CPO scheme was published in the Southern Star on 23<sup>rd</sup> March, 2019 and the application was submitted to An Bord Pleanála on 28<sup>th</sup> March, 2019. Two objections were received on 16<sup>th</sup> July 2019 Andrew Donovan and the 26<sup>th</sup> of September by Alan O'Brien and Stephanie Murnane. The former objection was withdrawn.

### Statement of Evidence of Ms Tracey Horan

Finally, Ms. Tracey submitted details of the consultation which is undertaken with the various landowners. It was stated that no contact was made with the residents of Cois na Coillte. This formally concluded the submission of Irish Water at the oral hearing.

## **Submission on behalf of the Objector**

### Statement of Ms Stephanie Murnane

A short submission from Ms Murnane stated that on foot of the submissions of Irish Water, most of her concerns have been allayed with regard to the amenity impacts arising from the WWWTTP proposed. Furthermore, the objector welcomed the fact that plots 10,11 &12 are to be realigned so as not to affect her property to the rear of her house.

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<sup>7</sup> Due to encroachment that was discovered after the CPO was originally published, the "Pack" was issued to Alan O'Brien and Stephanie Murnane on the 18<sup>th</sup> July 2019.

## **Closing Submissions**

The closing submission on behalf of Irish Water was made by Mr. Keaney. It set out details of the substantive law concerning Irish Waters powers to acquire lands, and the need to demonstrate that the acquisition is being made in the interests of the common good, and in accordance with the tests for proportionality etc. The submission addresses the concerns raised in the objection and states that the proposal fully meets the tests set out in case law with regard to the acquisition.

This concluded the submissions at the oral hearing. The Inspector formally closed the hearing at 12.40 p.m.