



An
Bord
Pleanála

Inspector's Report ABP304709-19

Development	Compulsory Acquisition of Lands for pumping station, rising main, gravity sewer and wastewater treatment plant.
Location	Castletownshend, Co Cork.
Planning Authority	Cork County Council.
Applicant	Irish Water.
Type of Application	Notice of Compulsory Purchase Order under Water Services Act 2007-2013, Planning and Development Act 2000 (as amended) and the Housing Act 1966.
Objectors	(1) Denis Noel O Driscoll
Date of Site Inspection	October 1 st 2019.
Inspector	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 (Castletownshend 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 Castletownshend 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 Mr. Denis Noel O Driscoll of No. 8 Glenard, Castletownshend County Cork. This report 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 Castletownshend into Castle Heaven Bay.
 - 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.

- To more effectively manage fluctuations in flow during storm events in order to comply with current guidelines and best practice in relation to stormwater flows.
- Finally, the improvement in wastewater treatment derived from the proposal will improve water quality in the Castle Haven Bay area.

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 23rd May, 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 8th of June, 2019.
- A WWTP and Pumping Station Options Report.
- 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 two plots (Plot 9 & 16).

1.4.2. Part 2 of the Schedule sets out lands to be acquired for permanent wayleaves; It involves a total of 8 plots (Plots 8, 10, 12, 24, 26, 31, 34, & 41).

- 1.4.3. Part 3 sets out the requirements for permanent rights of way. A total of 4 plots are required for this purpose (Plots 1, 17, 37 & 38).
- 1.4.4. Part 4 sets out details of the proposed temporary works areas required to facilitate the works. A total of 13 separate plots are required (Plots 6, 7, 11, 13, 18, 25, 27, 32, 33, 35 and 36, 40 & 42).

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 which are currently in the ownership of John J Fleming Construction (In receivership). The changes related to slight modifications, in terms of alignment and area to plot numbers 08, 24, - (permanent wayleaves) and plots numbers 06, 07, 25 (temporary working areas). A new temporary working area (plot no. 43 – with an area of 0.562 hectares) around the south-eastern and south-western boundary of the WWTP is also proposed. The modifications are indicated on a new map contained in Tab 10 in the folder attached to this file and submitted by Irish Water at the Oral Hearing.¹
- 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 Receiver of John J Fleming Construction, states the Receiver is satisfied with the proposed modifications².

2.0 **Site Location and Description**

- 2.1. Castletownshend is a small picturesque village in west Cork on the western side of Castle Heaven Bay approximately 8km south-east of the town of Skibbereen via the R596. It comprises primarily of a main street which runs in a north-easterly direction towards a small harbour area on the west side of Castle Heaven Bay. Two small

¹ For comparison of the original CPO of lands and the modified CPO see P8 of the Statement of Evidence by Seamus Glynn submitted at the oral hearing.

² The letter from Hallissey & Partners Solicitors is contained in Tab 9 of the folder attached to this file.

residential estates are located to the north of the Main Street, “The Lawn” and “St Barrahanes Ave”. A road runs roughly parallel 250 metres north of the Main Street serving approximately 8 dwellings in the townland of Glenard. This roadway ends in a cul-de-sac to the north-east of the village. As of the 2016 census the village had a population of 196.

- 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 along Main Street and discharges near the small slipway and the eastern end of Main Street. A number of houses at St Barrahanes Ave discharge into a septic tank which in turn discharges into the culvert along Main Street. ‘The Lawn’ residential estate is served by a temporary WWTP which discharges into a percolation area. This WWTP is not being maintained. The Mall, a small roadway which runs south of Main Street and serves 8 houses is not part of the Castletownshend sewerage scheme as it does not comprise of public sewers.

3.0 Proposal

- 3.1. It is proposed to provide a new wastewater treatment plant to the north east of the town capable of providing primary treatment for the Castletownshend agglomeration. The new WWTP will be located to the north east of the village, approximately 300 m north of the existing slipway at the eastern end of the town. A new pumping station with a rising main together with new gravity sewers will be required to convey flows from the existing catchment to the WWTP for treatment. The WWTP will be designed to cater for a PE of 531 over a 10-year horizon but the WWTP site will be of a sufficient size to cater for an ultimate PE of 950 over a 30 year horizon. The wastewater from the existing catchments (Main Street, septic tank at St Barrahanes Ave and The Lawn residential estate) will be required to be intercepted prior to discharge and re-routed to the proposed WWTP. Two options were considered³ for the location of the WWTP and the pumping station. The preferred option involved

³ For details of the two options see Section 6 of report entitled ‘WWTP and Pumping Station Options Report submitted with the application.

intercepting wastewater at the end of the Main Street, wastewater would then be pumped via a new pumping station located within and adjacent to the entrance to the Castle Hotel at the end of the street, in an northerly direction up a small cul de sac to a header manhole. New pipes will be laid across open fields to the north of Main Street to the WWTP. The wastewater will flow by gravity from the header manhole to the WWTP.

- 3.2. To the northwest of the village wastewater from 'The Lawn' housing estate will be diverted from the temporary WWTP serving the development via a gravity sewer to the header manhole and onto the WWTP.
- 3.3. Treated wastewater from the WWTP will flow westwards via a newly constructed effluent outfall pipe and will discharge into Castle Heavens Bay, at a point south of Milkmaid's Rock c. 200 meters to the west of the WWTP.
- 3.4. The pipework and wayleaves etc associated with the preferred option comprise of:
 - 240m of 125 mm diameter rising main from the Castle Pumping Station to the header manhole.
 - 360m of 225 mm diameter gravity sewer to convey flows from the temporary WWTP serving 'The Lawn' housing estate to the header manhole.
 - 170m of 225 mm diameter gravity sewer to convey flows from the header manhole to the WWTP.
 - 240m of 225 mm diameter pipe for treated effluent from WWTP to the marine outfall.

4.0 Planning History

- 4.1. The evidence of Ms Majella Keating at the oral hearing made reference to an approval for a Cork Co Council sewage scheme in Castletownshend under the provisions of Part 8 of the Act. It was approved at a Council meeting on June 23rd 2008. The works comprised of a WWTP, administration building, pumping station, access road and outfall. Details of the Part 8 Scheme are contained in Appendix 3 of Ms Keating's submission. The location of the WWTP proposed in 2008 is the same as that proposed under the current CPO application.

- 4.2. Ms Keating's submission also made reference to Reg. Ref. 08/760 where permission was granted for 45 houses to the west of the lands currently earmarked for the rising main. This development was essentially an extension to 'The Lawns' but the permission was never implemented.

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. **West Cork District Local Area Plan 2017**

5.10. The following policies are of relevance to the current application CPO before the Board.

5.11. Table 1.2 entitled 'Strategy for Water Service Provision states in relation to villages and wastewater treatment, that the policy approach is that 'adequate wastewater treatment facilities will be prioritized for villages which already had some element of public infrastructure'.

- The strategic aim for Castletownshend is to encourage the consolidation of this village within its coastal setting, preserve the unique architectural character and landscape setting of the settlement and to promote sympathetic development in tandem with the provision of services.
- Objective DB-01 states that within the development boundary of Castletownshend encourage the development of up to 70 additional dwelling units during the plan period.
- Objective U-01 seeks the provision of a wastewater treatment plant.

6.0 **Objections**

6.1. One objection was received in relation to the proposed CPO, this objection was submitted by Mr. Denis Noel O Driscoll. Mr O Driscoll is the owner of the closest house at No. 8 Glenard Castletownshend to the proposed WWTP Site. The grounds of the objection are set out below:

- 6.2. The roadway is a private roadway and is owned by the objector and it currently serves 8 residential dwellings. The structure of the roadway is only suitable for the purpose of serving the dwellings in question. The construction of the WWTP will involve the movement of significant plant and machinery and furthermore, regular servicing and desludging during will occur during operation. This will have an adverse impact on the structural integrity of the access road and will give rise to extra traffic. It will also give rise to a significant amount of disturbance for families living on the road.
- 6.3. The CPO should condition the applicant to construct and maintain a new roadway and should also provide for a connection for the 8 dwellings on the road to the proposed WWTP. The objector has consulted with the other 7 residents along the access road and they share the objectors concerns with regard to the roadway and the lack of connection of these houses to the WWTP.

7.0 Oral Hearing

- 7.1. An Oral Hearing was held in respect of the application to confirm the CPO and the West County Hotel, Skibbereen County Cork on Thursday November 7th 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. 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.

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 Receiver of John J Fleming Construction, namely Hallisey and Partners Solicitors. Irish Water have indicated that the modifications were made with the express agreement of the affected landowner. This landowner to which the modifications relate did not lodge an objection to the original CPO application. The modifications relate to slight changes in area and alignment to plots 6, 7, 8, 24 & 25. It also involves the addition of Plot no. 43 as a temporary working area around the southwestern perimeter of the WWTP site. They do not affect any other landowners other than the owner of the lands who has expressed full agreement of 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 do not in anyway relate to the objector's concerns.

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 Castletownshend agglomeration does not have the benefit of adequate wastewater treatment prior to discharge of effluent into Castle Haven Bay. Untreated wastewater is currently being collected in a combined sewer which runs under the

Main Street and discharges in the vicinity of the slipway at the eastern end of the village.

- 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). 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 3rd Schedule of the Urban Wastewater Treatment Regulations located in proximity to the existing outfall. The nearest designated Bathing Waters are Traguana Beach c 8 km to the south west. Its water quality is classed as 'excellent'. Warren Cragane Strand is located c13 km to the east. Its bathing water quality is classed as 'good'. Castle Haven Bay is used for bathing, boating and more general water-based recreation. However, the waters are not officially designated under the Bathing Regulations. There can be little doubt however that the provision of an appropriate wastewater treatment plant and associated infrastructure can improve water quality within the Bay and can also facilitate the planned residential expansion within the development boundary of Castletownshend by way of encouraging the development of up to 70 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 of route selection and the impact on the structure and integrity of the private road to be used as a right of way to and from the WWTP and the potential impact the works could have on the amenity on residents along the roadway.
- 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 Castletownshend 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 27 plots lands which are subject to the CPO only two plots (plot no.9 & plot no.16) are to be permanently acquired. Plot 9 is sought to facilitate the wastewater treatment plant whereas Plot no. 16 are sought to facilitate the pumping station. Plots no. 1, 37 and 38 seek a permanent Right of Way along the roadway leading to the proposed wastewater treatment plant. 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 along with foreshore areas, small tracts of woodland, small sections of roadway and private gardens (in the case of the Castle Hotel). Additional lands are also being sought to cater for the wastewater treatment plant. Lands to be permanently acquired comprise of a rectangular plot of land in the north eastern corner of a field

amounting to 0.5799 ha. The area to be acquired for the pumping station amounts to 131 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 WWTP, pumping station, or wayleaves/temporary working areas associated with the laying of the pipes. The sole concern relates to the use of the access road by traffic associated with the WWTP.
- 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-easterly direction towards the coastline. Given the topography of the lands and the built-up nature of the south-eastern end of the town there is little scope for providing a WWTP in this location, having particular regard for the requirement to maintain 50m buffer zones between such WWT infrastructure and residential receptors⁴. It is in my view both inevitable and desirable that the WWTP would be located to the north of the Main Street in a less developed area on more elevated ground thus necessitating a pumping station to intercept and pump wastewater from the combined sewer along the Main Street. In fact, as Irish Water point out in the documentation submitted, the existing stone culvert serving the Main Street discharges along the southern shore, a pumping station is likely to be required regardless of where the WWTP is to be located.
- 8.4.5. Furthermore, in addition to serving the Main Street and environs, the proposed wastewater treatment plant is also to replace the existing temporary WWTP which serves 'The Lawns' to the north west of the village. As the Lawns is at a more elevated level than the location of the site of the proposed WWTP, a gravity sewer can be installed avoiding the necessity for a second pumping station. The location of the WWTP also allows for gravity flow to the marine outfall.
- 8.4.6. 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.

⁴ Recommended Standard in the EPA's Wastewater Treatment Manual – Treatment Systems for small communities, Business, Leisure Centres and Hotels.

The proposed wastewater treatment plant is located within the development boundary on lands currently used for agriculture.

- 8.4.7. The lands to which the CPO relates are located in an area designated as an area of 'high landscape value' in the CDP. However, it should be noted that the entire coastal area around County Cork attracts such a designation. It would not be feasibly possible in my opinion to locate a wastewater treatment plant in proximity to the area intended to be served without locating such a treatment plant within an area designated as high landscape value. The area in which it is proposed to locate the wastewater treatment plant is relatively sparsely populated and is located some distance from the main population centres within the village.
- 8.4.8. 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 and attributes 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 West Cork 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 West Cork District Local Area Plan, the plan clearly states under the provisions of utilities and infrastructure that it is an objective of the plan to provide a wastewater treatment plant for the village of Castletownshend.

8.5.4. On the basis of the explicit and unambiguous overarching statements contained in the 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 the clear and concise statement in the District Local Area Plan for West Cork regard the provision of a wastewater treatment plant, 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 wayleave route.

Wastewater Treatment Plant Location

The issue of alternative sites did not present itself as a serious concern in the written grounds of objection. It was however, challenged during the proceedings of the oral hearing.

Irish Water identified two potentially suitable land parcels on which to locate a wastewater treatment plant. Both of which are located in the large field to the north of the village. Option 1 (sometimes referred to as site no.1 – in the documentation submitted) is the preferred option and is located in the north-eastern corner of the field adjacent to the local private access road serving the objectors house. The second option is located within the same field between 150m and 200m to the south of the preferred option. When asked about other locations within the town 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 form part of a private garden, a WWTP at this location would necessitate the pumping of effluent back along the Main Street to the new WWTP. For these reasons it was ruled out at preliminary stage.

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

- Buffer zones around dwellings and the impact on the development potential of the lands.
- Connecting with existing extant waste water infrastructure serving the village.
- Topographic constraints.
- Flooding extent.
- Cultural heritage
- 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).

The assessment undertaken indicated that option 1 was considered to be marginally preferable to option 2, primarily on the basis that option 2 required the extension of the existing roadway (80m extension) and that this would give rise to additional costs in terms of land acquisition, construction and maintenance. The assessment did acknowledge that the environmental impacts arising from option 1 maybe greater on the basis that it would result in the removal of some invasive alien species including

rhododendron and Himalayan knotweed. Both options were considered to be generally equal in terms of planning policy and cost. It was however concluded that option 1 was marginally more acceptable overall.

The evaluation of alternatives undertaken was challenged during the proceedings of the oral hearing on the following basis:

- A number of alternative sites were not included in the initial assessment including sites to the immediate north of St Barrahanes Avenue (ie the south western portion of the field in question).
- Irish Water did not take into consideration the fact that option 2 would have a less profound visual impact as it is located on lower ground within the field and a small ridge within the field would help screen it from the objector's house. It is argued that option one would have a much more profound visual impact from the objector's dwelling.
- Option 1 requires the provision of additional wayleaves and pipelines to link the pumping station with the wastewater treatment plant over that associated with option 2.
- The alternatives considered did not place due consideration to the potential impact on the value and saleability of the objector's property.

Each of these issues raised in relation to alternatives are assessed below.

With regard to locating the WWTP in the south west of the field to the immediate north of St Barrahanes Ave and the east of 'The Lawns', this option may be more advantageous to the objector in that it removes the WWTP to a location further away from the objector's house, however it would undoubtedly move the WWTP in closer proximity to the higher concentrations of houses at St Barrahanes Ave and 'The Lawns'. As such the relocation of the WWTP in closer proximity to a higher concentration of houses may not be in accordance with the exigencies of the common good.

With regard to the visual impact, it is difficult to assess in absolute terms visual impact arising from the provision of a wastewater treatment plant at either location (option 1 or option 2) on the basis that there is no application before the Board for a such a development and as such, there are no detailed drawings or designs

indicating what the structures associated with the wastewater treatment plant may look like. Notwithstanding this point, I do accept that option 2 may be preferable from a visual perspective on the basis that it is located at lower ground levels than option 1. I also note that an elongated hillock runs in an east-west direction through the portion of this field separating option 1 and option 2 and this could help mitigate the visual impact from the objectors house to some extent. A key concern raised by the objector related to the potential impact arising from any proposed wastewater treatment plant to impinge on views from the objector's house across Castle Haven Bay. I would ask the Board to note that the preferred site for the wastewater treatment plant is not located directly within the line of view from the objectors view southwards or south eastwards across Castle Haven Bay. Rather the preferred location for the wastewater treatment plant is located in the northeastern corner of the field to the north of the objector's house thereby not being located directing in the line of view across the Bay. The objectors house incorporates a first-floor balcony on the front elevation which provides excellent views across Castletownshend village and that Bay. However, it can be equally argued but the elevated nature of the balcony would allow views of a wastewater treatment plant were it to be located on site 2 and that this site would be more directly in the line of view from the objectors dwelling across the Bay. Therefore, I would not accept the objector's argument that option 2 would be significantly or materially preferable over option 1 from a visual amenity perspective.

With regard to the assertion the option no. 1 would be less preferable on the basis that that it involves the incorporation of more extensive lengths of wayleaves and temporary working areas than option 2, I consider this issue to be a material consideration in examining alternatives. Information submitted with the application indicates that the pipework requirements associated with option 1 are some 360 m more than that associated with option 2. This compares with an 80m extension of a roadway for option 2. The evidence on Mr. Kieran Thornton points out that while the amount of pipeline associated with option 1 may be more extensive, the laying of pipeline is considerably less expensive than constructing a roadway. Mr Thornton indicated that the laying of a pipeline would involve excavating a trench with a digger across a field and back filling after laying the pipe. Whereas the construction of a roadway would involve acquiring the land and carrying out much more extensive

construction works than merely digging a trench. For this reason, the option 2 was not considered to be significantly advantageous over option 1.

With regard to the saleability of the objector's house, this is a material consideration, particularly as it was indicated during the proceedings of the oral hearing that the objector intended to put the house up sale in the immediate future. It is acknowledged that WWTP's, if inappropriately located, could affect the price of property. However, in order to have a material impact, it must in my view be demonstrated that the development would adversely impact in a material manner on the amenities of property in the vicinity. I am satisfied that the lands sought to facilitate the wastewater treatment plant are located an appropriate distance from the objector's dwelling house so as to ensure that the objector's amenities are not impacted upon in any material manner. I have argued above that the wastewater treatment plant is located a sufficient distance from the objector's house to ensure that it complies with the 50 meter buffer zone and at the site for the wastewater treatment plant will not have a significant or material impact on the visual amenities currently enjoyed at the objectors dwelling. The WWTP plant will be relatively small for the purposes of serving the Castletownshend agglomeration and therefore is unlikely to give rises to significant odour or noise issues. Mitigation measures can be put in place to address these potential issues during any future planning application stage.

The Board should also consider that any alternative location or the wastewater treatment plant could potentially result in adverse impacts on the amenity of other residential receptors in the village. It is imperative that the Board in confirming any CPO, assess the proposal in the context of the overall exigencies of the common good and not only the impact on the objectors dwelling.

Finally, any potential or theoretical impact on property values of properties in the vicinity of the site where the wastewater treatment plant is to be located, must be balanced against the benefits which would be derived from delivering such infrastructure in terms of water quality etc. I reiterate that it is a legal requirement that wastewater be treated to a satisfactory standard in order to comply with the provisions of the WFD and the Urban Wastewater Treatment Regulations. Thus, any adverse impact on an amenity or property values must be assessed against the overarching exigencies of the common good and the proper planning and

sustainable development of the area arising from the provision of a wastewater treatment plant to serve the village. The amenity impact arising from traffic using the objector's private roadway will be assessed under a separate heading below.

In conclusion therefore in respect of alternative sites investigated, I would consider that there is very little between the two sites considered in terms of advantages v's disadvantages. On the whole it would appear that both sites could be considered suitable to accommodate a wastewater treatment plant. While the objector argues that site number 2 is clearly and unambiguously more preferable, it is not in my considered opinion, inherently obvious that one site has fundamental and clear advantages over the other site. This is an important consideration in deciding on the principle of alternatives. I specifically refer at the High Court case in *Ballyedmond v. Commission for Energy Regulation* [2006] I.E.H.C. 206 where Clarke J. noted;

"The specific issue which the Commission has to decide is not whether an alternative may be preferable but whether the acquisitions sought should be made. Clearly if there were a demonstrably better route with significant advantages and/or significantly less adverse effects on a range of material factors then, at a certain point, it might be said that a body such as the Commission was acting irrationally or disproportionately in making an acquisition order for property along a route which was demonstrably less favorable. The question which the Commission had to ask itself was not, therefore, a narrow one of deciding whether A was necessarily better than route B, but rather whether it was inappropriate to make acquisition orders in respect of Route A because of any demonstrated superiority of an alternative".

I consider that neither option is demonstrably superior than the other, while each option has some slight advantages other the other, I cannot come to the conclusion that it is inappropriate to pursue the acquisition of land on the basis that option 1 is clearly and demonstrably a poorer alternative than option 2 in terms of meeting the exigencies of the common good in this instance.

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 just less than 0.58 ha. This is broadly in line with site areas to be acquired in similar Irish Water applications for primary treatment of wastewater⁵. I further note that the land-take to be acquired in the case of the current CPO for the WWTP is very similar to that sought under the Part 8 scheme for a treatment plant initiated by Cork Co Council and which was approved in 2008. 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 0.0131 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 construction 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 Mr. O'Driscoll relates to the fact that the roadway serving the site for the proposed wastewater treatment plant is a private roadway and the structural integrity of the roadway is not suitable to accommodate either construction or operational traffic associated with the wastewater treatment plant.

8.10. I have visited the site in question and have inspected the roadway. On the basis of a preliminary inspection, I do not consider that the roadway is incapable of

⁵ I refer to the current CPO applications for Aghada – Rostellen-Whitegate Co Cork (Reg Ref 303877) which was confirmed by the Board and the proposed CPO of lands by Irish Water at Inchigeelagh Co. Cork (Reg. Ref 304080) which has yet to be determined.

accommodating either construction or operational traffic associated with the proposed WWTP. While the road is relatively narrow, it incorporates good forward sightlines, and there are places along the carriageway where vehicles can pull-in when required to do so. The roadway in question appears to me to be in relatively good structural condition. I refer the Board to the photographs attached to this report which indicates the condition of the road at present (photo's 6, 7, 8, 10, & 13). There is an absence of potholes or structural defects on the surface of the roadway. I found no evidence of any cracks or large scale erosion at the edge of the metalled carriageway. A superficial visual analysis would indicate that the road is in relatively good condition.

- 8.11. I fully accept that regular and frequent HGV movements could adversely impact on the structural integrity of the roadway. Irish water has however stated that the road will be monitored during the construction phase and that the construction works will be the subject of a pre-construction survey. Inspection works will also take place throughout the construction phase of the project and a post-construction survey will also be undertaken. The construction phase is anticipated to last in total of 9 months; only 4 of which will involve intense HGV movements. Any damage to the roadway will be repaired by the appointed contractor to ensure that it is restored to its current structural condition. Irish water has indicated but they will enter into a maintenance agreement for the future upkeep of the road.
- 8.12. With regard to the operational phase, it is not anticipated that the traffic generated would be of such a volume to impact on the structural integrity of the roadway. Irish Water has indicated that trip generation arising from the WWTP would be modest, amounting to 1 or 2 trips per day involving a private car or small van. In terms of HGV movements, it is anticipated that sludge removal from the WWTP will occur once monthly, and removal of screenings would occur on a fortnightly basis. The Board will note that the road currently accommodates 8 to 10 houses along its alignment. The additional traffic generated by the proposed wastewater treatment plant during operational phase will not result in a significant or a material intensification of the use of the road in my considered opinion.
- 8.13. The modest increases traffic associated with the wastewater treatment plant typically during the operational phase will not result in any significant ongoing disturbance to residences living along the roadway. I do accept that there is potential for increased

disturbances for residence during the construction phase, particularly in terms of noise, however this impact will be temporary and will mainly be confined to the four-month period in which intensive HGV movements will take place. Any adverse temporary impact on residential amenity and disturbance must be balanced against the overall benefits which will be derived from the provision of a new WWTP to serve that village of Castletownshend.

- 8.14. While the objector would prefer that the applicant would not have a right of way over the roadway in question, I note that the access road is the only access to the preferred site and indeed, is the only access available to site 2 which was considered as part of the alternatives. As such it is entirely appropriate that a right of way be sought along this access road as opposed to building a new separate roadway to exclusively serve the WWTP. Irish water has also indicated that as a matter of course, it will provide compensation in relation to the acquisition of the right of way.
- 8.15. If the Board decides to confirm the CPO, the objector requests that the existing 8 properties along the road in question would be connected to the wastewater treatment plant. Irish Water has indicated that all requests for new connections need to follow Irish Waters 'new connections procedure'. It is assumed that any such application would be decided on its merits.
- 8.16. Finally, a question arose during the proceedings of the oral hearing as to whether or not Irish Water will be the only party that will have a right of way over the roadway in question. Irish water maintained that under any agreement reached, it would be the sole third party which would have legal rights over the roadway in question. The objector disputed this assertion and claimed that any additional grants of a right of way would convey rights to all third parties and not just Irish Water. This, it was argued, would have significant and adverse ramifications on the objector's legal title associated with the roadway. This legal issue is not a matter or An Bord Pleanála to determine in my opinion, but rather it is a matter for the Courts.

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 improving water quality in the Castle Haven Bay area and would be consistent with the policies and objectives of both strategic and statutory planning policy.

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 West Cork 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 7th Day of November 2019 as follows:

- Plot number 08 shall be realigned with an increase in area of 0.0611 hectares in area
- Plot number 24 shall be realigned with a decrease of 0.1152 hectares in area.
- Plot number 6 shall be realigned with a decrease of 0.0197 hectares in area.
- Plot number 07 shall be realigned with an increase of 0.0636 hectares in area.
- Plot number 25 shall be realigned with a decrease of 0.0455 hectares in area.
- Plot number 43 comprising of a newly added temporary working area with an area of 0.562 hectares along the southern boundary of plot number 9 shall be added to the schedule.

Paul Caprani

Senior Planning Inspector

13th November 2019

Appendix 1

Proceedings of Oral Hearing

An oral hearing was held in the West Cork Hotel, Skibbereen on the 7th November 2019. The following people were in attendance:

Appearing on behalf of Irish Water

- Alan Dodd, BL.
- Padraic Murray, Solicitor.

- Kieran Thornton.
- Seamus Glynn.
- Majella Keating.
- John Finnegan.
- Tracey Horan.

Appearing on behalf of the Objector

- Elizabeth O’Connell, Senior Counsel.
- Maeve McCarthy.
- Donal O’Donovan.
- Noel O’Driscoll (Senior).
- Noel O’Driscoll (Junior).

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. Dodd on behalf of Irish Water set out details of the outline legal submission and made specific reference to substantive law in relation to the statutory acquisition powers of Irish Water making reference to Section 31 of the Water Services Act 2007 (as amended), Section 32 which sets out the general functions of the Water Services Authority and Section 93 which contains the provisions for the general acquisition of land in order for Irish Water to perform any of its functions.

Mr. Dodd 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 Castletownshend Sewage Scheme Project. Mr. Glynn set out the existing situation and the need for the scheme. It notes that the existing sewage infrastructure in Castletownshend comprises of a combined wastewater/stormwater/groundwater culvert running along Main Street and discharging untreated wastewater into Castle Haven Bay through an outfall located next to the slipway to the east of the village. It is noted that a number of houses on

St. Barrahanes Avenue discharge into the septic tank which in turn discharges into the culvert. It is also noted that the existing wastewater drainage arrangements have been the subject of a wastewater discharge licence which was originally granted in 2011 and amended in 2014. A requirement of the licence is that by the 22nd December, 2015 Irish Water will provide treatment for primary discharge in accordance with the requirements of the Urban Wastewater Treatment Directive. 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 marine 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.

Finally, Mr. Glynn's submission set out details of the proposed modifications submitted at the oral hearing which relate to one landowner only and it is stated that the modifications were made with the express agreement and consent of the affected landowner. Details of the proposed modifications are set out on page 8 of Mr. Glynn's submission. In conclusion, Mr. Glynn states that the project is necessary to end the discharge of untreated wastewater into Castle Haven Bay 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 two options were considered, the preferred option and a separate option approximately 200 metres south of the

preferred option within the same field. The two 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 44 of the submission. Option 1 scored a total of 24/25 whereas Option 2 scored a total of 23/25.

The submission notes that the only existing access to both sites is along a private roadway used to access private houses. It is proposed to acquire a right of way for this purpose.

Finally, the submission addresses concerns outlined in the objection by Mr. Noel O'Driscoll. In relation to the condition of the roadway it is stated that there was no visible evidence that the roadway is unsuitable for the construction or operation of the wastewater treatment plant. The road will be monitored during the construction stage and will be the subject of pre-construction and post-construction surveys as well as detailed monitoring during the construction phase. During the operational phase it is stated that traffic on the roadway will be relatively light comprising of daily access by a small van, fortnightly access for screening removal by a waste truck and once a month access for a sludge tanker in order to remove sludge from the plant.

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. It is noted that a sewage scheme for Castletownshend was approved by way of a Part 8 procedure by Cork County Council on 23rd June, 2008. It is also noted that in the same year Cork County Council granted planning permission for 45 dwellings adjacent to the existing residential development to the north-west of the village and referred to as The Lawns.

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. The evidence goes on to outline the land use zoning objectives contained in the development plan and notes that there are no specific land use zoning objectives within the Castletownshend development boundary other than those with the 'general development zoning objective'. The submission goes on to set out details in relation to policies and objectives of protected structures and Architectural Conservation Areas.

The submission goes on to detail specific objectives contained in the West Cork 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. It is noted that the proposed development would be provided within the development boundary of Castletownshend. Reference is made to the Local Plan objectives including the provision of 70 additional dwelling units within the plan period and Objective U-01 which relates to the provision of a wastewater treatment plant.

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 3 provides details of Cork County Council Part 8 approval for 2008.

Statement of Evidence by Mr. John Finnegan

The statement of evidence from Mr. John Finnegan 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 Castletownshend 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 30th May, 2018. The Castletownshend Sewage Scheme Engineer's Report was signed on 16th May, 2019 and the Managing Director's Order was signed on the 23rd May, 2019. The CPO documents were signed on 30th May, 2019 and the Compulsory Purchase Order "Pack" was issued to landowners and occupiers of land on 4th June, 2019. Details of the CPO scheme was published in the Southern Star on 8th June, 2019 and the application was submitted to An Bord Pleanála on 18th June, 2019. It was noted that one objection was received on 17th July, 2019 by Denis Noel O'Driscoll.

Statement of Evidence of Ms Tracey Horan

Finally, Ms. Tracey submitted details of the consultation which is undertaken with the various landowners including precise details of landowner engagement with Mr. Noel O'Driscoll and his agents. 22 separate contacts were made with the landowners via letter, email and telephone calls. It is concluded that all reasonable endeavours were made to engage with the landowner and/or their agents during the CPO process.

This formally concluded the submission of Irish Water at the oral hearing.

Submission on behalf of the Objector

Statement of Ms Elizabeth O Connell

Ms. Elizabeth O'Connell, Senior Counsel made the introductory statement on behalf of the objector at the oral hearing.⁶ The submission argued that the proposed CPO did not adequately evaluate alternative sites. The methodology employed in

⁶ The Board will note no written submission was presented by Ms. O'Connell at the hearing.

evaluating alternatives did not pay due consideration or give due weight to the issue of visual amenity. It is argued that the preferred option would have a profound impact on the objector's visual amenity when compared to Option 2. Ms. O'Connell requested the Board to note that the objector is in the process of putting his house up for sale and a key selling point in relation to the objector's house was the desirable views across Castletownshend and Castle Haven Bay. Ms. O'Connell argued that the preferred site for the wastewater treatment plant would profoundly impact on the views in question, particularly from the first-floor balcony and this would have a significant and adverse impact on the valuation of the property in question.

Ms. O'Connell indicated that there was a perfectly viable option to put the wastewater treatment plant in the south-western portion of the field in closer proximity to 'The Lawn' residential estate and St. Barrahanes Avenue and this option was not adequately assessed in the alternatives studied. It is suggested that the preferred option did not fully take into consideration issues such as maintenance costs, visual amenity and proximity to dwellings. It is suggested that if these factors were taken into consideration, it would be patently obvious that Site No. 2 to the south would constitute the preferred option.

With regard to the roadway, it is noted that the private road proposed to service the wastewater treatment plant site is a mere 3.5 metres wide and as such is totally unsuitable to accommodate HGV traffic to and from the site in question. The intensification of traffic on the roadway as a result of the wastewater treatment plant would also have a significant effect on property prices. As the wastewater treatment plant expands under Phase 2, this will result in greater volumes of traffic including HGV movements along the road and this in turn will have a greater impact on the amenity of residents living along the road.

It is stated that the road was built solely to facilitate private houses. The objector does not want an upgrade of the road in question and it is imperative that the road not be taken in charge.

When asked by the planning inspector whether or not bin lorries currently use the private road in question, Mr. O'Driscoll (objector) indicated that to the best of his knowledge bin lorries do not serve the dwellings at the eastern end of the road. It is

acknowledged that bin lorries may serve some of the dwellings at the western end of the road. Mr. O'Driscoll indicated however that it was unusual to have HGV trucks accessing the private roadway.

Submission by Donal O'Donovan

Mr. Donal O'Donovan submitted a report to the Board which primarily dealt with engineering considerations associated with the proposed CPO.

The submission sets out the background to the site selection and assessment of options report and states that there is no difference in real terms between Option 1 and Option 2. The report notes that both options are located on agricultural land and that Option 2 had the additional cost of 80 metres of roadway. However, this is not reflected in the marking system as both options had a mark of 5. It is noted in the environmental section appraisal, that Option 1 only received a mark of 4 whereas Option 2 received a mark of 5. Hence, it appears that Option 2 would be the more appropriate in terms of the environment.

It is stated that the imposition of the private roadway for the construction of the wastewater treatment plant is both intrusive and disruptive. The proposal will involve significant traffic flows and the flow of many HGV's. The road structure is not constructed for such volumes or loadings. The constant use of the roadway would affect the residents and upset their free use of the road and would result in huge interruption.

The construction stage would also involve noise interference and dust migration and this would be intrusive and would be an unacceptable imposition on all residents.

In conclusion it is stated that the road is not constructed to facilitate the uses intended by Irish Water both during construction and thereafter. The construction of the wastewater treatment plant would not be acceptable in visual and proximity terms.

Submission by Maeve McCarthy Auctioneer

This submission comments on the saleability of the 8 properties along the private access road at Glenard, Castletownshend if the plans for the wastewater treatment plant were to proceed. It is stated that there is absolutely no doubt that the wastewater treatment plant in its proposed location and the use of the proposed right

of way to provide access to the wastewater treatment plant would have a detrimental effect on the marketability of the properties in question. Any prospective buyer of one of these houses would be most unhappy to be informed that a wastewater treatment plant is to be located within 50 metres of the property. The traffic to service the wastewater treatment plant will also impact on property. Based on Ms. McCarthy's experience it is stated that the properties in question will become "virtually unsaleable". It is suggested that once prospective buyers learn about the wastewater treatment plant and the proposed right of way they would lose interest in the properties in question very quickly. Thus, it would be difficult in the current market for these properties to secure a purchaser. At present the properties in question are in a very desirable location in the much 'sought-after' village of Castletownshend. While it is difficult to estimate the fall in value of the properties, it is considered that the value of the property would be reduced substantially.

Finally, the submission asks the planning inspector who is presiding over the hearing whether or not he would purchase one of the properties knowing that a wastewater treatment plant was to be constructed on the site in question. In response the planning inspector stated that it would be inappropriate for him to answer such a question.

Questions and Cross-Examinations

- Ms. O'Connell SC put a number of questions to Irish Water with regard to the two options presented in the route selection and alternatives report submitted by Irish Water and in particular the extent to which Irish Water took into consideration views from the objector's property. Irish Water indicated that all aspects were taken into consideration in evaluating the route options and sites in question. Ms. O'Connell suggested that Site No. 2 was the lesser of the two burdens particularly from the objector's point of view.
- Questions were asked in relation to the sustainability of constructing a pipeline versus a roadway. Ms. O'Connell suggested that the extensive additional piping that would be required to service Option 1 was a real and significant consideration in evaluating the options particularly when compared with the requirement under Option 2 to merely construct an additional 80 metres of roadway. In response Mr. Thornton on behalf of Irish Water argued

that the cost in constructing a roadway was significantly greater than digging a trench in order to accommodate a pipeline and wayleave and for this reason Option 2 was less desirable.

- Ms. O’Connell suggested that a brownfield site near St. Barrahanes Avenue would be a much more appropriate site and would certainly address Mr. O’Driscoll’s concerns. Irish Water indicated that locating a wastewater treatment plant in such close proximity to St. Barrahanes Avenue would present real and significant problems for the residents of St. Barrahanes.
- When asked questions in relation to the archaeological impact arising from the two options, Mr. Thornton on behalf of Irish Water indicated that preliminary investigations carried out subsequent to the CPO application being lodged with An Bord Pleanála suggested that Option 1 may be more preferable in terms of having a lesser archaeological impact than Option 2. Ms. O’Connell on behalf of the objector requested that the Board dismiss this information as it did not form part of the initial findings in the assessment undertaken. Mr. Dodd on behalf of Irish Water stated that the initial route selection report was predicated upon the initial archaeological findings under which Option 1 was considered the most preferable option. Therefore, any subsequent archaeological investigations did not inform the preferred option.
- Ms. O’Connell on behalf of the objector requested details in relation to the costings involved in removing the invasive species which would be required under Option 1 (Himalayan Knotweed and Rhododendrons). Irish Water indicated that costings were not available to the Board. Ms. O’Connell that such costings are a key factor in determining which option was most appropriate and Irish Water had not furnished either the objector or the Board with details of the costings.
- Finally, a number of questions were put to Irish Water in respect of the right of way and the objector contended that any third-party rights in respect of the private road would have significant implications for the objector’s property rights particularly in relation to the saleability of the properties in question. Irish Water disputed this assertion stating that any third-party rights over the right of way would be confined to Irish Water only and not other third parties.

This was strenuously denied by the objector who reiterated concerns that any additional rights of way conferred to Irish Water would also be available to other third parties.

Closing Submissions

The closing submission on behalf of Irish Water was made by Mr. Dodd. It is stated that the assessment of alternatives was not merely predicated on costings but took other factors into account. It is argued that Irish Water have met the legal tests with regard to the CPO and that the provision of a wastewater treatment plant at this location is in accordance with the exigencies of the common good. Mr. Dodd argued that with regard to alternatives, that the Board must merely be satisfied that one option is not demonstrably superior than the preferred option. It is argued in this instance that Option 2 is not demonstrably superior to the preferred option and this, in itself, is sufficient to enable the Board to confirm the CPO.

The closing submission on behalf of the objector by Ms. O'Connell SC reiterated that it was the objector's opinion that Option 2 constituted the superior option and that details in relation to the costings have not been provided by Irish Water. Finally, it is stated that the objector in this instance "could live with" a wastewater treatment plant being located at Site No. 2 but that the provision of a wastewater treatment plant at the preferred site is not acceptable to the objector.

This concluded the submissions at the oral hearing the Inspector formally closed the hearing at 1.40 p.m.