



An
Bord
Pleanála

Inspector's Report ABP-308052-20.

Application	Application for Compulsory Purchase Order entitled Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade) Order, 2020.
Location	Kilcarragh and Ballybreen townlands, Kilfenora, Co. Clare
Applicant	Irish Water.
Local Authority	Clare County Council.
Objectors	<ol style="list-style-type: none">1. Michael King2. John Howard.
Date of Site Inspection	13 November 2020.
Inspector	Mairead Kenny.

Contents

1.0 Overview.....	4
2.0 Purpose of CPO.....	4
3.0 Application Submission.....	5
3.1. Documentation	5
3.2. Format of CPO and Schedule	5
4.0 Written Objections	6
4.1. Michael King.....	6
4.2. John Howard.....	6
5.0 Description of lands	7
6.0 Oral hearing.....	8
6.2. Irish Water submissions	8
6.3. Objectors' submissions	9
6.4. Discussion.....	11
6.5. Closing statements.....	13
7.0 Planning History.....	14
8.0 Policy Context.....	15
8.1. National Planning Framework	15
8.2. National Development Plan.....	15
8.3. Water Services Policy Statement 2018-2025.....	15
8.4. Regional Spatial and Economic Strategy (RSES) for the Southern region .	15
8.5. Clare County Development Plan 2017-2023.....	16
8.6. West Clare Municipal District Plan	17
9.0 Assessment.....	17
9.1. Overview	17

9.2.	Community need	17
9.3.	Suitability of lands	19
9.4.	Alternatives	22
9.5.	Planning policy	23
9.6.	Other matters raised by objectors	24
10.0	Conclusions and Recommendation.....	24
11.0	Reasons and Considerations	25

1.0 Overview

This report relates to the application by Irish Water for confirmation by the Board of the Compulsory Purchase Order entitled Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade) Order, 2020.

The Kilfenora Wastewater Treatment Plant Upgrade was the subject of a planning appeal under reference ABP – 305756 – 19. Permission was granted on 6 March 2020.

There is a live appeal with the Board under ABP-308904-20 for a house for Mr Anthony King – this overlaps with the site of the permitted Kilfenora Wastewater Treatment Plant Upgrade.

An oral hearing (virtual) was held on 23rd February 2021.

2.0 Purpose of CPO

The purpose of the CPO is to facilitate the development of a new wastewater treatment plant and percolation area known as the Kilfenora Wastewater Treatment Plant Upgrade project.

The Kilfenora Wastewater Treatment Plant Upgrade is planned in order to satisfy current and medium to long-term wastewater treatment capacity demands in the village of Kilfenora. The project will provide for cessation of the direct discharge to groundwater and thus comply with the requirements of the EPA under the conditions of the Certification of Authorisation (CoA) for the Kilfenora agglomeration A0079–01.

The Kilfenora Wastewater Treatment Plant Upgrade project comprises:

- Demolition of the existing WwTP and construction of a new 330 PE WwTP of capacity 330 PE including UV disinfection system and new stormwater storage tank of capacity 350 m³.
- Percolation area/sand filter for indirect discharge to groundwater including ancillary infrastructure (lifting pump and control kiosk).

A number of existing infrastructure items will be retained namely the existing administration building and storm tank at the WwTP site and the existing rising main

and gravity main pipeline currently discharging treated effluent from the WwTP to Ballybreen swallow hole.

In addition, as described in the CPO application IW proposes to repair/replace approximately 400 m of the combined sewer network in the village.

3.0 Application Submission

3.1. Documentation

The documents presented in support of the application are:

- Cover letter
- The Managing Director's Order
- Irish Water Compulsory Purchase Order map executed under seal by the Managing Director and Company Secretary.
- Report of Michael Tinsley, chartered engineer confirming that the proposed work is in conformity with the planning policy objectives and that the land is suitable and necessary for the purpose.
- Public notice from the Clare Champion dated Friday, 14 August 2020.
- Sample copy of notices sent to landowners.
- Certificate of service of CPO notices.
- CPO map IW/10001393/CPO/01.

3.2. Format of CPO and Schedule

If confirmed the CPO will authorise Irish Water to compulsorily acquire for the purposes of the Water Services Act and the Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade) Order, 2020:

Permanently, the lands described in Part 1 of the Schedule the lands which are shown shaded in grey on the drawing marked "Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade) Order, 2020" and numbered IW/10001393/CPO/01 submitted.

Permanently, the wayleaves described in Sub-Part A of Part 2 of the Schedule, over the lands described in Sub-Part B of Part 2 of the Schedule the wayleaves which are coloured yellow on the drawing marked “Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade) Order, 2020” and numbered IW/10001393/CPO/01 submitted.

Temporarily the rights described in Sub-Part A of Part 4 of the Schedule over the lands described in Sub-Part B of Part 4 of the Schedule hereto which lands are shown coloured green on the drawing marked “Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade) Order, 2020” and numbered IW/10001393/CPO/01 submitted.

4.0 **Written Objections**

4.1. **Michael King**

Mr King owner of Plots 001, 002 and 003 states as follows:

- An oral hearing is required in order to allow me to make my case.
- The notification of the process was flawed.
- It impacts on the rights of third parties and family members.
- It impacts on my obligations to family members.

4.2. **John Howard**

Mr Howard owner of Plots 004, 005, 006, 007 and 008 states as follows:

- Strong objection to the proposed CPO.
- Request an oral hearing to protect my property rights.
- Reasons for objection relates to negative impact on proposals and plans for this zoned land.
- Also concerns regarding pollution and damage to the environment.
- Concerns relating to rights of family members.

5.0 Description of lands

- 5.1. Kilfenora is a small village located in a remote part of County Clare on the southern side of the Burren national park and about 8 km to the north-east of Ennistymon. The village location and amenities result in tourism being an important industry.
- 5.2. The subject lands may be considered in three areas:
- site of existing wastewater treatment plant
 - rising main and gravity main pipeline
 - site of proposed percolation area.
- 5.3. The site of the existing wastewater treatment plant, which is to be redeveloped is at Kilcarragh, close to the centre of the village. There are karst features in the vicinity of the WwTP and flooding occurs to the north and west. Three of the plots subject of this CPO are in the immediate vicinity namely Plots 006, 007 and 008. These are located to the south and east of the WwTP site. Plot 006 is part of lands over which a permanent way leave is sought to provide permanent rights of access for emergency purposes across the existing rising main and gravity main pipeline, which is to be retained. Plots 007 and 008 are required for temporary working associated with the construction of the new WwTP.
- 5.4. Three additional plots of land are relevant to the application for acquisition of permanent way leave along the rising main and gravity main pipeline namely Plots 002, 004 and 005. The rising main and gravity main pipeline crosses agricultural land between the site of the WwTP and the existing swallow hole to which it presently discharges. The pipeline route follows a south-west/north-eastly direction and the distance between the site of the WwTP and the swallow hole is in the region of 600m. No construction works are proposed along the existing pipework at Plot 002, which will be retained and reused for the proposed development apart from the installation of a short section of new pipework to collect the existing pipework to the proposed percolation area. No works are proposed along Plots 004 and 005. The structural integrity of the existing rising main and gravity main pipework has been confirmed in terms of suitability for continued use and that there is no need for upgrade works.

5.5. Plot 001 and the adjacent lands at Plot 003 relate to the construction and operation of the proposed percolation area. Permanent acquisition of lands for the percolation area is required in relation to Plot 001 and a temporary working area at Plot 003.

6.0 Oral hearing

6.1. An oral hearing was held remotely on 23rd February 2021. A recording of the hearing was made and is on file.

6.2. Irish Water submissions

- 6.2.1. **Mr Keaney** led the Irish Water team and also presented legal evidence. The evidence was as set out in the written documentation provided in advance of the hearing.
- 6.2.2. **Esther White** described the existing wastewater treatment system, the need for the scheme, the proposed development, some details of the planning history case and alternatives considered. The scheme is stated to comply with planning policy and financial provision has been made for the scheme in Irish Water's Capital Investment Plan 2020 – 2024 and a design build contractor engaged. The lands sought are necessary and suitable to fulfil a community need and the proposed work supports planning policy. A planning application for the works has been granted on the lands to be acquired.
- 6.2.3. **Mr das Dores** referred to the project background and objectives, the proposed works, and the detail of the CPO. As part of the design review report in 2016 engineering alternatives including alternatives for discharging treated effluent to surface water bodies or existing sewerage schemes were considered. The site selection for the percolation area and the need for temporary working areas close to the WwTP were justified. Measures to protect lands and activities during construction and reinstatement measures are described. All reasonable alternatives have been fully considered and the lands and wayleaves are necessary for the upgrade and are suitable for the purpose for which they are required. The acquisition of permanent land and wayleaves and temporary working areas in the manner identified is proportionate to the interests of the common good served by the project.

- 6.2.4. **Ms McGee** planning consultant provided a summary of relevant policies. The proposed development is in accordance with the NPF including objectives relating to supporting the proportionate growth of development in rural towns and ensuring the efficient and sustainable use and development of water resources and water services infrastructure. Regional policy objectives RPO 211 and RPO 214 in relation to aligning the supply of wastewater treatment facilities with settlement strategy and elimination of untreated discharges would be fulfilled. The recent approval decision by the Board and the reasons and considerations on the conclusion that the development would be in accordance with the proper planning and sustainable development of the area are relevant, as is condition 5. The application by Mr Anthony King on the site of the permitted percolation area was referenced.
- 6.2.5. The upgraded scheme will serve the existing population and can service a rise in population in the village. The works for which the CPO is sought accords with national and regional policy and the development plan for the area.
- 6.2.6. **Mr Collins** provided a summary of the CPO process and confirmed that all of the relevant proofs have been met by Irish water.
- 6.2.7. **Ms Horan** described the engagement with landowners. All reasonable endeavours were made in this respect. Agreement was not reached.
- 6.2.8. **Mr Keaney** stated that the need and justification for the proposed development has been adequately established, that the CPO was necessary and that it significantly advances the common good and complies with relevant policies and objectives. The purpose for which the interest in lands is being acquired is lawful and follows from a decision of the Board to permit the development for which the acquisition is sought. The CPO is proportionate to the legitimate aim being pursued.

6.3. **Objectors' submissions**

- 6.3.1. Mr Duffy a chartered civil engineer represented Mr King and Mr Howard.
- 6.3.2. **Mr Duffy** noted that many people including Mr King will not benefit from the system. He queried the selected 330 PE. He raised this in the context of what he stated was a development plan policy that required Irish Water to install additional capacity to cater for growth. He also referred to the 2012 Ryan Hanley report. The PE quadruples in the summer and the same PE as 50 years ago is not appropriate.

- 6.3.3. The upgrade scheme is long overdue. There is a fundamental objection to the pipeline and the witnesses' statements did not address the alternatives. If it was a *de novo* application, it would be run through public lands.
- 6.3.4. In principle he queried whether there were any other cases whereby municipal wastewater treatment involved discharge to a large percolation area. He objected to the structure noting that it would fail on the basis of the hydraulic loading. In his opinion the percolation area will wash out resulting in a direct discharge to groundwater.
- 6.3.5. Mr Duffy referred to the undertaking last week by contractors of further site suitability tests at the site of the percolation area and stated that three of these tests had failed and that the bedrock was encountered at 1.1 m and 1.6 m. The Board should require further information as there is now a question regarding the need for these additional tests and why it is not deemed possible to rely on the original. The Board should avail of the expertise of the EPA in addition. The plant and pipework are useless unless certified by the EPA so they should be part of the process. In the past the EPA had raised issues regarding a proposed percolation area planned by the local authority, but the information was not provided. We ask the Board to suspend the decision of the CPO until it can be convinced that the project will stand up.
- 6.3.6. **Mr Michael King** stated that the lands to be acquired for the proposed percolation area had been identified by his father as the site for Mr Anthony King, who now wished to return home and had sought planning permission for a house.
- 6.3.7. Mr King raised the question of flooding of the percolation area site, which he stated was happening on that day and to which he turned his camera. He described the site as a swamp. If the site has been deemed not suitable for a proposed dwelling house for his brother Mr Anthony King how can it be suitable for the village's percolation area? The proposed percolation area would cause pollution of streams and groundwater. The wayleave pipe will split the farm.
- 6.3.8. **Mr John Howard** stated that the future development of land for him and his children will be impacted by the pipe. The pipe was put in place in 1983 but this scheme was an opportunity to have it removed onto the public road. Boreholes taken were in the vicinity of the existing pipe only. Other alternatives including alternative sites for the percolation area, pumping towards the sea or disposal to another wastewater

treatment plant were available. The proposal is upsetting for him as a farmer and custodian of the land. Regarding the temporary use of lands adjacent the existing wastewater treatment plant site he stated that storm drainage from the village flows onto the field which is intended for the siltation system and that the field will be flooded and unsuitable.

6.4. Discussion

- 6.4.1. I highlight below the significant items raised during discussion (between the hours 1130 and 1335). I refer the Board to the record for more detail on any particular item.
- 6.4.2. The **scope of the Board** in determining CPO's was addressed during the hearing in objection to some of Mr Duffy's comments. Mr Keaney stated that the oral hearing is not an opportunity to revisit the planning consent. Mr Duffy noted that under section 220(1) the remit of the Board extended to consideration of environmental impacts.
- 6.4.3. Mr Duffy requested clarification regarding the **alternatives considered in relation to the pipeline**. Mr das Dores stated that the use of the existing pipework was considered appropriate once it was determined to be structurally sound and sufficient for reuse as it comprised existing infrastructure which was fit for purpose, avoided impacts on archaeological or other environmental impacts or additional financial cost. On this matter, Mr Keaney noted that a permanent way leave was what was required and not permanent acquisition of the lands.
- 6.4.4. Mr Duffy queried the **recent site investigations at the site of the percolation area**. Ms White stated that the contractor selected as part of a tender was pursuing the detailed design and it is as part of that that further site investigations were undertaken. The results of the tests undertaken last week are not known. The investigations would be considered to be normal practice. The work is being done by our contractor and their designer and the onus is on them to satisfy themselves in relation to any additional information required and they will report the findings to Irish Water in time and the findings will be used in the detailed design. This is in the context of developing the project in compliance with the permission and conditions.
- 6.4.5. Mr Duffy posed questions relating to the **selected PE for the plant**. In response Mr das Dores confirmed that the 2012 Ryan Hanley report had been reviewed. Mr Duffy noted that report had recommended a higher PE. Irish Water was requested by Mr

Duffy to comment as to whether or not it was a requirement under the current County Development Plan that the Council will engage with Irish Water to upgrade the Kilfenora plant and to provide additional capacity for future growth. He stated that the design constituted a **material contravention of the plan**. Ms McGee disagreed.

- 6.4.6. Mr Duffy asked whether Irish Water or its consultants have dealt with a **municipal plant for a conglomeration of this size by way of a percolation area**. Ms White noted that the circumstances were not common but not completely unique and there is at least one other project of that nature, which she believes is in Galway.
- 6.4.7. Mr Duffy noted that the documents sent to his clients as part of the CPO advised them to undertake independent advice. However, his clients have been effectively entrapped as at the time of issuing **consent for the planning application** they were not advised to get legal advice. Mr Keaney stated that the consent provided is of limited nature and the rights of the landowners under the CPO are not lessened nor the tests for the CPO which the Board has to assess are not changed. He added that Mr Duffy is attempting to mount an attack on the legality of the planning process. Mr Duffy stated that the process would have been more difficult and different for Irish Water. The CPO process is premature.
- 6.4.8. Mr Duffy queried the **lack of consideration of Mr Anthony King** in the process. Mr Keaney stated that the proper persons have been served and there has been no suggestion until today that Mr Anthony King has a proprietary interest in the land that would require him to be part of the CPO. Mr Duffy noted that it is common in farming families that a suitable site would be left in in this case that site was identified for Mr Anthony King. Mr Keaney noted that documentation served requested that other parties be brought to the attention of Irish Water.
- 6.4.9. I returned to objectors' claim that lands adjacent the WwTP which are to be acquired for the purposes of **temporary working areas are prone to flooding** due to discharge of surface water from the village. Mr Howard stated there is a piped storm drain which discharges to his lands where the temporary working area is proposed and while they may not be using that part of the field, the field does flood. In elaborating on the issue, he did note that it 'goes down as it is the Burren'. Mr Keaney stated that this information will be considered in the design of the site but the temporary working area has been identified on the basis of allowing flexibility for

construction in relation to what might actually exist on the site and any requirements can be catered for if necessary. Mr das Dores stated that we have no knowledge of the field being flooded and deemed the site suitable.

6.4.10. Mr King contributed that notwithstanding the surveys undertaken there is water on the field (my understanding is that he was referring to the percolation area site) and it will push water to the east towards my farmyard in which I have considerable investment. He reiterated his opinion regarding the **unsuitability of the percolation area site**. Mr das Dores reiterated his opinion that the site of the percolation area was suitable.

6.5. Closing statements

6.5.1. Mr Duffy for the objectors

6.5.2. Mr Duffy reiterated that **alternatives for the pipe have not been assessed**. He referred to photographs taken this week at the site of the percolation area. The continued use of the pipeline just because it was there does not address the fact that it will be there in perpetuity. If the application was being made today it would not be routed in that manner.

6.5.3. He noted the legal **requirements that alternatives** be considered before the CPO process is engaged and stated that this has not happened in relation to the pipework. It is unclear which planning permission applies to the site of the percolation area - either the decision that it is not suitable to take a PE of 8 or the decision that it is suitable for 330 PE.

6.5.4. He queried if Irish Water would **indemnify Mr King in relation to possible future flooding** as he depends on this land for his sheds which are adjacent the site. The proposed design PE will result in a requirement for more capacity in the future and queried if this would result in Mr King being required to get out of farming.

6.5.5. Regarding the scope of the CPO the **Board is clearly entitled to deal with the environmental matters** and in this regard, he referred to section 220(1) of the Act. It is open to the Board to make further enquiries and satisfy itself in relation to what is being proposed. We are on record as saying this will not work. Europe will be the ultimate arbitrator.

6.5.6. **Mr Keaney for Irish Water**

6.5.7. Mr Keaney noted the history of Mr Duffy's involvement in groundwater issues in the village. There seems to be a consensus that the upgrade of the **wastewater treatment system is needed**, and this was underscored in the planning application and appeal.

6.5.8. **Alternatives have been addressed** by Irish Water. Not every component of the development process has to be considered. Mr das Dores addressed how the careful consideration of alternatives was assessed and Site A was selected. Once that was done it was deemed that there was considerable benefit to using the existing pipe network which was fit for purpose and which does not result in any diminution of rights on the parts of the landowners which they currently enjoy. The area of the pipe is not being acquired compulsorily resulting in lands being divided.

6.5.9. Regarding **possible flooding** of the percolation area and damage to Mr King's property, Mr Keaney noted that the site has been selected as a site for a dwelling house. Mr King reserves all his rights in private law. This is not therefore a relevant consideration in relation to the Board's decision regarding acquisition of the land.

6.5.10. Regarding section 220 (1) and the discretion of the Board to consider environmental issues, it does not apply in the current context.

6.5.11. The **common good is well served** by the upgrade scheme and the confirmation of the CPO. There have been **no lacunae in relation to alternatives** and it is an **appropriate and proportionate** step to acquire permanent wayleave rather than permanent acquisition over the pipe. Easements contain indemnity provisions in respect of the landowners in the event of flooding and damage to property and is a safeguard. The Board is requested to uphold the CPO.

7.0 **Planning History**

7.1. Under ABP-305756-19 the decision of the planning authority to grant permission for the Kilfenora Wastewater Treatment Plant Upgrade was upheld by the Board.

7.2. Under 308904-20 the Board is presently considering a live appeal for a house for Mr Anthony King at lands at Ballybreen.

8.0 Policy Context

8.1. National Planning Framework

The NPF is the Government's strategic planning document. It sets out the spatial pattern which is considered to best accommodate and support change. The NPF will inform future strategic national investment, including in infrastructure.

Objectives of relevance relate to:

- Support the proportional growth of development in rural towns including through provision of services (NPO 18a).
- Develop a program for new homes in villages with public infrastructure agencies such as Irish Water to provide service sites (NPO 18b).
- Prioritise provision of new homes at locations that can support sustainable development and at appropriate scale of provision for the location (NPO 33).
- Ensure the sufficient and sustainable use and development of water resources and water services infrastructure in order to manage and conserve water resources in a manner that supports a healthy society, economic development requirements and a cleaner environment (NPO 63).

8.2. National Development Plan

National Strategic Objective 9 describes investment in waste management infrastructure as critical to our environment and economic well-being for a growing population and the achievement of economic and climate objectives.

8.3. Water Services Policy Statement 2018-2025

This was published by the Minister in May 2018 following the NPF and NDP. Priority objectives include bringing and maintaining wastewater services to acceptable international benchmarks.

8.4. Regional Spatial and Economic Strategy (RSES) for the Southern region

Amongst the relevant policies and statements are:

- RPO 211 which supports implementation of Irish Water investment plans to align the supply of wastewater treatment facilities with the settlement strategy and objectives.
- RPO 214 which supports the elimination of untreated discharges from settlements in the short term while planning strategically for the long term.

8.5. Clare County Development Plan 2017-2023

Goal VII sets out a vision for the county which supports strong economic growth and high quality of life for all residents through the provision of efficient and robust physical infrastructure whilst having regard to environmental responsibilities and complying with international and national legislation.

Objective CDP 18.6 is to ensure the proposals for development in areas where there is a risk of flooding based on the maps contained in Volume 2 have regard to the Flood Risk Management guidelines and any OPW flood assessment information and demonstrate appropriate mitigation can be put in place.

Objective CDP 18.8 relates to stormwater management, including to ensure that adequate stormwater infrastructure is in place to accommodate the planned level of growth.

Objective CDP 8.24A is to work closely with Irish Water to identify and facilitate the timely delivery of water services required to realise the development plan objectives.

Objective CDP 8.24C is to ensure that adequate water services will be available to service development prior to the granting of planning permission and require developers to consult with Irish Water regarding available capacity.

Objective CDP 8.27A is to advocate the provision by Irish Water of adequate wastewater services and capacity to accommodate the target population and employment potential of the county in accordance with statutory obligations.

Objective CDP 8.27E is to encourage and support the changeover from septic tank/private wastewater treatment plants to public collection networks whenever feasible subject to connection agreements with Irish Water.

Under the settlement hierarchy Kilfenora is designated a large village with a target population by 2023 of 363.

8.6. **West Clare Municipal District Plan**

The strategy for Kilfenora in line with the provisions of the Urban and Rural Settlement Strategy is to provide for small scale, well-designed residential, commercial and community developments. Irish Water is progressing a study to develop options for the required capacity upgrade untreated effluent discharge. Future development will be dependent on the upgrade of local infrastructure.

9.0 **Assessment**

9.1. **Overview**

I consider that the criteria which are relevant to the determination of the Board in this Compulsory Purchase Order case may be summarised as follows:

- that it serves a community need
- that the lands are suitable and proportionate
- that alternatives have been considered and that there is no alternative which is demonstrably preferable
- that the development to be served accords with or at least does not materially contravene the development plan
- that the acquisition is necessary.

9.2. **Community need**

- 9.2.1. The stated purpose of the Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade) is to facilitate construction of a new wastewater treatment plant and percolation area to serve Kilfenora. The deficiencies in the existing plant include that it dates to 1974, was designed for carbon removal only, does not provide for removal of nutrients or disinfection of final effluent prior to direct discharge to groundwater by way of a swallow hole 600m away. The plant in addition is hydraulically overloaded at times. The EPA directed cessation of direct discharge to groundwater by 31 December 2016 under the Certificate of Authorisation for the Kilfenora agglomeration (A0079 – 01).

- 9.2.2. The deficiencies in the existing system are highlighted not just by Irish Water but are also accepted by the objectors. Under local planning provisions the need for an upgrade is set out. Furthermore, the Board in granting planning permission accepted my conclusion that the proposal constitutes a positive development in terms of protection of the environment including groundwater resources. Subject to compliance with the terms of that permission I am satisfied that the Kilfenora upgrade project would comply with European and national legislation relating to water quality and environmental standards and would address the condition of the Certificate of Authorisation. These matters all establish a community need which would be satisfied by the Kilfenora Wastewater Treatment Upgrade.
- 9.2.3. Mr Duffy queried the principle of discharging the treated wastewater from the town to a percolation area to cater for a PE of 330 and, in effect, whether the subject proposal for which the CPO is intended would in fact meet a community need. He referred to a live appeal related to a proposed dwelling house for Mr King's brother at the site of the percolation area and the decision of the planning authority that it would not be suitable to cater for this development with a PE of 8. In that context he queried how it could be suitable to serve the village in effect.
- 9.2.4. I consider that the detail of the selected PE for the modular WwTP and its suitability is not a matter which is relevant to the CPO except insofar as it may be relevant to development plan policy. The overall approach including the suitability in principle of discharge to a percolation area is not suitable for consideration under a CPO. Both matters have properly been addressed under the planning application and appeal process and further consideration of the principle of the development in this respect is not a matter for the CPO.
- 9.2.5. Therefore, I consider that it is demonstrated that there is a need for the project involving the upgrade to the wastewater treatment plant and that the proposed development is suitable to meet that need.
- 9.2.6. I conclude that the CPO would allow Irish Water to progress the Kilfenora WwTP Upgrade project and would therefore serve a community need.

9.3. Suitability of lands

- 9.3.1. Regarding the suitability of the overall scheme to meet the community need which I consider is established, I consider that the Board's decision confirms that suitability. I refer below to the suitability of lands in terms of the individual plots.
- 9.3.2. **Plot 0001** is in the ownership of Mr Michael King and permanent acquisition is required including for the purposes of the percolation area and to allow for an extension from existing pipework to the percolation area.
- 9.3.3. The suitability of the selected percolation area site for this element of the development was a material consideration in the planning appeal for the overall scheme. That suitability was confirmed by the Board.
- 9.3.4. It is the objectors' position that there is a requirement for the Board to now consider ongoing site investigations at the site. It is stated that ground conditions differ from those described in the details submitted for the planning consent.
- 9.3.5. Irish Water has confirmed that ongoing investigations (of which they have to date no detailed results) are for the purposes of detailed design and are for the purposes of developing the project in compliance with the planning permission and conditions.
- 9.3.6. I submit that Mr Duffy's statements do not warrant further investigation in the context of the earlier assessment of the site and the conclusions of the Board under the planning appeal. If the conditions of the permission cannot be met, then the matter of a possible further planning application could be re-opened.
- 9.3.7. In relation to photographs which were taken in the days preceding the hearing are referenced, which are attached to Mr Duffy's oral hearing statement, the conditions shown are not conclusion of flooding of the site in my opinion. there is evidently some ponding on part of the site as would be likely to result from ground being trodden. On the lower lands there is some water lodged on the surface. This land appears to be well outside the lands relevant to the CPO.
- 9.3.8. This issue goes to the scope of the process. While it is Mr Duffy's position that under section 220(1) of the Act environmental matters should be considered, I agree with the response of Mr Keaney that this applies to local authority projects under section 175. In considering the suitability of the land I consider that this is to be done at a high level and not given the same detailed investigation of environmental effects

as would apply under a planning application. In my opinion it is established having regard in particular to the decision of the Board to grant permission for the overall Kilfenora Wastewater Treatment Upgrade scheme that the site of the percolation area is suitable.

- 9.3.9. I therefore reject the suggestion made on behalf of the objectors that the CPO process is premature or should be interrupted. I consider that the suitability of the lands known as Plot 001 which are required for the percolation area is supported by the planning history and there is no evidence which would warrant its further consideration.
- 9.3.10. Regarding the adjacent lands **Plot 003**, which will be used as a temporary working area this will be fenced and reinstated during works and are suitable for the purpose. The objectors' case included reference to the possible displacement of water flows by the percolation area structure and consequent flooding of these and other lands in the ownership of Mr King. Mr Keeney referenced indemnification and private rights. I am satisfied that, in the event of such occurrence, there would be an appropriate remedy and that the matter does not undermine the suitability of the lands for the purposes of the CPO. I consider that it is demonstrated that Plot 003 is suitable for the purposes for which it is to be acquired temporarily.
- 9.3.11. The percolation area and wastewater treatment plant sites are connected by the existing rising main and gravity main which connects the site of the wastewater treatment plant to the existing discharge at the swallow hole at Ballybreen. Permanent acquisition is sought over the pipeline **Plots 002, 004, 005 and 006**. The rising main and gravity main pipeline have been in place for decades and can be deemed suitable for the purpose. No evidence was presented to suggest that the lands have not served that purpose over the years.
- 9.3.12. **Plots 0007 and 0008** are located to the south and east of the wastewater treatment plant site and under the CPO these lands are to be used as a temporary working area. During the oral hearing Mr Duffy noted that it was likely that matters related to the CPO in relation to these plots could be resolved. The objection stood nevertheless and was not withdrawn. I refer the Board to the discussion on these plots during the hearing.

- 9.3.13. I have considered the issues relating to the potential for flooding of these temporary working areas. I note that this issue was not raised in any of the objections to the CPO or indeed in the consideration of the planning appeal. The PFRA which was submitted with the planning appeal did not identify any issues relating to flooding at this location and the planning authority did not highlight any concerns. Mr Duffy did not contribute any comment on this matter at the oral hearing, and I note that he is both a local resident as well as a practising engineer with long-standing knowledge of Kilfenora. In my opinion, the evidence does not support Mr Howard's concerns relating to flooding of Plots 007 and 008 and I note that he himself appear to infer that any such floods would be a very short duration and percolate quickly and secondly that not all of the relevant field is affected.
- 9.3.14. The subject plots were identified under the appeal case ABP-305756 including in the Outline CEMP as part of the environmental protection and control measures, which might be applied during the construction phase. On the planning application drawings two indicative areas are shown where it might be necessary to develop silty water containment features. There is ample room to provide such features and to allow for contractor flexibility with respect to a suitable location and for working around such features.
- 9.3.15. In my opinion it is conclusively demonstrated that Plots 007 and 008 are necessary as temporary working areas for the contractor and are suitable for the purposes outlined.
- 9.3.16. In relation to the proportionate nature of the rights to be acquired under the CPO and in particular the lands which are identified as Plots 001- 008, no issues were raised in relation to the extent of lands. I consider that all of the lands identified under the CPO are necessary for the purposes and there is no evidence of excess land take or unnecessary acquisition of lands or of rights over lands. I consider that the CPO overall may be considered to be proportionate.
- 9.3.17. I consider that all of the plots which are identified under the CPO are suitable for the stated purpose and that the CPO is proportionate.

9.4. Alternatives

- 9.4.1. The selected site for the percolation area was one of 4 no. sites which were subject of site investigations. Other alternatives for disposal of treated wastewater were also considered earlier on in the design stage. The alternatives with respect to how and where to discharge the treated wastewater, which is a significant element of the overall design of the scheme, were considered in detail.
- 9.4.2. As confirmed at the oral hearing by Irish Water the decision to retain and continue to use the existing rising main and gravity main pipeline was made once the percolation area site was assessed and having ascertained its integrity and suitability and the environmental and cost advantages over other alternatives.
- 9.4.3. No evidence was given to indicate that the objectors' preferred option of a pipeline route through public lands was considered. Mr Keaney offered an opinion that not all elements of a project require to be considered in terms of alternatives. I submit that this position is not unreasonable as the route of pipelines follows from the main infrastructure items to which it would connect.
- 9.4.4. I conclude that there were a number of alternatives considered for the project which is to be implemented by the CPO if confirmed.
- 9.4.5. The identification of the temporary working areas identified largely follows from their position relative to the main elements to be constructed and the suitability of the lands. Regarding Plots 007 and 008 and the availability of alternative sites Mr das Dores noted the requirement for proximity and that lands to the north and west were deemed unsuitable primarily due to periodic flooding and the presence of a medium voltage overhead ESB line. There were no particular issues raised in relation to the temporary use of the lands of Plot 003.
- 9.4.6. I conclude that that alternatives with respect to the design of the Kilfenora Wastewater Treatment Plant Upgrade have been considered and that there is no alternative which is demonstrably preferable.

9.5. Planning policy

- 9.5.1. Regarding the planning policy, the objectors' make reference to the need to provide additional capacity for future growth and state that the proposed development by reason of the 330PE is a material contravention of the development plan.
- 9.5.2. CDP 8.24 states an objective of the development plan to work closely with Irish water to identify and facilitate the timely delivery of the water services required to realise the development objectives of this plan. It also refers to ensuring that adequate water services will be available to service development prior to granting of permission.
- 9.5.3. CDP 8.24 states an objective of Clare County Council to advocate the provision, by Irish Water, of adequate wastewater services and capacity to accommodate the target population and employment potential of the county in accordance with statutory obligations.
- 9.5.4. I have considered policy provisions CDP 8.24 and the other policies in the earlier section of this report. In relation to the PE of the proposed development, it is acknowledged by all parties that there are a number of houses on septic tanks and that this situation will not change. Irish Water indicates that the plant is capable of expansion if needed.
- 9.5.5. There is no explicit provision in the County Development Plan in relation to any particular population equivalent for the upgraded wastewater treatment plant. As the proposed upgrade would meet the needs of the village and provide for limited growth in line with the vision of the development plan and in the absence of prescriptive development plan policies, I consider that it cannot be concluded that the plan is contravened, let alone materially contravened.
- 9.5.6. Furthermore, I note that there is no contravention of the zoning objectives.
- 9.5.7. I conclude that there is no reasonable basis for concluding that the proposed development constitutes a material contravention of the development plan and I reject the case made by the objectors in this respect.

9.6. Other matters raised by objectors

- 9.6.1. Objectors referred to the reliance on telephone calls during negotiations. This matter is not relevant to the CPO other than in respect that it is relevant to note that agreement was not reached necessitating the pursuit of the CPO.
- 9.6.2. Regarding the statement made in written objections that the notification of the process is flawed, the details of the process are set out in the witness statement of Matthew Collins. The particular references at the hearing to Mr Anthony King and his rights are noted. I am satisfied that the CPO procedures were properly followed and that notices were served on all persons with evident rights.
- 9.6.3. Regarding impacts on farming and business commitments as described in written objections, I note the measures set out by Irish Water in relation to the maintenance of normal farming activities (insofar as possible) and the reinstatement of lands. These are suitable for addressing under arbitration.
- 9.6.4. Regarding the need to consult the EPA I consider that there is no basis for this in law.

10.0 Conclusions and Recommendation

Having regard to the above I conclude that:

- the acquisition of lands and interests under the CPO would serve a need that advances the common good
- that the particular land is suitable to meet that need
- that alternatives have been considered and that there is no alternative which is demonstrably preferable
- that it does not materially contravene the development plan
- that the acquisition is proportionate and necessary.

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

11.0 Reasons and Considerations

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

- (a) The deficiencies in the existing wastewater treatment system in the village of Kilfenora.
- (b) The grant of permission by An Bord Pleanála for the Kilfenora Wastewater Treatment Plant Upgrade scheme and the reasons and considerations for that decision.
- (c) The community need, public interest served and overall benefits to be achieved from the Kilfenora Wastewater Treatment Plant Upgrade scheme.
- (d) The requirement for the Compulsory Purchase Order to implement the Kilfenora Wastewater Treatment Plant Upgrade scheme.
- (e) The policies and objectives of the Clare County Development Plan 2017 – 2023, which are not materially contravened.
- (f) The submissions and observations made at the oral hearing.

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

Mairead Kenny
Senior Planning Inspector

2 March 2021