



An
Bord
Pleanála

Inspector's Report

ABP309123-21

Development	Compulsory Acquisition of Lands for the development of a school campus
Location	Ballymacarry, Buncrana, Co. Donegal
Planning Authority	Donegal County Council
Applicant	Donegal County Council
Type of Application	Notice of Compulsory Purchase Order under the provisions of the Local Government (No.2) Act 1960, the Housing Act 1966, the Roads Act 1993, and the Planning and Development Act 2000 (as amended).
Objectors	Roy Baldrick David Walker
Date of Site Inspection	24 th March 2021.
Inspector	Stephen Ward

Contents

1.0 Introduction.....	3
1.1 Overview	3
1.2. Purpose of the CPO	3
1.3. Accompanying Documents	3
1.4 Format of CPO Schedule	4
2.0 Site Context and Description	4
3.0 Existing Educational Facilities.....	5
4.0 The Proposal	6
5.0 Planning Policy Context.....	6
6.0 Objections to the Compulsory Acquisition of Lands.....	12
7.0 Oral Hearing	15
8.0 Assessment	15
8.1 Overview	15
8.2 Community Need	16
8.3 Suitability of Lands to Serve Community Need	17
8.4 Consideration of Alternatives	22
8.5 The Development Plan.....	25
8.6 Proportionality and Necessity for the Level of Acquisition Proposed.....	26
8.7 Additional Issues Raised by the Objectors	26
9.0 Conclusions and Recommendations.....	30
10.0 Reasons and Considerations.....	30

Appendix 1: Proceedings of the Oral Hearing

1.0 Introduction

1.1 Overview

- 1.1.1. Donegal County Council (DCC) is seeking confirmation by the Board of a Compulsory Purchase Order (CPO) entitled “Donegal County Council (Buncrana School Campus Site) Compulsory Purchase Order 2020”.
- 1.1.2. The CPO relates to the compulsory and permanent acquisition of lands for the purposes of the provision of a site suitable for the development of a school campus. DCC has made the CPO and submitted the request for confirmation pursuant to the powers conferred on it, which are variously quoted by DCC as the Local Government (No.2) Act 1960, the Housing Act 1966, the Roads Act 1993, and the Planning and Development Acts 2000-2019.
- 1.1.3. Two objections were received in respect of the CPO from landowners, namely Roy Baldrick and David Walker. This report considers the issues raised in the objections submitted to the Board and, more generally, the application to acquire lands for the stated purpose.

1.2. Purpose of the CPO

According to the documentation submitted with the application, the purpose of the CPO is to provide a site suitable for the development of a new three-school campus.

1.3. Accompanying Documents

The application was accompanied by the following documentation:

- The Compulsory Purchase Order, signed and sealed by the Nominated Officer and dated December 4th, 2020.
- A CPO Map indicating the lands to be acquired.
- An Engineer’s Report outlining:
 - The background of the joint efforts of Donegal County Council and the Department of Education and Skills to identify a suitable site.

- Land ownership investigations and brief details of negotiations with a view to purchasing the lands by agreement.
- The conclusion that the purchase of the site by agreement could not be achieved at this time and that CPO procedures should commence in view of the urgency of securing the site for the much needed three-school campus.
- Copies of the Chief Executive's Orders.
- Copies of Public notices published in the Inishowen Independent (dated 8th of December, 2020) and the Inish Times (dated 9th of December, 2020).
- Copies of the Notices of the Making of the CPO and cover letters therewith served on all owners / reputed owners.
- Copies of An Post Certificate of Posting in relation to the service of notice.

1.4. Format of CPO Schedule

The schedule relates wholly to land other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense. The land, consisting of two plots, is stated to be in agricultural use and is to be acquired permanently. Plot 1 has a stated area of 3.64 hectares, while Plot 2 is stated to be 0.492 hectares (4.132 ha in total).

2.0 Site Context and Description

- 2.1. The town of Buncrana is located in North Donegal and adjoins Lough Swilly on the western coast of the Inishowen Peninsula. It is distanced c. 25km northeast of Letterkenny and c. 15km northwest of Derry City. According to the 2016 Census, the town had a population of 6,785, making it the second largest town in Donegal after Letterkenny. It has a strong tourism, economic and service function for the wider area, including a cross-border dimension given its proximity to Northern Ireland.
- 2.2. The town centre has developed in a compact form around the traditional Main Street, which generally runs in a north-south alignment. In more recent times the town centre has expanded around the Inner Relief Road to the southeast of the traditional

core. However, the main concentration of development in recent decades has consisted of residential developments on the periphery of the town, particularly to the east and north. The town also provides significant recreation and amenity opportunities through a substantial coastal green area and associated recreational facilities along Lough Swilly to the west.

- 2.3 The subject site is located on the northern periphery of the town centre and comprises two plots with a total stated area of 4.132 hectares. The two plots are divided by a drain/ditch which runs diagonally through the southeast corner of the overall site. The larger western plot is sub-divided by a field boundary consisting of a hedgerow and trees. The lands are generally low-lying, but gradually rise to an elevated portion in the centre of the site. The site is currently in agricultural grazing use, but the eastern portion is largely overgrown.
- 2.4. The site is bounded by the Causeway Road and adjoining residential properties to the south, and Cockhill/Carndonagh Road to the west. The northwestern corner of the site wraps around the side and rear of a group of houses. To the east of the site is a recently developed road which forms part of the Inner Relief Road, which is planned to extend further to the north. The northern site boundary mainly adjoins the Inishowen Co-op, which mainly offers hardware, building/agri products.

3.0 Existing Educational Facilities

Buncrana is a centre for education with a catchment area covering a large portion of Inishowen. There are 3 secondary schools and 4 primary schools within the town, as well as an adult education / training centre and an autism-related education facility. Details of the schools and enrolment figures for 2019-2020 (according to Department of Education figures) are set out in Table 1 overleaf.

Table 1: Existing schools in Buncrana

School	Level	Language	Gender	Enrolment
Crana College	Secondary	English	Mixed	550
Scoil Mhuire	Secondary	English	Mixed	744
Gaelcholáiste Chinéal Eoghain	Secondary	Irish	Mixed	32
Scoil Iosagain	Primary	English	Mixed	776
Buncrana National School	Primary	English	Mixed	26
Gaelscoil Bhun Cranncha	Primary	Irish	Mixed	130
St. Oran's National School	Primary	English	Mixed	212

4.0. The Proposal

The stated purpose of the CPO is to provide a site to facilitate the relocation of three of the existing schools to a new campus. The three schools to be relocated are Crana College, the Gaelscoil, and the Gaelcholáiste, all of which are stated to be currently housed in unsuitable premises.

5.0. Planning Policy Context

5.1. National Policy and Guidance

National Planning Framework (NPF)

- 5.1.1. The NPF is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings.
- 5.1.2. Section 2.6 notes that the fastest growing areas at present are on the edges of out towns, meaning the need for a constant process of catch-up for infrastructure and services, including new schools.
- 5.1.3. National Policy Objective 31 aims to prioritise the alignment of targeted and planned population and employment growth with investment in education, including the

provision of new schools on well-located sites within or close to existing built-up areas, that meet the diverse needs of local populations.

The Provision of Schools and the Planning System, a Code of Practice for Planning Authorities (Department of Education and Science, and Department of the Environment, Heritage and Local Government, 2008).

- 5.1.4. This document outlines that the effective integration of schools and the planning systems has core objectives relating to compact sustainable urban development and an integrated approach between the planning functions of planning authorities and the Department of Education.
- 5.1.5. It is stated that the Department will identify future primary school demands based on current and anticipated population trends. The procedure for establishing demand for new second-level schools may be more complex as it also involves an appraisal of the capacity of existing post-primary schools, coupled with an assessment of the enrolment patterns in existing and anticipated 'feeder' national schools.
- 5.1.6. Planning authorities will anticipate the demand for new schools infrastructure arising from new development within the drafting process for development plans and local area plans, and through these plans, facilitate the identification of suitable lands to meet the need for new schools or expansion of existing schools. Planning authorities are also advised to consult with the Department at an early stage of plan-making and in relation to specific land requirements and suitability, and to engage with landowners / developers to identify suitable sites for new schools.
- 5.1.7. With regard to the location of new schools, it is stated that planning authorities will:
 - Ensure that school sites are fit for purpose in terms of their location, access to services and the provision of space for recreational and sports activities.
 - Seek to situate new schools within the existing/proposed catchment in a manner that aids ease of access and encourages sustainable mobility.
 - Insofar as possible, reserve lands for educational purposes in locations close to the areas of greatest residential expansion and adjacent to community developments so that facilities can be shared.

- Following the identification / reservation of suitable sites, initiate immediate contact with the Department to clarify the suitability of the site and the specific timeframe for acquisition of the site.
- Generally, base their approach in assessing school site requirements on the Department's site standards, as well as taking into account other urban design and sustainable development considerations.

5.1.8. The Department will consider the use of multi-campus schooling arrangements in appropriate cases, e.g. 2 or 3 schools side by side; a primary and a post-primary school sharing a site; schools anchoring wider social and community facilities required in the same area.

Technical Guidance Documents (Department of Education and Skills)

5.1.9. TGD-025 (revised 1 September 2019) outlines the Identification and Suitability Assessment of Sites for Primary Schools. It acknowledges that, due to the scarcity of land in urban areas, it is not always possible to achieve the ideal site size and that allowances can be made for particular site characteristics and design proposals. The guidance outlines a range of criteria to be considered relating to zoning and planning policy; environmental constraints; and site conditions. Table 1 of the TGD outlines a School Site Area Analysis and quantifies the elements which form part of a site.

5.1.10. TGD-027 (also revised 1 September 2019) sets out similar criteria for the assessment of sites for post-primary schools and includes similar allowances for smaller sites subject to suitable circumstances.

Development Plans, Guidelines for Planning Authorities (DoEHLG, 2007)

5.1.11. The guidelines outline that consideration must be given to the future provision of supporting infrastructure, including schools, when allocating land for development. There should be a reasonable expectation that these can be delivered in the lifespan of the plan. Development plans must facilitate the provision of sufficient land to meet the need for new schools or expansion of existing schools in accordance with the requirements of the community and of the relevant education authorities.

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009).

- 5.1.12. Collaboration and integration of school planning is promoted in the context of residential development. The guidelines also promote sustainable and healthy transport patterns when considering the relationship between residential development and related uses.

The Planning System and Flood Risk Management, Guidelines for Planning Authorities (DoEHLG & OPW, 2009)

- 5.1.13. These guidelines require the planning system to avoid development in areas at risk of flooding unless appropriately justified and mitigated; adopt a sequential approach based on avoidance, reduction and mitigation; and incorporate flood risk assessment into the decision-making process.

5.2 County Donegal Development Plan 2018 - 2024

Vision and Core Strategy

- 5.2.1. Chapter 1 sets out the vision for the County and includes several Key Strategic Objectives. Objective S-O-7 prioritises key infrastructural investments required throughout the County, including the provision of education and community-based facilities, and aims to collaborate on delivery, including in the regional context.
- 5.2.2. Under the Settlement Structure of the Core Strategy, Buncrana is identified as a Layer 2A Strategic Town in the context of housing land supply and its Special Economic Function. It estimates a 2016 population for Buncrana of 6,735 persons and projects a population of 7,950 by 2024 (an additional population of 1,215 or 18%). To cater for this projection, c.65 hectares is proposed to be zoned for residential and other uses to facilitate the provision of 760 additional housing units.
- 5.2.3. Core Strategy Policy CS-P-2 clarifies the policy approach towards the assessment of proposals in Buncrana. Development proposals shall be considered in the light of all relevant material planning considerations; relevant policies of the CDP including Part C Chapter 13, 'Objectives and Policies of Buncrana'; other regional and national guidance/policy; relevant environmental designations; and particularly Map 13.1A (Buncrana Land Use Zoning).

Flooding

- 5.2.4. Section 5.4 outlines the aim to manage development proposals within flood risk areas in a sequential manner based on avoidance, substitution, justification and to otherwise ensure that flood risks can be managed. The relevant policies and objectives outline that proposals will be assessed in accordance with the Guidelines for Planning Authorities, including the sequential approach and the 'justification test'.

Community Facilities

- 5.2.5. Section 11.1 of the Plan states that the provision of high quality social and community infrastructure (including schools) is crucial to the creation of sustainable communities and a high quality of life. The Council will collaborate with public, private and community organisations in the provision of such infrastructure and services. It highlights that, in order to justify, sustain and maximise the potential of social and community infrastructure and services it is imperative to achieve a critical mass of population in our settlements and to locate new social and community developments in close proximity to services and residential areas.

- 5.2.6. Relevant policies/objectives for community facilities can be summarised as follows:

CCG-O-3: Facilitate the provision of services for the community including, in particular, schools, crèches, and other education and childcare facilities.

CCG-P-1: Consider proposals in urban areas in accordance with the following locational criteria:

- At locations within the defined boundaries of settlement framework/urban areas which are within safe walking distance (i.e. via an existing or proposed footpath) of local services and residential areas and which would otherwise promote social inclusion.
- At alternative locations within settlement framework/urban areas where it is demonstrated that there are no suitable sites available which meet the abovementioned locational criteria.

CCG-P-4: Additional criteria for assessing proposals will be as follows:

- Compatibility with surrounding land uses.
- Impact on adjacent residential amenities.

- Capacity in the public water waste infrastructure.
- Traffic hazard and the existing road network capacity.
- Parking provision, access arrangements, maneuvering and servicing areas.
- Quality and priority of pedestrian permeability and access.
- Noise nuisance or any significant environmental emissions.
- Impact on the landscape, character, or built environment of the area.
- Appropriate boundary treatment and means of enclosure.
- Impact on the heritage value of the area.
- Flood risk impacts.
- Impacts on water quality.

CCG-P-5: Proposals for schools shall comply with the following guidance documents, or any subsequent publications, in terms of location, siting and design:

- The provision of Schools and the Planning system (July 2008).
- Technical Guidance Document TGD20-TGD25 (2007).
- Sustainable Residential Development in Urban Areas (2009).

CCG-P-6: Facilitate the implementation of the Department of Education and Skills programme of capital investment in schools in line with the proper planning and sustainable development of the area.

Objectives and Policies for Buncrana

- 5.2.7. Part C of the Plan (Chapter 13) outlines the detailed written text and land use zoning maps relating specifically to Buncrana. In accordance with the CDP Core Strategy, it outlines that lands have been identified to supply some 736 housing units to 2024, thereby catering for the projected population increase of 1,215 persons.
- 5.2.8. It outlines that seven sites have been identified by reason of their scale, strategic location and potential use, as 'Mixed Use' sites, the objective of which is to reserve strategic lands/sites for appropriate mixed use development, including landmark buildings/tourism/cultural, educational, community and residential uses. The CPO site is included as one of those seven sites (Mixed Use 2). It is described as a flat open agricultural field and a prime 'edge of town centre' site and would lend itself particularly for Educational use, having regard to its proximity to the town, adjacent

residential areas, room to expand and a range of access points which would enhance access to and from the site in a circuitous manner.

5.2.9. Section 13.9 indicates that a number of schools in Buncrana (Crana College, the Gaelscoil, and the Gaelcholáiste) are currently proposing to extend their facilities to cater for rising demand and there is a need to facilitate this growth through the identification of appropriate objectives, policies and land use zoning that will be sufficient to supply future education needs.

5.2.10. The following community-related objectives are relevant:

BC-SCC-O-1: To integrate the planning and sustainable development of the town with the community, education and health requirements of its population.

BC-SCC-O-3: To facilitate the continuing promotion, protection, harnessing and sustainable development of the community, education and health sectors in Buncrana subject to environmental designations and considerations.

BC-SCC-O-4: To facilitate a coordinated approach to the delivery of infrastructure and services, as well as inter-agency liaison and co-operation with other organisations, including cross border initiatives.

6.0 Objections to the Compulsory Acquisition of Lands

6.1 Objection by Mr. David Walker

Mr. Walker states that he is a joint registered owner of the lands subject to the CPO, and the grounds of his objection can be summarised as follows:

Alternative Sites

- It has not been demonstrated that there are no other suitable sites available, or that all alternatives have been properly considered and exhausted.
- DCC identified 9 potential sites in 2015 and the objector questions what actions were taken to pursue other sites and the rationale used for determining their suitability. Mr. Walker draws a clear distinction between an 'unsuitable' and a 'less suitable' site.

- It is stated that the potential purchase of Site No. 6 (Fruit of the Loom site) was at an advanced stage until it was purchased by a 3rd party in 2018. The objector questions why a CPO is not now being pursued on this site. This brownfield site is over 23 hectares, only part of which is currently utilised, and would provide plenty of room for expansion, even if only partly acquired.
- Site No. 8a would also appear suitable. It is of a similar location and size to the CPO site, with the added benefit of direct access to playing fields.
- The objection highlights 3 other potential sites (not previously identified in 2015) and questions whether they were examined or deemed unsuitable.

Traffic

- The main Carndonagh road is already busy and the additional traffic associated with 3 schools will lead to increased congestion.

Potential for expansion

- The site is bounded by roads on 3 sides, which limits the potential for expansion of school facilities.

Flooding

- The objection contends that the County Development Plan outlines flooding potential in relation to this site and the surrounding area.

6.2 Objection of behalf of Mr. Roy Baldrick and Mr. David Walker

This objection was prepared by C.C. Kelly & Co. Solicitors and states that Mr. Baldrick is the legal personal representative of Mr. David Baldrick (deceased). Some of the grounds of objection are common to Mr. Walker's separate submission (above) and I do not propose to duplicate same. The following additional issues are raised:

Interference with property rights

The Local Authority has an obligation to adhere to Articles 40.3 and 43 of the Constitution to ensure consistency with natural and constitutional justice. In order to justify compulsory acquisition, it is submitted that it must be demonstrated that:

- (a) There is a community need to be met by the acquisition;
- (b) The property is suitable to meet the community need;
- (c) The proposed works are in accordance with the relevant development plan(s) for the functional area; and
- (d) Alternative means of meeting the need which have been identified are not considered appropriate or are not available.

Alternative Sites

There is a high legal threshold for the making of a CPO in light of the infringements in constitutional property rights. The principle of proportionality requires that acquisition must be justified by the local authority, which must clearly demonstrate that alternatives are not available or appropriate.

Traffic

Development Plan policy requires developments that will generate high volumes of traffic to provide an appropriate traffic management plan.

Flooding

The CDP outlines flooding potential in relation to this site and the surrounding area, and states that any proposal will be required to comply with the Flood Risk Objectives and Policies set out in Chapter 10 of the Plan.

Inheritance

The beneficiaries would be unable to avail of agriculture/business relief on their inheritance, thereby significantly increasing their Capital Acquisitions Tax liability and resulting in a very significant financial penalty. It would also deprive the beneficiaries of their legitimate expectation of inheritance of the family farm, which has been in the family's ownership for many generations.

Engagement

The local authority has not engaged in a substantive attempt to reach agreement with the owners to purchase the site prior to making the CPO.

The lessee

It is stated that the land has been leased for grazing for several years. The lessee's farming business will be impacted by the loss of these lands, and he has not been afforded the opportunity to comment on the CPO.

7.0 Oral Hearing

An Oral Hearing was conducted on Wednesday 14th April 2021. Both objectors and Donegal County Council were represented at the hearing and oral submissions were heard by, or on behalf of, all parties. The proceedings of the oral hearing are summarised in Appendix 1. The entire proceedings were also recorded and are available to the Board.

7.1 Modifications

No modifications were sought to the CPO during the course of the oral hearing.

8.0 Assessment

8.1 Overview

8.1.1. For the Board to confirm the subject CPO, it must be satisfied that, as set out in the judgement of Geoghegan J. in *Clinton v An Bord Pleanala (No. 2) (2007) 4 IR 701*, DCC has demonstrated that the CPO is clearly justified by the "common good". This has been interpreted by legal commentators, as per '*Compulsory Purchase and Compensation in Ireland: Law and Practice, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath (2013)*', as a requirement to satisfy the following criteria:

- 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 methods of meeting the community need have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate), and

- The works to be carried out should accord or at least not be in material contravention of the provisions of the statutory development plan.

- 8.1.2. Furthermore, as set out by Garrett Simons in '*Planning and Development Law, Second Edition (2007)*', the Board should consider whether the acquisition will have an excessive or disproportionate effect on the interests of the affected persons.
- 8.1.3. The proposed CPO is now assessed in the context of the above tests prior to addressing the specific issues raised in the objections lodged.

8.2 Community Need

- 8.2.1. The community need for the proposed school campus has been set out in Mr Raftery's submission to the oral hearing on behalf of the Department of Education. Mr Raftery has outlined the problems associated with the facilities for the three existing schools, which largely relate to rental tenure; shared usage; substandard accommodation; and severe limitations on expansion. Mr Raftery submits that a new campus would address these problems and provide significant educational and social benefits to the community.
- 8.2.2. I have visited the three schools in question and am familiar with their general arrangements and facilities. I acknowledge that both the Gaelscoil and the Gaelcholáiste operate within buildings which are not purpose-built and are shared with other users. Both facilities are accommodated over multiple levels and I would acknowledge that there are challenges in terms of accessibility and the general standard of accommodation. Neither of the two schools appear to have dedicated outdoor play facilities and I also consider the peripherality and accessibility of the Gaelcholáiste to be challenging.
- 8.2.3. Crana College is a larger purpose-built facility located within the built-up area of Buncrana. It has an extremely restricted area of just c. 0.1 hectares to cater for a stated enrolment of 550 pupils. The main school building covers almost half the site and the remaining area is largely occupied by several temporary structures, leaving no space available for recreation. The site is generally surrounded by multiple residential properties, leaving no realistic potential for expansion.
- 8.2.4. Having regard to the above, I consider that the existing facilities for the three relevant schools are wholly unsuitable and there are no realistic prospects for satisfactorily

addressing these deficiencies within the confines of the existing sites. I also note that the objectors did not challenge the confirmation of the CPO on this basis.

- 8.2.5. Having reviewed the information submitted and having conducted an oral hearing, I am satisfied that there is a need for a new school campus to cater for existing and projected needs in Buncrana. I am therefore satisfied that a clear and pressing community need exists and that it would be facilitated by the proposed acquisition.

8.3 Suitability of Lands to Serve Community Need

- 8.3.1. The suitability of the lands to serve the community need is a critical issue in determining whether to confirm the CPO. I propose to discuss this matter under a number of key headings set out below.

Location

- 8.3.2. I note that the NPF and Ministerial Guidelines on the provision of schools and residential development promote compact development and sustainable transport patterns through the provision of schools within or close to existing built-up areas. This approach is effectively supported at local level in section 11.1 of the CDP.
- 8.3.3. The CPO site is located on the northern periphery of the town centre and in close proximity to the majority of residential development to the east, west and north of the town centre. The site is also close to the shorefront area which contains several community and recreational amenities of potential convenient use to the school.
- 8.3.4. Accordingly, I am satisfied that the proposed location would support the principle of compact urban development and would encourage sustainable mobility by facilitating walking / cycling trips and the use of public transport facilities. The proximity of the site to the town centre would support economic vitality, while its proximity to community and recreational facilities would provide significant social benefits.

Size

- 8.3.5. I note that the objectors have raised concerns about the size of the site and the absence of potential for expansion. In this regard I will refer mainly to the Department's TGD's 25 & 27, in which the recommended site sizes are set out for primary and post-primary schools respectively.

- 8.3.6. On the basis of the ‘future requirements’ set out in the Department’s submission, I have outlined in Table 2 (below) the recommended site areas for 2-storey buildings as per the respective TGD recommendations.

Table 2: School Site Area Analysis

Type of School	Size of School	Recommended Area (Ha)
Primary	4 to 8 Classroom	0.71
Post-Primary	1,000 pupils	4.57
		Total = 5.28

- 8.3.7. The TGDs highlight that design and layout will be site-specific and the document should only be used as guidance. Furthermore, I acknowledge that, as highlighted in Mr Lewis’s contribution to the oral hearing, the figures are not directly applicable to a shared school campus and such arrangements would expect to yield certain efficiencies and synergies in terms of site size and shared facilities. I also note that the above figures relate to a 2-storey building and the TGDs make provisions for reduced site sizes for three-storey designs, which would be possible on this site according to the Department’s discussions with DCC. Finally, I note that the September 2019 updates to the TGDs provide increased flexibility to allow smaller sites in urban areas subject to suitable arrangements and in the interests of compact development and sustainable transport use.
- 8.3.8. In conclusion, I acknowledge that the size of the subject site (4.13ha) is less than the recommended cumulative requirements as per the TGDs (5.28). However, I consider that this is an accessible location for walking, cycling and public transport, which would facilitate a reduced requirement for vehicular parking and circulation space. I agree that the shared campus nature of the facility would achieve efficiencies by avoiding the duplication of facilities and services, and that the proximity of the site to existing community facilities would alleviate the pressure the provision of such facilities on the subject site. Furthermore, it is reasonable to conclude that a three-storey building is achievable on the site, which would further reduce requirements.
- 8.3.9. Having regard to the above, I do not object to the suitability of the site on the basis of an inadequate size to cater for existing and projected requirements.

Traffic

- 8.3.10. The objectors have raised concerns about the current extent of traffic congestion at the junction to the southwest of the site and contend that the proposed school campus and other planned developments will exacerbate this situation. In response, DCC has submitted that there are currently no serious traffic management issues with the junction and envisage that any future requirements will be addressed as part of the planning process. Mr Mahon of DCC has confirmed that no preliminary assessment has been generated in relation to the projected traffic associated with the school campus.
- 8.3.11. It is important to highlight that the proposed campus would facilitate a relocation of existing facilities. As such, it would not result in a significant increase in traffic in the town as a whole, but would result in a redistribution of traffic concentration. Furthermore, given the one-way systems that apply in the town centre and the current concentration of the three largest schools (Crana College, Scoil Mhuire and Scoil Iosagain) on its western side, it is my experience that school-related congestion is currently most concentrated to the south and west of the town. Accordingly, I consider that there would be significant traffic benefits associated with the relocation of the schools, particularly Crana College, to the northern edge of the town centre.
- 8.3.12. As previously outlined, the location of the CPO site is conducive to sustainable mobility and is likely to reduce dependence on the private car. The site is well served by footpaths and public lighting facilities linking to surrounding areas. The Causeway Road to the south of the site links the Cockhill/Carndonagh Regional Road to the west with the Inner Relief Road to the east. With this extensive road frontage on three sides, I consider that there is more than adequate scope to consider options for safe and efficient traffic circulation to and from the site. Furthermore, I consider that the adjoining Regional Road and the Inner Relief Road offer significant traffic capacity to accommodate and distribute the likely levels of traffic associated with the proposed campus in an efficient circuitous manner.
- 8.3.13. Having regard to the above, I consider that the proposed campus is not likely to generate significant additional traffic, is appropriately located and serviced to encourage sustainable mobility, and has adequate infrastructure to accommodate the likely vehicular traffic levels. Accordingly, I have no objection in this regard.

Flooding

- 8.3.14. I note that a Strategic Flood Risk Assessment (SFRA) and Strategic Environmental Assessment (SEA) was carried out as part of the CDP. However, in relation to the zoning of sites in individual settlements, including Buncrana, the SFRA outlined that a more detailed 'stage 2' SFRA would be carried out as part of the future preparation of a Local Area Plan for Buncrana, which has not yet been completed.
- 8.3.15. In the absence of same, I note that, according to OPW CFRAM flood mapping, the southern, southeastern and southwestern portions of the site are subject to a low probability of fluvial flooding (i.e. a very extreme flood event with an Annual Exceedance Probability (AEP) of 0.1%). Smaller sections of the extreme southeast and southwest corners of the site are also modelled as having a medium probability of fluvial flood risk (i.e. a severe flood event with an AEP of 1%).
- 8.3.16. The flood risk Guidelines define three types of flood zones. Flood Zone A refers to the highest fluvial flood risk (i.e. greater than 1%). Flood Zone B refers to a moderate fluvial flood risk (i.e. between 0.1% and 1%). Flood Zone C refers to a low fluvial flood risk (i.e. less than 0.1%). I acknowledge that the Guidelines are largely designed to assist in the preparation of plans and the assessment of planning applications. However, I propose to have regard to the provisions, as appropriate.
- 8.3.17. Having regard to the above, I consider that the fluvial risk associated with the subject site falls marginally below the threshold for Flood Zone A (i.e. not greater than 1%), and accordingly the site is within Flood Zone B. The Guidelines classify schools as 'highly vulnerable development' and such uses are generally considered inappropriate in Zone B, unless the requirements of the 'justification test' can be met.
- 8.3.18. The Guidelines outline two types of 'justification test', one which assesses the zoning of land at plan-making stage, and the other which assesses development proposals at planning application stage. The current CPO case is not part of either stage and the criteria of either test are not directly applicable. However, I have considered the applicable criteria and would state as follows:
- Buncrana is targeted for growth in the CDP as Layer 2A Strategic Town with a projected population increase of 18%.

- The development of the site on the edge of the town centre is essential to facilitate expansion and it has been identified as a 'strategic' site.
- It comprises significant under-utilised lands within / adjoining the urban core.
- Other suitable alternatives in areas of lower risk are not readily identifiable (see section 8.4 for further details).
- An SFRA and SEA has been completed as part of the CDP, which has deemed it appropriate to carry out further assessment as part of an LAP.
- The site has been zoned for mixed-use development in the CDP and has been identified as being suitable for educational use.

8.3.19. At the oral hearing, Mr Mahon submitted that the modelled flood risk most likely relates to a stream that runs to the southeast of the site. Apparently, this stream has been prone to blockages and subsequent flooding of the Causeway Road. However, Mr Mahon has not witnessed flooding of the subject site, most notably including the severe flood events of 2017. I note that the objectors did not contest this point and did not put forward any evidence of historical flooding events on the site. Similarly, the OPW mapping does not record any past flood events on the site.

8.3.20. A drawing was submitted by DCC at the hearing (Drawing Number B/CPO/2) in an attempt to demonstrate how an indicative school layout could be accommodated without encroaching on flood risk areas. I highlighted that the layout presented was not being assessed as part of the process and that I would not take it into consideration. However, the extent of the site that is not affected by flood risk is, of course, an important consideration.

8.3.21. I estimate that at least 50% of the site (i.e. at least 2 hectares) is not affected by any modelled flood risk. In considering the acceptability of this proportion, I have referred again to the TGDs and I note that the 'School Site Area Analysis' therein only apportions approximately 25% of the post-primary site area to school buildings (including expansion). This proportion is lower still for primary schools (approximately 15%). Accordingly, I consider that any likely extent of school buildings could be comfortably accommodated within the site area (i.e. 50+%) that is outside the flood zones. The remainder of school site areas should be reserved for parking, circulation, recreation and ancillary facilities, and I consider it a reasonable

proposition that such facilities could be accommodated within flood zones. And while any development within the flood zones would have to ensure that flood risk is not increased elsewhere, I consider it reasonable to expect that this could be addressed through appropriate drainage design.

- 8.3.22. Having regard to the strategic nature of the site and its envisaged use as per the CDP, the characteristics of the site and the absence of evidence of historical flooding, and the significant extent of the site that is not subject to modelled flood risk, I do not have any objections to the suitability of the site on grounds of flood risk.

Conclusion

- 8.3.23. I have considered the suitability of the site for the provision of a school campus, particularly in terms of its location and size, as well as potential traffic and flooding implications. As outlined above, I do not have any objection on these grounds, and I am satisfied that the site is suitable to meet the community need in this case.

8.4 Consideration of Alternatives

- 8.4.1. The objectors have raised concerns about the extent to which DCC has considered alternative sites, particularly in light of the impact of the CPO on their constitutional property rights. In this regard I am satisfied that the test threshold is set out in section 8.1.1. of this report, i.e. that alternative methods of meeting the community need have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate).
- 8.4.2. In considering alternative sites, I note that Mr Baldrick contends that the existing zoning of a site is not a conclusive matter as it may be subject to change in the future. While zonings may indeed be changed, I am satisfied that the current proposal must be assessed in light of the current zonings and without any speculation of potential changes to same. I have visited all 11 sites, which will now be assessed in light of the criteria of the test outlined above.
- 8.4.3. In my opinion, there are several sites that can be easily discounted. **Sites 3, 4 & 11** are peripheral sites zoned as 'Strategic Residential Reserve'. **Sites 5, 7 and 10** are similarly peripheral and are zoned as 'Agricultural/Rural'. Having regard to the zoning of these sites, and the policy approach which aims to facilitate school facilities in more easily accessible central sites, I consider these sites to be unsuitable.

- 8.4.4. **Sites 2 and 9** are more easily accessible and are zoned as 'Residential (Phase 1)'. And while I would contend that educational uses would normally be compatible with a residential zoning, I would accept that the scale of the educational proposal would be a key consideration. Mr Christy's contribution to the oral hearing outlined concerns that the development of all, or the majority of, a residential site for educational purposes may constitute a material contravention of the CDP. In this regard, I note that the extent of residential land in Buncrana has been specifically allocated to meet projected population needs (as per Table 13.5 of the CDP) and sites 2 and 9 (referred to as sites O and Z in Table 13.5) are identified as major contributors to the projected housing yield. Accordingly, I consider that the development of these sites for educational purposes would have a significant impact on the residential capacity of Buncrana and would be unsuitable on this basis.
- 8.4.5. In addition to zoning concerns, I note that Site 2 is of an irregular shape that is not conducive to educational use, and that it is already the subject of existing and planned social housing development. Furthermore, and similar to the CPO site, significant portions of Sites 2 and 9 are also within the flood zones as modelled through the OPW CFRAM process.
- 8.4.6. Although **Site 1** is zoned for 'mixed uses', it has a peripheral location and there are severe access limitations, particularly in relation to the Crana River bridge which is single-lane with limited footpath width. On that basis I do not consider the site suitable and I note that Mr Baldrick effectively accepted this at the oral hearing.
- 8.4.7. **Site 6** is a large site (c. 12 ha) mainly comprising three former industrial elements. A central portion of the site is currently used as a fuel distribution business and a northern portion is used as an autism-related educational facility. The site is zoned as 'mixed uses' and Policy BC-ED-P-9 of the CDP states that it may be appropriate for educational use. The site has good road access and is reasonably proximate to the town centre (particularly the northern extremities of the site).
- 8.4.8. The Department's submission outlines that previous negotiations in relation to the site were unsuccessful and that there are difficulties relating to the operation of existing businesses on site. The objectors argue that large parts of the site are unused and should have been considered further by DCC.

- 8.4.9. I have also considered this site in light of OPW flood mapping and I note that a large majority of the site is affected by fluvial and tidal flood zones. Furthermore, the fluvial flood risk covers a larger area than the CPO site and is rated as a 10% AEP, which means that it is at a significantly higher risk than the CPO site (1% AEP).
- 8.4.10. Only the northern section (c. 3 ha) of Site 6 is unaffected by the flood zones. The majority of this section accommodates the former 'sewing factory' and planning permission has recently been granted for the change of use of the factory to a 'call centre' with the potential for the creation of 400 jobs. As outlined earlier, the remaining plot on the northern section of Site 6 currently accommodates an autism-related education facility and planning permission is in place to significantly expand and consolidate this valuable community facility.
- 8.4.11. Having regard to the flood risk that has been modelled for Site 6, which is more significant in extent and probability than that of the CPO site, together with the accepted difficulties associated with established uses and structures on site, particularly the potential social implications for the existing education facility and the potential economic implications for the planned call centre, I would have reservations about the suitability of Site 6, and I certainly do not consider that it is demonstrably preferable to the CPO site.
- 8.4.12. **Site 8(a)** is at a similar location to the CPO site and accommodates a transport business at its northeast corner. The site is zoned as 'mixed uses' and Policy BC-ED-P-10 of the CDP states that it has strong potential for educational / community uses. The Department's submission outlines difficulties relating to the operation of existing businesses on site, while the objectors argue that it is comparable to the CPO site, with the added benefit of access to community playing fields.
- 8.4.13. Again, I note that OPW flood mapping has identified eastern and western portions of the site as being affected by fluvial and tidal flood zones. While the extent of flood zone areas are smaller than that of the CPO site, I note that the fluvial and tidal risk on the western portion is rated as a 10% AEP, which means that it is at a significantly higher risk than that of the CPO site (1% AEP). As per my conclusions on the CPO site, I would not object to the suitability of Site 8(a) on grounds of flood risk alone. However, the flood risk does have other implications given the close proximity of the site to Lough Swilly SAC, and I consider that the increased potential

for connections and impacts on this Natura 2000 site would require further assessment in accordance with the Habitats Directive.

- 8.4.14. With regard to traffic, I do not consider that Site 8(a) benefits from the same high-quality road infrastructure that serves the CPO site. Any road access is likely to be confined to the Cockhill/Carndonagh Regional Road to the east, which would have implications for the traffic capacity concerns raised by the objectors.
- 8.4.15. In conclusion on Site 8(a), I consider that it shares obvious similarities with the CPO site in terms of zoning and location. However, having regard to the issues raised regarding flood risk and proximity to the Lough Swilly SAC, together with the potential traffic congestion concerns and difficulties associated with the established business on site, I would have reservations about the suitability of Site 8(a), and I certainly do not consider that it is demonstrably preferable to the CPO site.

Conclusion

- 8.4.16. Having regard to the above, I accept that the acquiring authority has considered alternative methods of meeting the community need, which I have expanded upon in my assessment. For the reasons outlined above, and taking into account environmental effects where appropriate, I am satisfied that none of the alternative sites are demonstrably preferable to the proposed CPO site.

8.5 The Development Plan

- 8.5.1. I consider that the proposal would facilitate the Core Strategy aims for the growth of Buncrana as a Layer 2A Strategic Town. With reference to general policies for community / educational facilities, I am also satisfied that the proposal is in accordance with the criteria for location and other assessment criteria, and that the use would be compatible with the existing and planned use of surrounding lands.
- 8.5.2. In terms of the specific provisions relating to Buncrana, I am satisfied that the proposal is in accordance with the 'mixed use' zoning objective for the site, that the need for educational facilities is acknowledged, and that Policy BC-ED-P-6 specifically recognises the suitability of the site for educational uses.
- 8.5.3. Having regard to the above, I consider that the proposal would accord with the provisions of the CDP and would not constitute a material contravention of the Plan.

8.6 Proportionality and Necessity for the Level of Acquisition Proposed

- 8.6.1. 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.
- 8.6.2. I have already set out my opinion on the size of the proposed site with reference to the requirements of the TGDs. Given that the proposed site area is actually smaller than that recommended in the TGDs, which is acceptable under the circumstances previously discussed, I consider that there can be no argument that the extent of land-take is excessive in this case. I am satisfied that the full extent of the CPO is necessary and proportionate to the community need and, accordingly, I have no objection in this regard.

8.7 Additional Issues Raised by the Objectors

- 8.7.1. In addition to, and elaboration on, the issues raised above, the other issues raised by the objectors are addressed under the following headings.

The purpose of the CPO

- 8.7.2. The objectors contend that the purpose of the CPO is to transfer the lands to the Department and that this is an unlawful purpose. However, while I accept that this is envisaged as part of the proposal, I consider that the ultimate purpose of the CPO is to provide a site suitable for the development of a school campus.
- 8.7.3. I note that the provisions of s. 212 of the Planning and Development Act 2000 (PDA), as amended, enable a planning authority to '*develop or secure or facilitate the development of land*' and as such, the planning authority need not necessarily be the actual developer of the land. Further detail is provided on this generality in s. 212(1)(d) which enables a planning authority to '*provide, secure or facilitate the provision of areas of convenient shape and size for development*', and in s. 212(2)(a), which provides that a planning authority may '*provide or arrange for the provision of....sites for the establishment or relocation of...schools*'.
- 8.7.4. Provisions relating to collaboration are set out in s. 212(3), which provides that '*A planning Authority may, in connection with any of its functions under this Act, make*

and carry out arrangements or enter into agreements with any person or body for the development or management of land..’, which I consider to be consistent with the approach between DCC and the Department in this case.

8.7.5. Sub-section 4 of 212 outlines that *‘A planning authority may use any of the powers available to it under any enactment, including any powers in relation to the compulsory acquisition of land, in relation to its functions under this section and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land.* Furthermore, s. 213 (2)(a) outlines that *‘A local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan... acquire land, permanently or temporarily, by agreement or compulsorily’.*

8.7.6. Finally, I note that s. 211 of the PDA provides that land acquired by a planning authority may be disposed of where it no longer requires the land, or in order to secure the best use of land or the provision of structures or works for the proper planning and sustainable development of its functional area.

8.7.7. Having regard the above, and notwithstanding that the site may ultimately be transferred to the Department, I am satisfied that the proposed CPO aims to secure land to facilitate the provision of a school campus, which is accepted as an urgent community need, and which would give effect to and facilitate the implementation of the CDP. Accordingly, I have no objections to the purpose of the CPO.

The reason for the CPO

8.7.8. The objectors raise concern that the reason and rationale for the CPO is based on the alleged incapacity of Mrs Baldrick to make decisions and agreements about her assets, which they consider to be improper, premature and entirely misconceived.

8.7.9. However, I accept from the submissions of Mr Boyle and Mr Raftery that the reason was not solely based on the alleged incapacity of Mrs Baldrick. In addition to concerns about Mrs Baldrick’s capacity, Mr Boyle’s written report of the 2nd December 2020 clearly points to considerable gaps in land valuations and the urgency in securing the school campus facility as part of the rationale for commencing the CPO process.

8.7.10. For the reasons outlined above, I consider it reasonable for the acquiring authority to conclude that acquisition by agreement was not achievable at this time, and that, in light of the urgency of the community need, compulsory acquisition would be an appropriate measure.

Proportionality

8.7.11. The concerns of the objectors in this regard largely relate to the consideration of alternatives. I have already addressed this matter in section 8.4 of my report.

Engagement

8.7.12. The objectors raise concerns that DCC did not fully engage in attempts to agree acquisition as their intention from the outset was to compulsorily acquire the site. Furthermore, concerns are raised that their approach was not consistent with the Memorandum of Understanding (MOU) between the Department and the City and County Manager's Association on the acquisition of sites for schools (March 2012).

8.7.13. It is my understanding that there is no statutory obligation of the acquiring authority to attempt to facilitate an agreement. However, I accept that it would be an established and expected practice in the interests of natural justice and fairness, which is reflected in section 6.1 of the MOU as follows:

In the event that a negotiation process is fully exhausted and the landowner refuses to sell the site/fails to agree an acceptable price, the LA will consult with the Department (SAPM) to determine if it is necessary for the Local Authority to acquire a suitable site by compulsory order (within 3 months of the original request to acquire being issued).

8.7.14. The MOU was designed to codify cooperation practice between the Department and local authorities. It is not, of course, a legally binding document, and it is not planning policy. In any case, it is not contested that the local authority did engage with the landowners over a significant period that involved several meetings / discussions. And while opinions on their intentions and whether the process was '*fully exhausted*' may differ, it would appear to me that the local authority made reasonable attempts to agree an acquisition prior to proceeding with the CPO.

Inheritance

8.7.15. I consider that the concerns of the objectors on the financial implications of the CPO are not a matter for consideration at this stage. Such matters will be addressed by the statutory arbitrator as part of the compensation process.

Representation

8.7.16. The objectors' written submission raised concern that a lessee of the land was not afforded an opportunity to participate in the process. In response, Mr Raftery's submission to the oral hearing outlined that DCC was not made aware of any such lease and that all relevant parties will be entitled to the compensation process if the CPO is confirmed. The objectors did not elaborate on this point at the oral hearing and there was no request on behalf of the alleged lessee to make a submission.

8.7.17. I note Mr Bradley's serious concerns about the lack of representation for Mrs Baldrick. From the documents on file and the evidence provided at the oral hearing, it would appear that Mrs Baldrick was served notice of the CPO. Furthermore, it would not be uncommon that a landowner would not be represented in the process where that landowner does not object to the CPO. I acknowledge that the matter is complicated by Mrs Baldrick's alleged incapacity, but I do not consider that this is a matter for the adjudication of the Board.

8.7.18. Having regard to the above, I do not propose to discuss the issue of representation any further.

Chief Executive's Orders

8.7.19. The objectors questioned the existence of 'manager's orders' during the oral hearing. I note that copies of the following orders are included on the file:

No: 2020/CE/H0157 (dated 2nd December 2020) for the compulsory acquisition of the lands and the preparation of a CPO.

No: 2020/CE/H0163 (dated 4th December 2020) for the making of the CPO, application of the Seal of the Council, the submission to An Bord Pleanala for confirmation, the service and publication of notices, and the delegation of duties for the signing of notices.

9.0 Conclusions and Recommendations

Having regard to the above, I conclude that:

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

10.0 Reasons and Considerations

Having considered the written objections made to the Compulsory Purchase Order, the report and recommendation of the Inspector who conducted the oral hearing into the objections, and having regard to the following:

- (a) The purpose for which the lands are to be acquired as set out in the Compulsory Purchase Order,
- (b) The deficiencies in the existing educational facilities in Buncrana,
- (c) The community need, public interest served and overall benefits to be achieved from the proposed school campus,
- (d) The provisions of the National Planning Framework and the section 28 guidelines on 'The Provision of Schools and the Planning System (2008)' and 'The Planning System and Flood Risk Management (2009)',
- (e) The policies and objectives of the County Donegal Development Plan 2018 – 2024, which are not materially contravened, and
- (f) The submissions and observations made at the oral hearing,

It is considered that, the acquisition permanently of the lands in question, as set out in the CPO and on the deposited map, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

Stephen Ward

Senior Planning Inspector

26th May 2021

Appendix 1: Proceedings of the Oral Hearing

An oral hearing was held in relation to the proposed compulsory acquisition of lands on Wednesday 14th April, 2021. It was held remotely at the offices of An Bord Pleanála using Microsoft Teams Software. The following were in attendance and made submissions at the oral hearing.

Submissions on behalf of Donegal County Council

Mr Dermot Flanagan, SC

Mr Peter Raftery (Principal Officer, Department of Education)

Mr Paul Christy (Senior Executive Planner, Donegal County Council)

Submissions on behalf of the Objectors

Mr Conleth Bradley, SC (on behalf of Roy Baldrick and David Walker)

Mr Roy Baldrick

Mr Brendan McGee, Franklins Estate Agents (on behalf of David Walker)

The Inspector formally opened the hearing at 10:03 am. Following some introductory remarks, he requested that the acquiring authority make its formal submission.

Mr Flanagan outlined the intentions for submissions on behalf of DCC and called upon Mr Raftery to make his submission.

Submission by Mr Peter Raftery (Department of Education)

Mr Raftery read into the record the submission on behalf of the Department of Education, which was collaboratively prepared by himself and other colleagues. The submission is based on several issues, which can be summarised as follows:

Problems with existing schools

- Two schools (the Gaelscoil and the Gaelcholáiste) are currently in rented accommodation, which creates uncertainty for future planning.
- The Gaelscoil building is shared with other community facilities and services, which is unsatisfactory.
- The Gaelcholáiste is in a peripheral location with limited accessibility and no physical education facilities.

- Crana College is on a restricted site in a residential area. It has 12 modular units, which limit open space availability, and off-site locations are used to accommodate classrooms. There is no scope to develop the site to cater for current enrolments and the site limitations restrict expansion prospects.
- There would be educational and social benefits to the proposed campus given the characteristics of the existing schools.

Future requirements

- The Gaelscoil will have the capacity to increase to 200 pupils with an 8-classroom school. A 1,000 pupil post-primary facility will cater for the existing enrolments of Crana and Gaelcholaiste, while allowing for future expansion.
- The campus will enhance diversity and synergy in terms of the support of the Irish language, specialist facilities and a wider range of subjects.

Site Selection

- The Department contacted DCC in 2014 to seek assistance in acquiring a suitable site. Since 2015, various unsuccessful attempts have been made and the situation became urgent in 2019/2020.
- Mr Roy Baldrick approached the Department in August 2019 to enquire whether they were still seeking a site.
- In considering sites, the following conclusions were reached:

Site 1: Raised issues with infrastructural costs for access and servicing; proximity to Lough Swilly SAC; and acquisition of 3rd party houses.

Site 2: Identified by DCC for Social Housing project and funding has been sought. Phase 1 is currently under construction and phase 2 is in design.

Sites 3, 4, 5 & 7: Issues were raised about the zoning of these sites and the costs associated with servicing and access.

Site 6: Negotiations did take place, but the owners were not in position to provide vacant possession. Costs and leasing arrangements associated with an existing business raised concerns about economic viability. The site was sold to the lessee in 2019 and continues to operate as a business.

Site 8(a): Issues raised with the operation of a business on site and the requirement for vacant possession deemed the site economically unviable.

Site 8(b): This site is the subject of the CPO.

- It was concluded that the CPO site is suitable in terms of zoning, location, size, topography and access, and given the difficulties with title and valuations for both plots, it was decided to progress by way of CPO.
- DCC has deemed the site suitable for the location of schools and that a three-storey school building would be acceptable to them, and that it is compatible with surrounding residential development.

Response to objections

- DCC is acting within Part XIV of the P&D Act in assisting the Department to provide for the educational needs of Buncrana. The CPO process affords appropriate protections for the landowners, including statutory compensation.
- In addition to the sites already assessed (above), the other 3 sites identified by the objectors are assessed as follows:

Site 9: When developed, this 'residential' zoned site will complement the CPO site, which is appropriately zoned for the school campus.

Sites 10 & 11: Issues were raised about the zoning of these sites and the costs associated with servicing and access.

- The financial implications for the beneficiaries are matters for consideration under the compensation process.
- DCC held three separate meetings with the objectors in 2019/2020. Due to difficulties with title, compensation and valuations, DCC and the Department were advised to commence the CPO process.
- DCC has not been made aware of the details of any lease of the lands. All qualifying parties would be compensated on confirmation of the CPO.
- Traffic management issues will be dealt with through the full planning process and the local roads team has concluded that appropriate measures can address such issues.
- In terms of size, the site is suitable for the present and forecasted future demand for an educational campus for Buncrana.

Inspector's questions to the Department of Education

The Inspector questioned whether the site complies with the requirements for school site sizes set out in Table 1 of the Department's Technical Guidance Documents 25 and 27. Frank Lewis (Senior Architect, Department of Education) responded by stating that there is no guidance on shared campuses as the requirements vary greatly depending on the type of schools. Total requirements would not be a simple aggregation of individual school needs due to the efficiencies which can help reduce land take requirements. The 2019 revisions to the TGD's also account for NPF recommendations on compact growth to facilitate smaller sites and shared facilities.

At this point, in the interests of clarity, the Inspector clarified that the drawings submitted by DCC relating to an indicative school layout (Appendix 3.1 and 3.2 of the DCC submission) are not being assessed as part of the CPO process. Any such proposal would be the subject of a future application.

Submission by Mr Paul Christy (Donegal County Council)

Mr Christy read into the record the submission on behalf of Donegal County Council, which was collaboratively prepared by himself and other colleagues. The submission is based on several issues, which can be summarised as follows:

Background

- Mr Christy outlined the site context and the 'concept of 'compact growth', which is a key cornerstone of national planning policy as set out in the NPF.
- The CPO site is centrally located and easily accessible in relation to surrounding residential development, the town centre, and the existing and planned amenities on the shorefront. The site provides potential to encourage walking and cycling to the school and is highly accessible for bus services.
- Eamonn Mahon (Executive Engineer) has reviewed the junction of the R238/Causeway Road and advises that there are currently no serious traffic management issues. He also advises that the planning process will facilitate a detailed Traffic Impact Assessment (TIA) and envisages that this will highlight the need for traffic light/controlled junctions which would cater for future traffic.

Planning Policy

- The proposal facilitates and implements the general education policies of the CDP and the broad support for the education sector in Buncrana.
- The proposal implements the zoning objective for 'mixed-use' sites, which reserves land for uses including 'educational'. Policy BC-ED-P-6 specifically refers to the subject site (M2) and the proposed use is consistent with this.
- A southwestern portion of the site is in fluvial 'Flood Zone A' and a southern strip of the land is in fluvial 'Flood Zone B'. The uses proposed in these zones are the access road (categorised as 'less vulnerable') and ball-courts (categorised as 'water compatible development').
- Kevin Lake (Senior Executive Engineer) advises that there is sufficient capacity for water and wastewater connections for the CPO site.

Conclusions

- The submission concludes that the acquisition of the site for educational purposes facilitates the implementation of the Development Plan and the orderly development of the site and adjoining lands. The site is suitable in terms of shape, location and servicing, will greatly enhance educational facilities for the community, accords with proper planning and sustainable principles, and is required for present and future community needs.

Mr Flanagan then took Mr Christy through the Buncrana Land-use zoning map 13.1 to confirm the zoning for each of the sites numbered 1 to 11 (see Appendix 1 and 2 of DCC submission), the policies relating specifically to the CPO site, and the other maps attached to the DCC submission.

Inspector's questions to Donegal County Council

In response to questions relating to zoning, Mr Christy could not confirm whether there is a 'zoning matrix' in the CDP and it was agreed that the matter could be clarified later in the hearing. In relation to 'residential' zonings, Mr Christy advised that the objective is to reserve these lands primarily for residential development and he would have serious concerns that an educational use on the majority or all of such a site might materially contravene the Plan.

In relation to flood risk vulnerability, Mr Christy confirmed that schools are identified as 'highly vulnerable development' but highlighted that the majority of the site is not in a flood risk area. Mr. Christy confirmed that a Strategic Flood Risk Assessment was carried out as part of the CDP, but he could not confirm whether a specific assessment was carried out in relation to the subject site. It was agreed that the matter could be clarified later in the hearing.

The Inspector questioned DCC on the source of the OPW flood mapping concern. Mr Eamonn Mahon (Executive Engineer) indicated that a stream to the east of the site tends to flood at the crossing point of the Causeway road. However, he has been familiar with the Buncrana area for quite some time and is not aware of any flooding events on the subject site. The channel running through the site no longer takes water after drainage was improved as part of the upgrade of adjoining roads.

The Inspector questioned whether any level of preliminary traffic assessment has been carried out at this stage. Mr Mahon confirmed that existing infrastructure and traffic counts have been assessed but that no assessment has been generated in relation to the school campus.

In response to a question by Mr Flanagan, Mr Christy confirmed that SEA was carried out as part of the completion of the CDP.

Legal submission by Mr Flanagan (on behalf of Donegal County Council)

The submission outlines that DCC made the CPO in exercise of its powers under Part XIV of the PDA ' *for the purposes of the provision of a site suitable for the development of a school campus*'. Provisions of section 212 and 213 of the Act are highlighted as follows:

- To secure or facilitate the development of land.
- To provide, secure or facilitate the provision of areas of convenient shape and size for development.
- To provide or arrange for the provision of sites for the establishment or relocation of schools and services ancillary.
- To act collaboratively with other bodies, as also outlined in the CDP.
- To use powers relating to the compulsory acquisition of land.

- Giving effect to or facilitating the implementation of its development plan in accordance with the requirements of section 15 of the Act.

Mr Flanagan highlighted examples of similar cases of joint ventures under the provisions of section 212 of the Act, including Greystones Marina (ABP Ref. 27.CF2002), the Dublin Road scheme in Bray (ABP Ref. PL06D.HA.0020/KA0013), and the Clinton case (Clinton v. An Bord Pleanála (No. 2) 4 I.R. 701).

The submission suggests relevant caselaw on the matters of constitutional implications and proportionality and contends that an onus to demonstrate that alternative sites are not available is not the appropriate legal test for the exercise of compulsory acquisition. The appropriate test is set out in the case of Lord *Ballyedmond v. Commission for Energy Regulation, Clarke J. 2006*, and relates to the appropriateness of making the acquisition in light of any demonstrated superiority of an alternative. A superior alternative has not been demonstrated in this case.

It is submitted that the site is suitable for the development of an educational campus and the orderly development of the site and adjoining lands. It is the only site in Buinchrana with a specific zoning for a school and would facilitate the implementation of the Development Plan.

Compensation issues, including financial aspects to the acquisition, are not to be considered in the confirmation of a CPO. There is no legal authority for the proposition that a Local Authority must reach agreement with the landowners in advance of the CPO process.

The submission concludes by stating that the proposed acquisition is in accordance with statutory provisions, meets the proportionality test, meets the community need and the exigencies of the common good, is the minimum required to meet the objective, and supports the orderly development of the area. The obligation to consider other sites has been met in accordance with case law (*Ballyedmond*) and the site is suitable for CPO. Mr Flanagan also clarified that the purpose of the CPO is to provide a site for a school campus, not to dispose of land as is being suggested by the objectors.

Legal submission by Mr Bradley (on behalf of the objectors)

Serious concerns were expressed about the lack of representation for one of the owners (Mrs Mary Baldrick) and Mr Bradley questioned whether she had been served notice of the CPO.

Mr Bradley outlined the applicable legislation and highlighted that s. 212 of the PDA has the sub-title 'development by a planning authority', which does not cover the acquisition of land for the purpose of disposal to another body. It is submitted that the proposed CPO fails three fundamental requirements of any CPO proposed by a Local Authority, which can be summarised as follows:

The Purpose

The purpose of the CPO is to transfer the lands to the Department, which is an entirely unlawful purpose (caselaw is referenced). Mr Bradley questioned whether a Manager's Order had been prepared and if a lawful purpose had been stated therein. There is no such statutory function or powers vested in DCC to acquire the land or to dispose of it to a third entity.

Mr Bradley referenced caselaw which highlights the importance of the constitutional rights of the objectors and contended that there was no attempt to reach agreement on the purchase of the lands.

As interpreted in the Clinton case, a local authority cannot compulsorily acquire land for an unknown purpose. Similarly, in this case, the land is not being acquired for local authority use.

The submission highlights the legislative provisions relating to the acquisition and disposal of land by DCC as body corporate, and highlights that the disposal of land is a reserved function.

The Reason

Concerns are raised that DCC's reason and rationale for the CPO is based on the alleged incapacities of Mrs Mary Baldrick, which amounts to a decision taken for an improper purpose. The approach seriously prejudices the constitutional rights of the landowners.

There has been no attempt to reach agreement, which is the first and obvious course. Even if this course is followed and agreement is not possible, the acquisition must meet the tests as set out by McGrath & Galligan in *Compulsory Purchase and Compensation in Ireland: Law and Practice, Second Edition (2013)*.

Proportionality

DCC have failed to demonstrate that alternatives are not demonstrably preferable taking into account environmental effects where appropriate, particularly in light of some of issues the Inspector raised with regard to flooding and compliance with TGDs 25 and 27.

Mr Bradley disagrees with Mr Flanagan's interpretation of the Ballyedmond case and refers to test (iii) set out in McDermott and Wolfe in *Compulsory Purchase and Compensation in Ireland: Law and Practice' (1992)*, which has not been addressed with regard to 'environmental effects'.

For the reasons set out above it is requested that the Board refuses to confirm the CPO.

Submission by Mr Baldrick

The site comprises 40% of the original family farm and is a prime site for development. Despite pressure to sell, the land has remained in family ownership for generations. Mr Baldrick is not objecting to the school proposal but does object to the use of a CPO and the absence of due process.

Mr Baldrick has tried to establish the evolution of the site selection process through local media reports and FOI requests (as contained in his submission). He considers that the DCC 2015 site map (identifying 9 sites) was not comprehensive and his objection suggested another 3 sites. Mr Baldrick comments on the various sites as follows:

Site 1: Agrees that there are difficulties in servicing and access.

Site 2: Contends that this was deemed suitable for a school and questions why houses were built if there was an urgent need for a school.

Sites 3, 4 & 5: Questions why these suitable sites were not purchased. The cost of infrastructure should not be an impediment as it would be reflected in the land value.

Site 6: Advanced negotiations took place in relation to part of the site, but agreement could not be reached, and the lands were sold to a 3rd party. A 15-acre section of the land was still apparently available to the Council, but it did not proceed. Large sections of the land are still available, and it has good access and services. It has been designated as a site with 'educational potential' and is the obvious site to be investigated. He questions why CPO powers were not used in this case.

Site 7: Despite the unsuitable zoning of these lands, there are reports that the owner was approached, and advanced investigations took place with a view to purchase.

Site 8a: This site is also designated as having 'educational potential'.

Site 8b: The CPO site is not unique, as suggested by Mr Flanagan. Other sites in the area have been designated as having 'educational potential'.

Mr Baldrick stated that DCC has never made an offer for this land. The owners approached the council about selling only when family circumstances and land valuations were satisfactory. Mr Baldrick contends that DCC always intended to use CPO powers and no interest in negotiation.

Mr Flanagan raised concerns that Mr Baldrick was raising 'without prejudice' discussions and issues of 'compensation'. Mr Bradley denied that Mr Baldrick was discussing 'compensation' and was only outlining the approach taken by DCC.

Mr Baldrick concluded by highlighting traffic congestion at peak times and contending that new developments will exacerbate the situation.

Submission by Mr McGee (on behalf of David Walker)

In response to questioning by Mr Bradley, Mr McGee outlined the approach of DCC at a meeting on 1st April 2021 (DNG also represented Mr Baldrick at this meeting).

Mr Flanagan formally objected to this evidence being introduced regarding 'without prejudice' discussions at a time when they have formally objected to the CPO. The Inspector instructed Mr McGee's contribution to concentrate on relevant issues.

Mr McGee asserted that no offers were going to be made and the use of CPO was always the intention. Mr. Flanagan again objected on the basis of the introduction of issues relating to compensation and valuation. The Inspector advised that the

objectors' position in relation to the negotiating approach by DCC had been made clear and that the hearing should move on.

Mr Bradley objected to interruptions and raised the issue of an MOU between the Department and the City and County Manager's Association regarding the process for school site selection. He contends that the MOU outlines that only after negotiations are fully exhausted should compulsory acquisition be considered.

Clarifications

Before proceeding to cross-questioning, the Inspector sought clarification on issues raised earlier in the hearing.

Mr Christy confirmed that there is no formal 'zoning matrix' in the CDP, but that the site was zoned for 'mixed use' with provision for educational uses. As part of the CDP, a Stage 1 Strategic Flood Risk Assessment (SFRA) was prepared for all settlements across the county, including Buncrana. It concluded that a stage 2 Flood Risk Assessment (FRA) would be best delivered when preparing a new Local Area Plan (LAP) for Buncrana. He is satisfied that flood risk is not a prohibitor for the CPO and that the SFRA is available for inspection.

Mr Mahon clarified that he was present at the Causeway Road during the August 2017 flood events in Buncrana (a 1 in 100-year event). He did not witness any flooding of the subject site.

Mr Bradley's questioning of Mr Christy

When questioned in relation to flood-risk, the CPO process, the consent process, and the nature and extent of the proposal, Mr Christy clarified the following:

- a site-specific assessment has not been carried out in relation to the site.
- Mr Paul Kelly (SEP) had prepared a report assessing a matrix of sites and there was a manager's order. The report is summarised in the Department's submission, which confirms that the subject site is suitable.
- He cannot confirm the consent process that may follow CPO confirmation.
- He accepted that he must be able to confirm that the 'works' accord with or will not materially contravene the CDP. When questioned on the extent of

'works', he stated that detailed works were relevant at this stage, but he was satisfied about compliance with the CDP.

- Part of the lands are vulnerable to flooding, but it is not premature to confirm their suitability given that the majority of the site is not vulnerable.
- The indicative layout included in the DCC submission does not approximate to a planning application. It is an indication of how the site could be developed to accommodate a school campus.

At this stage the Inspector again clarified that these drawings do not form part of the CPO and will not be taken into consideration.

Mr Bradley's questioning of Mr Boyle

In response to questions relating to the preparation, purpose and rationale for the CPO, Mr Boyle clarified the following:

- He was involved in the process since 2014 and a Manager's Order was prepared for the CPO.
- The purpose is to acquire a site for a school and transfer it to the Department.
- The rationale for the CPO process was based on large gaps in valuations, the incapacity of Mrs Mary Baldrick, and the desire to attain clear title.
- Mrs Baldrick was served with a notice but there was no response. He is satisfied that Mrs Baldrick would be represented by the other landowners.
- Discussions with the owners of sites started with a view to acquisition by mutual agreement, which is the preferable option rather than a CPO.

Mr Bradley asserted that the consequence of the CPO is to clean the title, as confirmed by Mr Boyle, and that this is an unlawful proposition.

Mr Bradley's questioning of Mr Raftery

In response to questions relating to site acquisition attempts and the MOU, Mr Raftery clarified that:

- The Department has worked with DCC since 2014 on identifying suitable sites and negotiating with landowners, which informed their decisions on how to proceed. Two sites with existing businesses were not economically viable as they would have had to relocate existing businesses. The subject site is

greenfield and more suitable. His submission to the hearing summarises the reasons for not proceeding with other sites.

- While accepting Mr Bradley's reading of section 6.1 of the MOU as an accurate account, Mr Raftery outlined his understanding that one of the owners was not in a position to negotiate directly and that negotiations would not be successful in this case. Accordingly, it was his understanding that a CPO should be pursued.

Mr Bradley contends that this assessment does not meet the test of the Ballyedmond case with regard to alternatives and that the CPO was used to address the problems identified in Mr. Boyle's submission regarding clean title of the property.

Mr Flanagan's questioning of Mr Baldrick

After Mr Baldrick confirmed that he was a legal representative of Mr David Baldrick (deceased), Mr Flanagan suggested that he was in a position to represent the interests of Mrs Mary Baldrick and has objected to the CPO as such. Mr Bradley strongly objected to that proposition.

Mr Baldrick confirmed that he has no objection to a school being developed anywhere in Buncrana, but he objects to the use of the CPO process. He stated that this is a prime site, but it is not a unique site and it has not been demonstrated that other alternatives are unsuitable. His principal concerns regarding the process relate to the issues of choice and timing, rather than the price of the land.

When Mr Flanagan stated that one of the alternative sites suggested (Site 9) is also at risk of flooding, Mr Baldrick outlined that the vast majority of site is unaffected by flooding and he only suggested the site to show how the DCC investigations of suitable sites were not comprehensive. He accepted that site was zoned 'residential' but contended that this could be changed.

Mr Flanagan's closing statement

The appropriate test is as per the Clinton case and there is a present purpose in this CPO case. Section 212 of the PDA is clear in setting out that DCC can facilitate development by the use of CPO powers and they do not have to carry out the development themselves. Section 211 also allows local authorities to dispose of land if it would be in accordance with proper planning.

The Ballyedmond judgement test does not refer to 'environmental matters'. The test is whether or not there is any demonstrated superiority of an alternative, and no material to demonstrate this has been submitted by the objectors.

The site is suitable, which is uncontested, and a unique express policy supports the school proposal at this location. Similar to the current case, the Clinton case did not include a project and dealt with acquisition for development purposes only. There is no evidence of a material contravention of the CDP in this case and the development can be provided in the flood-free zone.

The MOU has no legal effect and the acquiring authority relies on the provisions of sections 211, 212 and 213 of the PDA, which support the purpose of the CPO.

An exhaustive requirement to balance and rank the suitability of the sites has no basis in law. Compensation is not relevant to the confirmation of the CPO (as per section 216 of the PDA). Mr Baldrick's concern relates to price and he does not object to a school at this location. The confirmation of the CPO will ensure that all relevant parties will be compensated.

The site is the most suitable site and has been proposed in accordance with statutory entitlements. The proposal is proportionate, meets the legal tests for CPO, and should be confirmed.

Mr Bradley's closing statement

Mr Bradley reiterated serious concerns that Mrs Mary Baldrick is not represented, and the manner in which Mr Flanagan has tried to assert otherwise.

Legal principle concerns have already been outlined in relation to the purpose, rationale and proportionality of the CPO. The Inspector's questions have also highlighted deficiencies in information on flooding, the zoning matrix, traffic, and compliance with TGDs. The reasons for the CPO are as set out in the submission by Mr Boyle.

Mr Baldrick's answers have been mischaracterised by Mr Flanagan. Mr Baldrick's answers regarding the absence of objection to the principle of a school were generalised and did not relate to the CPO site.

The CPO must be refused on grounds of the legal criteria and non-compliance with the MOU. He accepts that the MOU is not a legal document, but the local authority relied upon it. Mr Flanagan's interpretation of the Clinton case is incorrect.

Mr Bradley requested that the CPO be refused and indicated that costs will be sought under section 219 (1)(b) and (2) of the PDA.

Closing

The Inspector closed the hearing at 16:30.