



An
Bord
Pleanála

Inspector's Report

ABP-311409-21

Development	Carlingford Lough Greenway, County Louth
Location	From Omeath Pier, Omeath, to County Bridge in the townlands of Cornamucklagh, Drummullagh, Knocknagoran and Lislea, County Louth Carlingford, Co. Louth
Planning Authority	Louth County Council
Applicant(s)	Louth County Council
Type of Application	Compulsory Purchase Order
Type of Application	Compulsory Purchase Order under the provisions of the Local Government (No. 2) Act 1960, the Housing Act 1966 (as amended), the Roads Act 1993 (as amended) and the Planning and Development Act 2000 (as amended)

Objectors

Patrick Rooney
Owen McCourt and Peter McCourt
Owen and Ciara Connolly
Patrick Heaney
Patsy Heaney c/o David Heaney
Hugh McCourt
John O'Loughlin
Fergus Flynn-Rogers
Lorna Walker & Matthias Feist
Lawrence & Mary Connolly
Sean & Louise McMasters
Steven Heaney
Martin Ward

Date of Site Inspection

28th April 2022 and 18th October 2022

Inspector

Ian Boyle

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1.0 Introduction

Overview

- 1.1. This report relates to a compulsory purchase order (CPO) sought by Louth County Council to construct a greenway from Omeath Pier to County Bridge in Omeath, Co. Louth at the border with Northern Ireland.
- 1.2. The greenway is the Carlingford Lough Greenway and referred to as 'Louth County Council, Carlingford Lough Greenway, Omeath to Border, Compulsory Purchase Order 2021' within the formal documentation prepared by the Local Authority.
- 1.3. Louth County Council (LCC) is seeking to acquire compulsorily the necessary lands to implement the scheme. This includes both the permanent and temporary acquisition of lands, which are shaded grey and blue, respectively, on the deposited maps accompanying the CPO. The purpose of the temporary acquisition of lands is to facilitate site works associated with the construction of the greenway.
- 1.4. Thirteen objections were received in respect of the CPO from landowners as outlined in Section 5 below. This report considers the issues raised in the objections submitted to the Board and, more generally, the application to acquire lands for its stated purpose.
- 1.5. The CPO is made under and for the purposes of section 76 of and the Third Schedule to the Housing Act, 1966 (as amended), as extended by section 10 of the Local Government (no. 2) act, 1960, substituted by section 86 of the Housing Act, 1966 (as amended), and as amended and extended by the Planning and Development Act 2000 (as amended), the Local Government Act 1925 (as amended), the Roads Act 1993 (as amended) and all other Acts thereby enabling the compulsory purchase of lands published in accordance with article 4(a) of the Third Schedule to the Housing Act, 1966, as amended.
- 1.6. A Part 8 application process previously took place under Reg. Ref. 20/504, which gave consent for the building of the greenway in September 2020.

Purpose of the CPO

- 1.7. The purpose of the proposed greenway is intended to connect with existing and future sections of the overall cross-border Carlingford Lough Greenway network.

- 1.8. It would encourage more people to walk and cycle and undertake more cross border trips for recreational, amenity or travel to work purposes.

2.0 Site Location and Description

- 2.1. The proposed greenway route ('application site') extends approximately 4.2km along the general direction of the R173 (Regional Road) and takes in the townlands of Cornamucklagh, Drummullagh, Knocknagoran and Lislea, in Omeath, north County Louth.
- 2.2. The site is linear and mainly flat and the starting point for the route is near Omeath Pier, which is a short distance north of Omeath village centre. Omeath is connected to the coastal villages of Carlingford and Greenore via the R176 and R173 and is approximately 3.5km southeast of the border with Northern Ireland.
- 2.3. The site is generally bound to the northeast by Carlingford Lough and the high-water mark (HWM) along the shoreline, which includes a varying terrain of shingle, sand, and mudflats. It is mainly surrounded on its northwestern side by agricultural lands, horse paddocks, wooded areas, scrub, and residential properties.
- 2.4. The subject lands generally lie in between the old railway line embankment and coastline of Carlingford Lough. Parts of the proposed route belong to private landowners. Other sections take in the local road network and are taken-in-charge (TIC) by the Local Authority.
- 2.5. There are several European and Natural Heritage sites, and features of architectural heritage, in the vicinity of the c.4.2km long linear site.

3.0 Application of the CPO / Proposal Description

3.1. Documentation

- 3.1.1. The application documentation includes the following:
 - *Planner's Report / CPO Report*, completed by Senior Engineer and Senior Executive Planner, dated 30th August 2021, on the suitability of the lands for the purpose of CPO and statement that the proposed acquisition complies with all relevant planning and transportation policies and objectives for the

area as set out in the Louth County Development Plan 2015 – 2021 and the Draft policies contained within the Draft Louth County Development Plan 2021 – 2027,

- *Copy of Director of Services Order*, directing the acquisition and making of Compulsory Purchase Order; and sealing, publication and submission of same for confirmation, and signed 8th September 2021,
- *CPO Order*, signed and sealed, and dated 8th September 2021,
- *CPO Maps*, (referred to as ‘Deposited Map’), including 6 no. drawing sheets, marked as No. 181146-DC-XX-XX-SK-C-001 to 181146-DC-XX-XX-SK-C-006, outlined in red and showing lands to be acquired,
- *Newspaper Notice* (original copy) published in The Argus, and dated 14th September 2021,
- Copy of Receipt of Registered Post, dated 10th September 2021,
- *Notices served* (copy of letters) to landowners, lessees, and occupiers,
- Copy of Part VIII CEO Report for previous Part VIII Application, dated 24th August 2020, and
- *Copy of Meeting Minutes* for Municipal District of Dundalk where Part VIII Application was approved, held on 21st September 2020.

3.2. Reference to Previous Part 8 Application / Approval

- 3.2.1. A Part 8 process previously took place under Reg. Ref. 20/504, which gave consent for the building of the greenway in September 2020.
- 3.2.2. An Appropriate Assessment Screening Report was prepared and formed part of the assessment for the Part 8 process, where it was not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site and, as such, an Appropriate Assessment (Stage 2AA) was not required.
- 3.2.3. The Part 8 Consent for the greenway addressed the relevant planning and environmental considerations arising.

3.3. Description of proposed CPO / Greenway

3.3.1. The proposed CPO lands mainly comprise a linear and flat site ('the subject site' / 'application site'). It is approximately 4.2km in length and traverses agricultural lands, woodland and sections of land close to the coastline of Carlingford Lough.

3.3.2. The overall corridor greenway would comprise a shared walking and cycling route ranging in width from 5m - 6m and be constructed mainly with a granular unbound surface, incorporating the following:

- A 1.2 m high post and rail timber fence or other appropriate boundary fencing on each side of the greenway, including installation of stock proof fencing, security fencing, privacy screening, and planting and boundary walls, where appropriate.
- A 2 – 3m shared greenway surface for walking and cycling.
- An adjacent 0.5 - 1m wide over the edge 'v-ditch' drainage channel or French drain and a 0.5m buffer strip along the greenway.
- A new box culvert as extension of existing culverted private accessways at the L70541 ('Shore Road') and installation of safety barriers where required and a 140m section of asphalt surface providing a shared surface along a private access.
- Cycle parking facilities and new trail head signage at Omeath Pier.
- Traffic and transport improvements such as new signage and road markings where the greenway interacts public roads, access controls (pedestrian and cycle friendly gates), road marking, and traffic calming measures.
- All necessary site works such as tree felling, route clearance, sea wall repairs and fencing.

3.3.3. The technical design standards are in accordance with the relevant best practice guidelines. These are referenced in the Council's 'Carlingford Lough Greenway - CPO Engineering Report' and accompanying report summary.

3.3.4. There are 6 no. drawing sheets / sections of the route accompanying the CPO. These can be generally described as follows:

- Sheet 1 of 6 (Deposited Map): The starting point for this section of the greenway is at Omeath Pier, near an existing residential street, called Cluain na Mara. Cluain na Mara slopes downwards towards the water's edge and away from the R173 and Omeath village centre. The street veers southeast at this point. There is a small grassy section of land, near the shoreline, on the outside (northwest side) of the bend. This small area is currently subject to works being completed by Irish Water and closed off by temporary mesh fencing panels. Just past this is the start of the proposed greenway route / CPO lands. The route travels mainly straight and northwest for a distance along this embankment until it meets an area accommodating some mature and substantial beech trees, some of which are associated with the residential properties 'Drummullagh' and 'Omra Park'. A seawall runs parallel to this section of the application site on its inland side. Lands associated with St Andrew's Church are further northwest and denoted on the deposited maps accordingly.
- Sheet 2: The route meets a narrow public road called the L30541. Users would be required to use a short section of the L30541 at this point before continuing on and connecting with the greenway northeast, where it is once again tight up against the coastline. There is a small derelict signal cottage halfway along this section with various debris and discarded items scattered around the area. The route turns directly inland for a distance just past a property called 'Drummullagh Villa' and then continues northwest cutting across a series of privately-owned third-party lands. Railway Cottage is on an outside bend of the proposed route before the route crosses a small section of a one-way road providing access from the R173.
- Sheet 3: The route is meandering for this section. It runs close to the seashore initially before turning inland and past ruins called Rose Cottage. It largely stays away from Shore Road, thereby avoiding running in between a series of detached and terrace houses that face directly onto the lough. Instead, it travels to the rear of these properties through a series of agricultural lands and horse paddocks. This part of the CPO comprises the severance of some privately owned properties. It also requires the use of the L70541 for a short distance so that it can turn back towards the coast, before

connecting to the old Dundalk, Newry and Greenore railway line ('the old railway line').

- Sheet 4: This section of the route initially mainly comprises the old railway line and then land that is close to the coastline. There are several houses near where the route comes off the L70511. Various fencing and screening measures will form part of the future accommodation works agreement pertaining to the scheme.
- Sheet 5: The route turns inland and travels west shortly after passing the Cornamucklagh Round Tower. It passes through farming land and along the perimeter of a wooded area, called Narrow Wood, before connecting back with the old railway line a short distance inshore.
- Section 6: Continuing along the old railway line, this part of the proposed CPO is wide in sections. It travels generally in a straight line in a north-west direction until it is tight against the water's edge again where the Lough meets the Newry River. The route proceeds over a small section of state-owned land until it reaches County Bridge and the border with Northern Ireland.

4.0 Planning Policy Context

4.1. National Policy

National Planning Framework (NPF) – Project Ireland 2040 ('NPF')

National Policy Objective 22

Facilitate tourism development and in particular a National Greenways, Blueways and Peatways Strategy, which prioritises projects on the basis of achieving maximum impact and connectivity at national and regional level.

National Policy Objective 46

In co-operation with relevant Departments in Northern Ireland, enhanced transport connectivity between Ireland and Northern Ireland, to include cross-border road and rail, cycling and walking routes, as well as blueways, greenways and peatways.

Design Manual for Urban Roads and Streets, 2019 ('DMURS')

DMURS states that:

- *'Better street design in urban areas will facilitate the implementation of policy on sustainable living by achieving a better balance between all modes of transport and road users. It will encourage more people to choose to walk, cycle or use public transport by making the experience safer and more pleasant.'*
- *'Designing for cyclists must also be given a high priority. Trips by bicycle have the potential to replace motor vehicles as an alternative means of transport for short to medium range trips (and in some cases longer range trips). Cycling also promotes a healthy lifestyle.'*

The National Cycle Policy Framework, 2009 - 2020

Objective 3

Provide designated rural signed cycle networks providing especially for visitors and recreational cycling.

The Framework states that 'encouraging recreational cycling is a key element of creating a cycling culture in Ireland and recreational routes in and around urban areas, which, in turn link to rural areas are very important. The network identified will mainly use a mix of minor roads, and some greenways. The greenways are especially important for, typically, the first 10km along the routes emanating from busy town centres which are heavily trafficked and particularly unattractive for inexperienced or very young cyclists'.

The Framework further states that 'there is further work to be carried out in identifying which sections of the extensive network of disused rail-lines would be most suitable to be converted to high quality, traffic-free routes suitable for cyclists of all ages and abilities'.

The National Cycle Manual (NCM) 2011

This document offers guidance on the integration of the bicycle in the design of urban areas. The manual embraces the principles of sustainable safety as this offers a safe traffic environment for all road users including cyclists.

4.2. Regional Policy

Regional and Economic Spatial Strategy for Eastern and Midland Region, 2019 ('RSES')

Chapter 4 – People and Places

- The promotion of walking and cycling within and through the Regional Centre is supported by the RSES including the social and economic benefits of the Carlingford to Omeath Greenway forming part of the 'Great Eastern Greenway'.

Chapter 7 – Environment and Climate

- RPO 7.22: Local Authority development plan and local area plans, shall identify, protect, enhance, provide and manage Green Infrastructure in an integrated and coherent manner and should also have regard to the required targets in relation to the conservation of European sites, other nature conservation sites, ecological networks, and protected species.
- RPO 7.23: Support the further development of Green Infrastructure policies and coordinate the mapping of strategic Green Infrastructure in the Region.
- *Table 7.1* 'Strategic Natural, Cultural and Green Infrastructure Assets in the Region' references the Newry to Carlingford Greenway.

4.3. Louth County Development Plan 2021 – 2027

Zoning

The subject site extends approximately 4.2km and is subject to the following land use zoning objectives under the provisions of the Louth County Development Plan 2021 – 2027 ('the Development Plan').

A1 – Existing Residential

A small section of the beginning of the route is zoned A1 – Existing Residential, which seeks *'to protect and enhance the amenity and character of existing residential communities'*.

A2 – New Residential, Phase 1

A small section of the route further northwest is zoned A2 – New Residential, Phase 1, which seeks *‘to provide for new residential neighbourhoods and supporting community facilities’*.

L1 – Strategic Reserve

The majority of the subject lands are within the L1 – Strategic Reserve land use zoning objective, which seeks *‘to provide a land reserve for the orderly expansion of the settlement into the future’*.

Map based Objectives

- ‘Significant Trees & Hedgerows’
- ‘Special Area of Conservation (NPWS)’

Chapter 5 – Economy and Employment

- Table 5.1 Ongoing Cross-Border Projects in Louth

Theme	Projects
Tourism and Recreation	Carlingford Lough Greenway

Chapter 6 – Tourism

TOU 8: To promote and facilitate the development of walkways and cycleways at appropriate locations throughout the County utilising disused transport links where feasible.¹

TOU 9: To protect the integrity and scenic quality of existing and future walking and cycling routes and their setting.¹

TOU 10: To work in conjunction with adjoining authorities including Newry, Mourne and Down District Council and Meath County Council to extend and design new walking and cycling routes, including the Great Eastern Greenway and the Boyne Greenway. Ensure all proposals include appraisal of environmental impacts and take

¹ The above policies TOU 8 - 10 shall all be subject to compliance with all relevant EU policies such as the Water Framework, Birds, Habitats SEA & EIA Directives.

full account of the potential for negative impacts on European Sites through the process of Appropriate Assessment. ¹

TOU 11: To continue the development of a network of greenways in County Louth in accordance with the ‘Strategy for Future Development of National and Regional Greenways’.

Chapter 7 – Movement

Table 7.6 Local Road, Sustainable Transport and Environmental Projects

Location	Proposed Works
Great Eastern Greenway, Cooley Peninsula	Extensions to Existing Greenway

Chapter 8 – Natural Heritage, Green Infrastructure and Biodiversity

NBG 33: To assess the implications of proposed development on significant trees and hedgerows located on lands that are being considered for development, seeking their incorporation into design proposals where appropriate and in compliance with procedures detailed in Appendix 6.

Chapter 11 – Environment, Natural Resources and The Coast

ENV 61: To support proposals that improve access to marine and coastal resources for tourism activities and sport and recreation, where appropriate, at the applicable scale.

ENV 62: To facilitate sustainable tourism and recreation activities where appropriate, particularly where this creates diversification or additional utilisation of related facilities beyond typical usage patterns.

ENV 65: To resist development along the coast which would detract from its visual appearance or conflict with its recreational and leisure functions.

Chapter 12 – Climate Action

MOV 28: To promote walking and cycling as a safe, convenient, healthy, efficient, and environmentally friendly mode of transport for all age groups

MOV 29: To continue to work and engage with the National Transport Authority, the Department of Transport, any other agencies in developing a modern network of walking and cycling infrastructure in the County.

MOV 30: To provide, where possible, traffic free pedestrian and cyclist routes particularly where such routes would provide a more direct, safer, and more attractive alternative to the car.

MOV 38: To engage in the Compulsory Purchase Order process when required in order to facilitate the timely delivery of the Greenway and Cycleway Projects in the County.

Section 12.7.3.3 Greenways

- 'The Council has invested significantly in Greenways. The Great Eastern Greenway is a 7 kilometre trail that runs from Carlingford to Omeath along the southern shore of Carlingford Lough. It is proposed to further extend this greenway to Newry and Dundalk and increase the length of the trail to approximately 55 kilometres.'

4.4. Carlingford Lough Greenway Section II – Omeath Pier to NI / ROI Border, 2019, Route Corridor Assessment Report

- 4.4.1. The 'Carlingford Lough Greenway Section II (2019) Route Corridor Assessment Report' (RCA Report) states that Louth County Council intends to carry out, in an integrated, comprehensive, and planned manner, the construction of new greenway sections.
- 4.4.2. The Carlingford Lough Greenway will form the northern section of a proposed greenway link from Belfast to Dublin often referred to as the Great Eastern Greenway. This greenway will enable walkers and cyclists to travel off-road between Belfast and Dublin.
- 4.4.3. The report details four route corridor options that were considered at concept design stage, outlines the assessment criteria that was applied to each option and summaries the results of the assessment scoring.

4.5. Natural Heritage Designations

The subject lands fall within and are in the vicinity of several European Sites.

The Carlingford Shore SAC (002306) is directly northeast of the site and the proposed route interacts and is in proximity to it.

The Carlingford Mountain SAC (Site Code: 000453) is roughly 600m to the west of the site at its nearest point.

The Carlingford Lough pNHA (Site Code: 000452) is northeast of the site and the proposed route interacts and is in proximity to it.

The Woodland at Omeath Park pNHA (Site Code: 001465) is roughly 440m to the west of the site at its nearest point.

5.0 Planning History

5.1. Most recent planning applications in the vicinity of the site are for small residential developments and minor alterations to existing dwellings. However, the following application is of note:

5.2. Reg. Ref. 20/504: Chief Executive's Report adopted by the elected members in September 2020 for a Part 8 Application comprising the 'Carlingford Louth Greenway – Omeath Pier to the National Border'.

5.3. The Planning Statement accompanying the application stated that the overarching objectives / goals of the greenway were to:

- inspire active travel;
- meet local need and regional strategies in terms of tourism and healthy and active living;
- enable more sustainable forms of mobility on a cross-border basis;
- increase cross-border commuting by cycling or walking;
- improve cross-border social cohesion;
- improve cyclist safety through the construction of a predominantly 'off-road' shared cycle / pedestrian network; and
- reduce energy consumption and carbon emissions.

6.0 **Objections**

A total of 13 no. submissions were received. The main concerns raised are summarised as follows:

6.1. **Objection by Patrick Rooney**

- 6.1.1. Drummullagh, Omeath, Co. Louth.
- 6.1.2. Patrick Rooney, represented by Clark Hill Solicitors LLP, raised the following main issues.
- 6.1.3. The Council intends to acquire land at the rear of the objector's land holding that fronts onto Carlingford Lough, including plots marked 101a.01, 102a.01, 101b.0t, and 102b.04t.
- 6.1.4. The lands can be grouped into three parts, comprising (i) residentially zoned lands which only have access to the roads on the lands the Council is attempting to acquire, (ii) land which has already been the subject of a CPO by Irish Water, and (iii) land which is zoned strategic reserve and is the site of Drummullagh House.
- 6.1.5. Anxious to exploit the development potential of the lands zoned residential and wishes to preserve access to the main road over the remainder of the lands, as well as maintain direct access to the lough for any proposed development.
- 6.1.6. Mr Rooney intends to construct a private dwelling on the lands that have not been acquired by Irish Water and which are zoned strategic reserve. In this regard, an application previously submitted to the Council was deemed invalid.
- 6.1.7. The CPO is likely to render the lands zoned residential as sterile and inaccessible. The acquisition would diminish the amenity of these lands and also the lands zoned Strategic Reserve.
- 6.1.8. Intends to apply for direct access onto a nearby road as at present no access is in place.
- 6.1.9. The acquisition of land on the roadside of the property would still serve the public interest of having a dedicated cycle path, but with a reduced negative effect on Mr Rooney's lands, which have already been compromised by an Irish Water acquisition that subdivided his overall land holding.

6.1.10. If the Board confirms the acquisition of the land, the CPO should be modified to require the Council to acquire those lands of less than one half of a statute acre, as required under section 93 of the Land Clauses Consolidation Act 1845, east of the areas marked 102b.03t and 102b.04t. Otherwise, this land would be entirely cut-off from the balance of Mr Rooney's lands and made redundant.

6.2. Objection by Owen McCourt and Peter McCourt

6.2.1. The CPO would reduce the amount of space that is available to four rescue horses grazing the land. The amount of land taken should therefore be reduced as much as possible and kept close to the shoreline for their safety.

6.2.2. Appropriate fencing, posts, gates and signage should be used to prevent members of the public parking at the property.

6.2.3. The laneway leading from the R173 is the only access to the property and is not wide enough for bicycles, prams, etc. and other passing traffic.

6.3. Objection by Owen and Ciara Connolly

6.3.1. Owners of the property locally described as Railway Cottage, Drummullagh, Omeath, Co. Louth (A91 WK70).

6.3.2. Despite the CPO, the Local Authority has made no offers of compensation or indicated a timescale for completion of the proposed works.

6.3.3. The proposed route would intrude on the family home. The greenway could still be developed by taking an alternative section of land from a neighbouring land holding, on the opposite side of the road, which is currently used for agricultural purposes (rather than a garden).

6.3.4. The Board is requested to adjust the lands to be acquired under CPO to protect the privacy and security of the house, which would be very close to the proposed greenway route. Installation of privacy screening, gate, hedging and security fencing also requested.

6.3.5. Increase in number of people passing the main vehicular entrance of the house would endanger public safety by reason of being a traffic hazard.

6.3.6. The Board is requested to ensure that private access only be reserved for vehicles and for residential access only on any part of the greenway, that the greenway

should not be used for equestrian purposes, that access to / from the family home across the greenway is not restricted in any way, that noise caused by users of the greenway should be controlled, that road / greenway signage should be appropriate, that the greenway should remain litter free and be appropriately maintained by the Local Authority, and that appropriate policing and security measures be implemented to ensure the safety of all landowners.

6.4. Objection by Patrick Heaney

- 6.4.1. Point View, Drummullagh, Omeath, Co. Louth (A91 XF75).
- 6.4.2. Has not been correctly informed of the CPO by the Local Authority.
- 6.4.3. The CPO notice does not explain how legal representation and costs are to be dealt with by the Local Authority.
- 6.4.4. There is no scale on the serving maps (maps 106 and 108). The architectural and engineering drawings were not included with the CPO notice.
- 6.4.5. The land would be divided and landlocked by the CPO.
- 6.4.6. The notice was issued to 'Patsy Heaney' and not Patrick Heaney.
- 6.4.7. The gateway used to access the objector's field, shed and stables from the L30541 is subject to the CPO which would make them inaccessible. Any new access would incur excessive costs.
- 6.4.8. CPO includes land previously used as an illegal dumping ground.
- 6.4.9. Other concerns regarding loss of value of objector's remaining land, sheds and stables; security issues; insurance costs would increase; loss of privacy; littering and dog fouling in the area; increase traffic on surrounding road network; illegal car parking; and antisocial activity and unauthorised camping.

6.5. Objection by Patsy Heaney c/o David Heaney

- 6.5.1. Point View, Omeath, Co. Louth (A91 XF75).
- 6.5.2. Father is the owner of the land (Patsy Heaney) and David Heaney is his Power of Attorney. Absence of communication from the Local Authority.
- 6.5.3. The main concerns are that it is not known how long the construction phase will take, when it will start or if there are any plans to clean up after the works are complete.

- 6.5.4. The proposed greenway would meet two dead ends at either side of a small strip of land, which is marked as 106a.01 and 108a.01 on the CPO maps. This area is also the access to sheds and other outbuildings owned by the Objector. It would therefore landlock the objector's lands.
- 6.5.5. Other sections of the existing greenway do not have waste facilities, which encourages dog fouling and reduces its aesthetic appeal. The Council has failed to keep the greenway clean and local volunteers are required to take care of it. Will this happen with the new proposed section of greenway?
- 6.5.6. Other concerns; loss of land value, adversely effect the cost of running the Objector's business, security concerns, implications for cost of insurance, no longer being able to facilitate mares and foals, loss of privacy, personal safety and mental health issues.

6.6. Objection by Hugh McCourt

- 6.6.1. Beachcombe House, Drummullagh, Omeath, Co. Louth (A91 XP62).
- 6.6.2. The proposed greenway is not essential infrastructure as there are already lots of designated walks in the area and alternatives that do not impact on private gardens and homes.
- 6.6.3. Misled and misrepresented by the Local Authority and elected officials.
- 6.6.4. Loss of privacy and security due to the greenway passing closeby. The greenway would be 8m from the northside of the house and 18m from its western side. The greenway is elevated above the garden and people would be able to walk around the property, see in through windows and create noise.
- 6.6.5. There would also be an increase in litter, pollution, dog fouling, vandalism and anti-social behaviour. [Also, the owner's dogs may become distressed because of this disturbance.]
- 6.6.6. Adverse environmental impact on natural habitats and biodiversity.
- 6.6.7. Nearby land intended for the greenway is reclaimed and potentially contaminated.
- 6.6.8. The new CPO drawings involve a larger 'land take' than the previous, original drawings that were made available.
- 6.6.9. There will be undesignated car parking on the access road near the property.

6.7. Objection by John O'Loughlin

- 6.7.1. Shore Road, Lislea, Omeath, Co. Louth (A91 WF97).
- 6.7.2. No objections to the greenway or its proposed route. However, there are concerns regarding the approach adopted by the Local Authority in terms of delivering the greenway, including that a CPO should only be used as a last resort.
- 6.7.3. Primarily concerned with impact on privacy. Except for neighbours and the postman, the property enjoys total privacy. However, the proximity of the proposed greenway would impact this.
- 6.7.4. The greenway would hinder future plans for renovating and extending a derelict cottage. There is a strip of land which is intended to be a driveway to the house. The proposed extension will not sit almost against any fencing associated with the greenway, thereby providing no buffer.
- 6.7.5. Concerns that Plot Number 122a.01 will be used for unauthorised parking as it would be tarmacked and widened to 6m. Putting up signage here would not dissuade this from happening.
- 6.7.6. There is an ongoing property dispute in relation to land that the greenway crosses. The folios have been drawn and registered incorrectly. Any compensation offered for land should not be made while there is no formal consent between the parties.
- 6.7.7. Regarding Plot Number 121a.01, a small corner of the property is proposed to be taken into the control of the Local Authority. This tree provides opportunities for shelter and play and there is no assurance it will be protected by the Council. Removing ownership of this section of land will curtail the future intended development of the cottage and result in considerable architectural expenses. It also raises questions regarding the drilling of a deeper well and relocation of the pump house that the cottage extension would require.
- 6.7.8. Regarding Plot 121b.01t (temporary acquisition works). The removal and restoration of the bridge at this location would result in lengthy inconvenience and no adequate access to the property.
- 6.7.9. In summary, the objector fully supports the greenway, its proposed route, that it would be for the good of the public. However, a CPO process was not necessary, and the land being taken would result in significant personal implications.

6.8. Objection by Fergus Flynn-Rogers

- 6.8.1. Omra Park, Omeath, Co. Louth.
- 6.8.2. The objection is regarding land parcel 103a.01 which relates to the land / garden associated with the house at Omra Park 9 (A91 KP26).
- 6.8.3. Willing to withdraw appeal if the Local Authority agree to position the greenway closer to the sea wall.
- 6.8.4. Queries the rationale for applying the Strategic Reserve zoning to the land ('it was never explained or understood'). It was made known to the Local Authority that agreement would only be forthcoming for the proposed Greenway if the zoning was reversed (back to residential).
- 6.8.5. Ten residents at Shore Road refused to have the greenway at the front of their houses. Therefore, a revised and tortuous route was selected instead.
- 6.8.6. Positioning the greenway as close as possible to the sea wall would afford the pedestrian and cyclist a better sea view. This would avoid invasion of privacy of the garden associated with Omra Park.
- 6.8.7. Tidal flood concerns raised.

6.9. Objection by Lorna Walker & Matthias Feist

- 6.9.1. Shore Lodge, Shore Road, Lislea, Omeath, Co. Louth (A91 Y240).
- 6.9.2. The objection is regarding land parcel 120b.01.t, which relates to Shore Lodge.
- 6.9.3. In favour of the proposed greenway in principle.
- 6.9.4. Various points of clarification sought including that access will be maintained throughout the project (as it is the only access to this house), there will continue to be a right-of-way across the land during the construction phase, ownership of the land and the right-of-way will be fully restored once the build is complete, any damage incurred during the construction phase will be repaired / made good, the entrance will be reinstated with kerbs on both sides.
- 6.9.5. It is understood that the boundaries of the property will not be permanently changed – confirmation of this is requested.

- 6.9.6. It is also understood that the proposed greenway will not result in unnecessary expenses being incurred (legal fees, surveyor fees, etc.) and that a septic tank soakaway marked on the map will not be affected.
- 6.9.7. Clarification sought that the bridge providing access to the property and culvert providing access to a neighbouring property (A91 WF97) will be replaced with one new culvert and three entrances (one to the subject property, one to the neighbouring property and one to the proposed greenway).
- 6.9.8. New fencing should be installed to ensure that privacy and security of the property is maintained.
- 6.9.9. It is understood that the Council will temporarily purchase the land at a price to be agreed that reflects both the value of the land to the project and the inconvenience associated with the works taking place.

6.10. Objection by Lawrence & Mary Connolly

- 6.10.1. Cornamucklagh, Omeath, Co. Louth (A91 DA00).
- 6.10.2. Lack of communication from the Local Authority.
- 6.10.3. Requests clarification regarding insurance, indemnity, shore rights and access, what flood risk mitigation measures / infrastructure will be implemented.
- 6.10.4. Raises concerns regarding invasion of privacy, security, noise / nuisance (lighting, construction, traffic, etc), impact on habitats and biodiversity, future communication from the Council, and what costs any expenditure may be involved.
- 6.10.5. Strongly objects to the proposed CPO.

6.11. Objection by Sean & Louise McMasters

- 6.11.1. Drum Villa, Drummullagh, Omeath, Co. Louth (A91 EE62).
- 6.11.2. Objects to the proposed greenway.
- 6.11.3. The private right-of-way (laneway R173) is the only access to the property. The proposal to turn this into a public amenity is not wide enough for its intended purpose. It is only 10ft wide and has a 2ft drop on either side.

- 6.11.4. There are two alternative routes available for the greenway – the originally route past the coastline or a suitable footpath / walkway in conjunction with the existing laneway which would leave room for the various parties.
- 6.11.5. Concerns for rescue horses as the land for grazing is just over 3 acres. The proposed route should be kept as close as possible to the shoreline to leave the much-needed land for the horses.
- 6.11.6. The greenway would have an impact on privacy, safety and general wellbeing.

6.12. Objection by Steven Heaney

- 6.12.1. Point View, Omeath, Co. Louth (A91 XF75).
- 6.12.2. The project has been poorly managed by the Local Authority and communication lacking.
- 6.12.3. The land to the east of the Point View may become landlocked with no solution for the landowner (objector's father) to be able to gain access.
- 6.12.4. There are security concerns and the greenway would allow access to the property.
- 6.12.5. Inadequate screening, loss of land / devaluation of land, traffic congestion on the L30541 (this road has been described as an access route for the greenway, which is not suitable).
- 6.12.6. The land in question forms part of a site for which there is planning permission to construct a house. The CPO would negatively affect the percolation quality in the area, water well and potential ground source heat installations that would serve this dwelling.
- 6.12.7. The existing greenway has not been properly maintained or policed.
- 6.12.8. The land has been previously used to brood mares and foals. The proposed greenway would be detrimental to this and render the land unusable for this purpose in the future.
- 6.12.9. Open to negotiate on all concerns but is not in favour of the proposed CPO.

6.13. Objection by Martin Ward (Represented by EHP Services)

- 6.13.1. Ballykeel House, Drummullagh, Omeath, Co. Louth, A91 EV58.

- 6.13.2. Requests the Board to refuse the CPO as it presents a threat to safety, well-being, security and lives of horses, broodmares and foals.
- 6.13.3. There is no objection in principle to the proposed Greenway. However, the chosen route cuts through this paddocked property on the western side of the overall landholding and would have the effect of sterilising the current use of the land, which is thoroughbred racehorse breeding.
- 6.13.4. If confirmed, the selected route for the proposed greenway would result in a dangerous interaction between the public and these sensitive animals. Impacts could be mainly caused by noise, odour, litter, proximity of people and leashed/unleashed dogs.
- 6.13.5. The present onsite breeding programme would be required to be relocated to an offsite stud facility, as opposed to elsewhere on the property, if the greenway proceeds along the chosen route (i.e. western side of the property). Such operations have expensive stabling, training and breeding fees.
- 6.13.6. Various concerns raised in relation to the pre-consultation and route selection process undertaken by the Local Authority, including that the route ultimately selected was not communicated to the landowner. The objector had been willing – and still is – to gift land along the eastern part of his property to facilitate the greenway as this would be further away from the horse paddocks.
- 6.13.7. The lands shown on Sheet 3 of 6 shows the proposed greenway layout (pathway, fencing, etc), and lands to be temporarily acquired to facilitate its construction. The greenway once constructed would impede animals and machinery crossing between paddocks at this location, where there is a gated access / crossover point.
- 6.13.8. The chosen route would incur unnecessary additional costs due to a longer, more circuitous route. The ‘alternative eastern route’ shown as Route Option B in the Route Corridor Assessment Report, prepared by Doran Consulting (dated August 2019), was considered the most appropriate.
- 6.13.9. The selected route fails many of the eleven assessment criteria used by Doran Consulting to determine the approved route, including consideration of:
- physical constraints (topography, river/stream crossing points, pinch points, flooding etc.),

- quality of service (greenway should be an attractive product to users, such as segregation from vehicular traffic, safe and accessible for all, substantially off-road, etc.),
- potential cost (a fixed rate per km of Greenway will be estimated and applied to each route, high cost options will receive a lower score than lower cost options)
- material assets and human beings (land with high value, e.g. agricultural, will be scored less), and
- public feedback (views of the public on the respective route options must be recorded and reflected in the route scoring).

6.13.10. Rerouting the greenway along the eastern (rear) section of the property as per Option B (Yellow Route) would be a shorter, more expedient, and common sense solution than the current route. It would involve less land acquisition, legal fees, and costs resulting from relocating telephone poles / lines, construction of a bridge / culvert, replacement livestock pens and gated agricultural entrance. It would also avoid land severance and avoid the determinantal impacts upon the health, wellbeing, and security of the highly vulnerable and expensive thoroughbred horse breeding programme by diverting it far enough away to mitigate these impacts and concerns.

6.13.11. The objector remains willing to agree to the Council's CPO of any lands necessary to the east (rear) of his property and provide all necessary permissive agreements. However, in the event the current route is permitted, the level of compensatory remuneration must reflect not only the appropriate land value for the subject equine paddocks, but also the entire 5.88 acres of land that will cease to function as such.

6.13.12. The Board are requested to refuse the proposed CPO.

7.0 Oral Hearing

Background

7.1. An Oral Hearing was held on Wednesday, 26th October 2022. The objectors in attendance and Louth County were represented at the Hearing and oral submissions were heard by, or on behalf of, the parties. The proceedings of the Oral Hearing are

summarised in Appendix A of this report and referenced in the assessment section of this report below (Section 8.0). The proceedings were also recorded and are available to the Board on an audio file.

Modifications

- 7.2. Proposed modifications to the CPO and Schedule were submitted by Louth County Council to an Bord Pleanála on 21st October 2022, before the Oral Hearing took place, which was 26th October 2022.
- 7.3. A single modification was proposed comprising the deletion of Plot 121a.0 from the CPO. The amendment is also referenced in an appendix to a document submitted to the Board outlining the Council's 'opening remarks' for the Oral Hearing.
- 7.4. The amendment was presented in response to the objection received by the Board from Mr John O'Loughlin (see Section 8.7.8 below).
- 7.5. No objections were received on the submitted amendment.
- 7.6. The Board was requested by the Council to accept the modification as outlined in the submitted material and also during the proceedings of the Oral Hearing.

8.0 Assessment

8.1. Overview

- 8.1.1. The proposed CPO is in relation to a section of the Carlingford Lough Greenway, which is intended to be constructed between Omeath Pier to the County Bridge in Omeath, Co. Louth. This section of the proposed greenway would connect with existing and future sections of the overall cross-border Carlingford Lough Greenway network.
- 8.1.2. The Local Authority is seeking to compulsorily acquire the necessary lands to implement the scheme. The plots that are subject to the proposed CPO comprise the land, and site working areas, deemed necessary by Louth County Council for the construction of the greenway. The Council considers this appropriate having regard to the need to meet the required infrastructural standards and that the land take is proportional to its requirements.

- 8.1.3. The greenway ('application site') extends approximately 4.2km along the general direction of the R173 (Regional Road) in north County Louth. The site is generally linear and mainly flat.
- 8.1.4. The starting point for the route is near Omeath Pier, which is a short distance north of Omeath village centre. Omeath is connected to the coastal villages of Carlingford and Greenore via the R176 and R173 and is approximately 3.5km southwest of the border with Northern Ireland.
- 8.1.5. The site is generally bound to the northeast by Carlingford Lough and the high-water mark (HWM) along the shoreline, which includes a varying terrain of shingle, sand and mudflats. It is mainly bound to the northwest by agricultural lands, wooded areas, scrub, residential properties and lies largely in between the old railway line embankment and coastline of Carlingford Lough.
- 8.1.6. Parts of the proposed route belong to private landowners. Other sections take in the local road network and are intended to be taken-in-charge (TIC) by Louth County Council.
- 8.1.7. My assessment of the proposed CPO considers the issues raised in the written objections submitted to the Board, the points made at the Oral Hearing (OH), and the general principles to be applied in assessing CPOs of this nature.
- 8.1.8. 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 Pleanála (No. 2) (2007) 4 IR 701*, the Local Authority 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 four general principles, which are as follows:
- There is a **community need** to be met by the acquisition of the property in question.
 - The particular **property is suitable** to meet the community need.
 - The works carried out accord or at least not be in material contravention of the provisions of the **relevant statutory Development Plan**.

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

- 8.1.9. 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.
- 8.1.10. The proposed CPO is assessed below in the context of the above tests prior to addressing the specific issues raised in the objections lodged.
- 8.1.11. From the outset, I note the extent of the subject lands which are to be acquired, and the large number of landowners affected. The Schedule to the CPO includes the full list 'owners or reputed owners' and 'lessees or reputed lessees', which is extensive.

8.2. **Community Need**

- 8.2.1. I note that Louth County Council (LCC) and many of the objectors to the CPO are in agreement in that the greenway would be beneficial for the surrounding area and are, in principle, in favour of it. However, as the greenway, and its associated works, is required to pass through various sections of land owned by third parties, it is necessary for the Council to acquire these land parcels, and this has generated a number of concerns for the affected parties.
- 8.2.2. The main issues raised by objectors are in relation to privacy, security, noise / nuisance (lighting, construction, traffic, etc), impact on habitats and biodiversity, traffic and illegal parking of cars, costs or expense that might arise (because of implications caused by the CPO), that the consultation process carried out by the LCC has been inadequate, potential for anti-social behaviour, and potential impacts on the well-being and security of animals, including horses, broodmares and foals (some of which are part of a horse breeding program and others that are rescues).
- 8.2.3. Having regard to these concerns, I note also that the scheme intends to deliver a series of overarching objectives, which were referenced in the Planning Statement accompanying the previous Part 8 Application (Reg. Ref. 20/504). These objectives would result in positive community benefits for the locality and are as follows:
- Encourage and facilitate active travel (walking and cycling);

- Promote tourism and healthy and active living;
- Enable more sustainable forms of mobility on a cross-border basis;
- Increase cross-border commuting by cycling and/or walking;
- Improve cross-border social cohesion;
- Improve cyclist safety through the construction of a predominantly 'off-road' shared cycle / pedestrian network; and
- Reduce energy consumption and carbon emissions.

8.2.4. During my site visit, I observed that the proposed route generally following the coastline and that the broad views of Carlingford Lough and surrounding countryside were scenic and picturesque. The route would travel past and serve several houses in the area and also connect some small enclaves of houses to Omeath village centre. The route would end at the border between the Republic of Ireland and Northern Ireland, near County Bridge.

8.2.5. Therefore, the greenway, in addition to being a valuable tourist attraction for the area, would have the ability to deliver additional benefits for local community in terms of being an important cross-border initiative which encourages social cohesion, more sustainable forms of mobility, and result in improved local opportunities for people to walk and cycle as a means of transport other than driving.

8.2.6. There would be certain potential adverse effects arising due to the greenway on third party landholdings. However, I note the relevant test is whether on balance the overall benefits of the proposed scheme to the wider community would outweigh these more localised impacts.

8.2.7. Therefore, having regard to the scheme benefits outlined above, it is clear in my opinion that the proposed greenway would be an appropriate means of meeting the stated objectives of the project and be in the interests of community need and gain. The greenway would accord with national, regional and local policy, improve accessibility for pedestrians and cyclists, provide for better environmental conditions, encourage cross-border interactions and social cohesion, and reduce energy consumption. It would also likely deliver an economic return on investment and facilitate tourism development.

8.2.8. In summary, I conclude that the proposed greenway would benefit the wider community and that the CPO is justified in the interests of the common good. I conclude that 'the community need' for this scheme has been established and that this general principle in terms of assessing the CPO has been met.

8.3. **Suitability of Lands to Serve the Community Need**

8.3.1. The proposed greenway is intended to encourage more people to walk and cycle and undertake more cross border trips for recreational, amenity or travel to work purposes.

8.3.2. At present the lands have a variety of uses including agriculture / farming land, horse breeding, woodland, residential, urban and recreational. The c.4.2km route would be along the general direction of the R173 (Regional Road) and take in the townlands of Cornamucklagh, Drummullagh, Knocknagoran and Lislea. No habitable dwellings will be permanently acquired, and no public rights of way will be extinguished.

8.3.3. The Council has confirmed that it is proposed to permanently acquire 4.1ha of land to accommodate the greenway corridor, and to temporarily acquire 0.9 ha for facilitative construction works.

8.3.4. They have also outlined that given the number of plots and affected parties it was not considered practicable that all interests could have been acquired on a voluntary basis. The CPO process was, therefore, required to implement the subject scheme within a reasonable timeframe and because it was not possible for all the necessary land to be acquired voluntarily. Accordingly, LCC submit that there is a compelling argument, which is in the public interest for exercising compulsory purchase powers in this case. LCC state that the impacts on all landowners are proportionate to the public need for the scheme and the level of acquisition proposed.

8.3.5. I further note that the Local Authority stated several times during the Oral Hearing that any replacement works to boundaries would be carried out on a 'like for like' basis. However, where agreed with individual objectors, different boundary treatments would be provided. In some cases, upgraded boundary treatments would be installed to address certain specific concerns, including, for example, potential for loss of privacy or noise, or to maintain access between lands. This would be done through a future accommodation works agreement.

- 8.3.6. I note that the extent of the land that would be acquired under the CPO on a permanent and temporary basis is determined by the specifications of the proposed greenway layout and its associated construction works. I am satisfied that the land proposed to be acquired by the Council is required to accommodate the greenway and that the amount of land take is necessary and proportional to ensure the delivery of the scheme and to allow it to meet the necessary design standards. I am also satisfied that the lands, which currently accommodate a range of uses (mainly agricultural and open fields) are suitable for the construction and operation of the greenway for cyclist and pedestrian use.
- 8.3.7. Significant sections of the proposed greenway route comprise the old Dundalk, Newry and Greenore railway line, in addition to land that is close to the coastline and existing sections of the local road network (including the L70541). The parts of the greenway utilising sections of public road would result in some minor road improvements and related safety upgrades, however. These upgrades would mainly comprise information signage, road signage, line markings and traffic calming measures, and I consider that this would be to the benefit of improved traffic and public safety in the area generally.
- 8.3.8. In summary, and having regard to the above, I am satisfied that the lands identified in the CPO are required for the construction of the proposed greenway and that this is suitable to meet the criteria in relation to community need.

8.4. **Compliance with Planning Policy (including County Development Plan)**

- 8.4.1. The proposed route is part of a wider interconnected greenway network through which it is proposed to meet several national and regional policy based objectives. These national policy objectives are mainly focused on achieving a modal shift in transport away from car-based and fossil fuel dependent transport to more sustainable and less energy reliant modes of transport, including walking and cycling.
- 8.4.2. In this regard, I note that DMURS includes several policies and objectives which encourage more people to choose to walk, cycle or use public transport by making the experience safer and more pleasant. Specifically, I note that the guidance states that designing for cyclists must be given a high priority. Trips by bicycle have the

potential to replace motor vehicles as an alternative means of transport for short to medium range trips (and in some cases longer range trips). Cycling also promotes a healthy lifestyle.

- 8.4.3. The NPF (NPO 22) states that it is an objective to facilitate tourism development and in particular a 'National Greenways, Blueways and Peatways Strategy', which prioritises maximum impact and connectivity at national and regional level. I further note that NPO 46 seeks to achieve, in co-operation with relevant Departments in Northern Ireland, enhanced transport connectivity between Ireland and Northern Ireland, to include cross-border road and rail, cycling and walking routes, as well as blueways, greenways and peatways. These dedicated cycleway/pedestrian paths meet a community need generated by both locally based commuters, and the tourist industry, by the provision of off-road, segregated and safe cycling and walking facilities.
- 8.4.4. The proposal in this instance would link in with the wider 'Great Eastern Greenway' – a 42km route, which stretches from Carlingford and Omeath, across the Republic's border with Northern Ireland into Newry, County Down. Therefore, the project is recognised as a nationally important project deriving benefits across multiple areas and regions.
- 8.4.5. The 'Regional and Economic Spatial Strategy for Eastern and Midland Region, 2019 ('RSES')' includes relevant planning policies and objectives in relation to the delivery of the proposed greenway. Chapter 4 ('People and Places') states that the promotion of walking and cycling within and through the Regional Centre is supported by the RSES, including the social and economic benefits of the Carlingford to Omeath Greenway which forms part of the 'Great Eastern Greenway'. I note that Table 7.1 of the RSES, which sets out a series of 'Strategic Natural, Cultural and Green Infrastructure Assets in the Region', specifically references the 'Newry to Carlingford Greenway' route.
- 8.4.6. The Louth County Development Plan 2021 – 2027 includes several policies and objectives which seek to support cross-border projects, including the Carlingford Lough Greenway (see Tables 5.1 and 7.6 of the Plan); the development and expansion of tourism in the county (Chapter 6), including TOU 8, TOU 10 and TOU

11; and to utilise opportunities presented by the natural and coastal environment, including ENV 61, 62 and MOV 30.

- 8.4.7. I note, in particular, Objective MOV 38 of the Development Plan which states that it is an aim of the Local Authority 'to engage in the Compulsory Purchase Order process when required in order to facilitate the timely delivery of the Greenway and Cycleway Projects in the County'.
- 8.4.8. It is therefore clear to me that that national and regional policy, and the adopted County Development Plan, include specific policies and objectives that support the delivery of the proposed greenway that is currently before the Board for consideration.
- 8.4.9. Having regard to the foregoing, I am satisfied that the lands affected by the proposed CPO substantially accord with national, regional and local planning policy and the Louth County Development Plan 2021 – 2027. In relation to the CDP, this includes policies and objectives relating to land use; the economy and employment; tourism; movement; green infrastructure; and the environment, natural resources and the coast.

8.5. Consideration of Alternatives

- 8.5.1. The 'Carlingford Lough Greenway Section II – Omeath Pier to NI / ROI Border – Route Corridor Assessment Report (2019)' (RCA) considered various strategic route alternatives for the proposed greenway. The overall objective was to allow Louth County Council to carry out, in an integrated, comprehensive, and planned manner, the construction of a new greenway section.
- 8.5.2. The RCA sets out four route corridor alternatives and these were considered at concept design stage. The report also outlines the assessment criteria that was applied to each option and summaries the results of the assessment scoring. The Local Authority noted that a resolution was possible with many of the landowners affected by the proposed CPO. However, some others still objected to the route selected and the matter was debated at length during the Oral Hearing, as summarised in this section of the Report and outlined in Appendix A 'Proceedings of the Oral Hearing'.

- 8.5.3. Several landowners expressed their dissatisfaction with the level of communication carried out by Louth County Council. It was also put to the Local Authority by some third parties that a more appropriate route would have been to stay as close as possible to the Shore Road as this would be closer to the coastline and afford better and more scenic views of Carlingford Lough. This would also allay some concerns raised by objectors in relation to animal welfare, including protecting an existing horse breeding operation that exists on lands that would be affected by the proposed route.
- 8.5.4. In response, and during the OH, the Council submitted that the proposed project was the subject of a detailed community consultation process undertaken on behalf of Louth County Council and Newry, Mourne and Down District Council. A preferred route was then identified, and this struck a balance in terms of potential impacts and the delivery of a high-quality greenway.
- 8.5.5. The Local Authority submitted during the Hearing that the potential impact and effects on all landowners would be proportionate to the public need for the scheme and the extent of land being acquired. It was also argued that the alignment of the route is the most reasonable means of delivering a high-quality greenway, which would achieve the scheme objectives and community need, and would be in the interests of the common good. Whilst certain deviations from the preferred route form part of the current proposal this is due to certain infrastructural constraints and would involve compromises to the quality and physical specification of the greenway.
- 8.5.6. Having reviewed the Route Corridor Assessment Report, the submissions and various other information on file, I note the proposed route is generally in accordance with the site selection study which was developed for the project (i.e., the Carlingford Lough Greenway Section II – Omeath Pier to NI / ROI Border – Route Corridor Assessment, 2019). It is also consistent with the approved Part VIII application. Notwithstanding this, I acknowledge given the nature and extent of the proposed CPO that concerns relating to property and landownership will inevitably arise regardless of whichever option is selected.
- 8.5.7. The RCA recommended that the final greenway route should incorporate a combination of the ‘yellow’ and ‘red’ routes, mainly for reasons relating to proximity

and access to scenic views of Carlingford Lough, avoidance of the public road, economic viability, plus others.

- 8.5.8. The proposed CPO route follows the short-listed / recommended route option in the main. However, I note that the proposed CPO has diverted from the recommended route at certain points. The location where this is most evident is shown in Figure 6.1 of the RCA (Page 11) where the greenway would follow sections of the 'blue' and 'green' routes (Key Area 3). Therefore, it travels inland, away from the coastline, and utilises a section of a public road called the L70541.
- 8.5.9. This was discussed at length during the Oral Hearing where the objector, Mr Ward (represented by EHP Services), raised concerns in that the proposed route would cut through his lands and, therefore, would present a threat to the safety, well-being and security of horses, broodmares and foals, which currently utilise this land. The animals form part of an extensive horse breeding program which Mr Ward has established on the western section of his overall land holding. Mr Ward has also offered to gift a section of land to the east of his overall property to facilitate the greenway as this would be further away from the horse paddocks and unlikely to interfere with the welfare of these animals.
- 8.5.10. Upon questioning at the OH, the Local Authority, through Mr O'Donnell, responded to these concerns. A comparison was made with other similar horse training facilities located elsewhere. It was put forward that some of the most prestigious stud farms in the country are against long areas of busy road frontage and, in some cases, there are national and regional routes traversing through these well-known horse breeding facilities. However, these stud farms operate adequately and without any issue or impacts being experienced. It was also stated that the Irish National Stud operates satisfactorily and co-exists with a visitor centre and as a centre of gardens for members of the public to visit. Therefore, it was submitted by the Local Authority that there would be no incompatibility between a walking and cycling route and the existing horse breeding program on the lands in question.
- 8.5.11. In my opinion, and acknowledging the comments made by both the third party and Local Authority, I consider that the presence of the greenway in such proximity to Mr Ward's lands could potentially undermine the existing horse breeding program, but mainly only due to loss and potential severance of land. I am satisfied that the

proposed development would not adversely affect the horse breeding operation to any significant extent due to potential disturbance or noise created by walkers or cyclists using the greenway when compared with passing motor vehicles and traffic. However, the CPO could give rise to certain inconveniences in terms of the amount of land take proposed and the disruption or alteration of existing land patterns that could undermine the existing facility. This would be subject to the implementation of mitigation measures as per the works accommodation agreement and future terms of compensatory arrangements.

- 8.5.12. Furthermore, having regard to the relevant legislation and test concerning community need, it is my opinion that the chosen route would outweigh any potential harm caused by formally acquiring these third party lands, and that this represents a fair balance between achieving the interest of the community and protection of landowner rights. Insofar as the matter of compensation is concerned, I note that this is a separate issue which cannot be addressed under the CPO process. However, I note that Louth County Council acknowledged during the Oral Hearing that a separate scheme of compensation would be available if any such loss or damage were to occur.
- 8.5.13. While the Route Corridor Assessment Report (Section 9.0) indicates the red and yellow corridor options scored best overall, I note that for Key Area 3 the green and blue options was recognised to have certain locational and physical advantages over other options. This is mainly due to the absence of residential buildings and other structures along the chosen route, which would otherwise present certain physical constraints. This would have the effect of reducing the quality and usability of the greenway by having to decrease its width at certain points and by having to incorporate several sharp bends and additional earthworks for diversion and rerouting purposes.
- 8.5.14. In this regard, the RCA states that the blue route provides an alternate route via agricultural lands between the coast and the main road that would not need to have a reduced width, or require retaining works / earthworks, in order to navigate around various residential properties and sheds.
- 8.5.15. I note the technical information shown in Section 4.4 of the Report which illustrates via a cross sectional drawing some of the specifications and general physical

arrangement of the greenway. The route is a shared surface that is 3m in width. This width allows for pedestrians and cyclists travelling in opposite directions to pass one another safely and conveniently. It also includes a 0.5 – 0.5 / 1m verge or ‘v-ditch’ on the side of the gravelled surface for safe movement, drainage, and stopping and passing purposes.

- 8.5.16. The potential reduction of the width of the shared surface would impede users, in my opinion, and potentially result in a less safe environment for those walking and cycling, particularly at busier times. I consider that this would be especially the case where there are sharp bends or curves present in the route, which I note, according to Section 6.3.2 of the RCA, would be the case for the yellow route option along this particular stretch of the greenway.
- 8.5.17. In summary, and having regard to the above, I consider that alternative route options have been adequately explored by the Council. The proposed route alignment represents the most reasonable means of achieving the scheme objectives and I submit that this would meet the identified community need. I consider that LCC has demonstrated a reasonable consideration of the alternatives available and that the preferred, proposed route is the optimum one.
- 8.5.18. The Local Authority has shown that they have sufficiently considered alternative methods of meeting the community need and, taking into account the responses provided to the objectors’ concerns at the Hearing, I conclude that the criteria in relation to this particular test has been met.

8.6. Proportionality and Necessity for the Level of Acquisition Proposed

- 8.6.1. I consider that the scheme will benefit all users in the long run, including mainly visitors and tourists, but also local people who decide to use the facility for exercise and as a means of active travel by walking or cycling between destinations.
- 8.6.2. I acknowledge that proposed scheme has the potential to have a negative impact upon adjoining lands during both the operational and construction phases. Impacts experienced during the construction of the scheme would be temporary in nature. This would potentially be able to be managed by implementing various mitigation measures, including, for example, in a construction management plan for the project, or as part of future accommodation works.

- 8.6.3. Several objectors raised concerns regarding the potential impact which the proposed scheme could have on the residential amenity of their respective properties, including loss of privacy, reduced garden areas, noise, lightspill, odour, littering, etc. This matter was explored during the course of the Oral Hearing, and it is clear from the deposited maps submitted by Louth County Council that the proposed scheme would be run close to certain residential properties and houses. It would also require taking lands compulsorily that are used for not only agricultural farming, but for recreational and access purposes.
- 8.6.4. During the OH proceedings, LCC noted that any interference with private property rights must be supported by the relevant legislation and that it must strike a fair balance between the interests of the community and the protection of the rights of landowners. The Council stated during the proceedings that the greater public good would be achieved by implementing the proposed greenway and that its benefit for the people of the area and community at large would outweigh the negatives caused by formally acquiring third party lands in order to accommodate the scheme.
- 8.6.5. During the Oral Hearing, Patrick Rooney (represented by Cormac McNamara, BL) and Gordon White (Gordon White Consulting Engineers), expanded upon his written objection and stated that the proposed CPO would have a disproportionate effect on his land holding.
- 8.6.6. Mr McNamara referenced the Planner's Report completed by LCC during his opening submission. He specifically noted the section of the report where it states 'the scheme has been mitigated, to the maximum possible extent, impacts so that adverse affects have been resolved. The impact and affects on all landowners are proportionate to the public need and its level of acquisition'. Mr McNamara stated he intended to interrogate this statement and contended that the proposed CPO would render the part of Mr Rooney's lands which are zoned residential sterile and inaccessible.
- 8.6.7. It was also noted Mr Rooney wishes in the future to construct a dwelling on the lands which have not been acquired by Irish Water and which are zoned 'Strategic Reserve'. Mr White also submitted that the proposed CPO would reduce Mr Rooney's ability to access and use the lands which do not form part of the proposed CPO. It is asserted that the CPO would significantly limit access between the lands

remaining after both the Irish Water CPO and proposed LCC (Greenway) CPO have been completed. I acknowledge that this is a valid cause for concern.

- 8.6.8. Mr McNamara also stated during the Oral Hearing that Mr Rooney's position is that the CPO should not be confirmed. However, if it is, it should include lands marked blue and purple/mauve on the diagram accompanying his submission and that it should also preserve access from Drummullagh House to the slipway². These lands comprise a section of land between the proposed permanent acquisition line and foreshore boundary wall characterised by fill slope (shaded blue, Area 2) and part of the foreshore, including the slipway (shaded purple, Area 3). Secondly, the CPO should be modified to temporarily incorporate lands shaded green and orange, within this submission, so that the Council can complete the necessary works to construct the requisite access near the lands subject to a recent Irish Water acquisition (hatched in blue, Area 1).
- 8.6.9. However, having examined the matter at hand, the Council has made adequate provision so that such outcomes are unlikely to occur. The existing access from the Drummullagh House to the shore would be kept as part of the proposed scheme and, moreover, the Council has confirmed that 'all existing access gates to the shore would be provided as part of the greenway'. This position is on the record. An access would also be maintained along the boundary of Mr Rooney's lands with land recently acquired by Irish Water such that it would not be landlocked or deprived of an access in this location. This would avoid the lands owned by Mr Rooney being split into two separate parcels, as contended in Mr White's submission, and that adequate provision can be made to allow them to remain connected in some fashion.
- 8.6.10. I further note that future accommodation works would be an appropriate mechanism by which to address both matters and that this would help ensure that any land affected by the CPO would not be landlocked or cut-off from its residual balance. This could be achieved either by way of enhancing/preserving existing access points, or creating new access points, as appropriate, as part of more detailed discussions informing the future accommodation works agreement. I acknowledge that the Council indicated during the OH that it is their intention to construct and

² This diagram is entitled 'Map 6 – Affected Areas Outside the Louth Co Co Permanent Acquisition Line' (Drg. No. G1372-06) (dated 20 Oct. 2022) as prepared by Gordon White Consulting Engineers.

facilitate an appropriate access arrangement – potentially in the form of two gated access and egress points – so that Mr Rooney’s lands would not be landlocked due to the Irish Water acquisition and CPO proposed by LCC. I consider this reasonable and appropriate and do not consider that LCC should be required to temporarily acquire any lands to construct the access points as it is not necessary.

- 8.6.11. In relation to the argument that the CPO lands should be extended, so that the lands marked blue and purple/mauve would be acquired by the Council, this would require the extent of land going over and above what is necessary to accommodate the proposed greenway. In other words, the acquisition of the purple and blue lands shown in Mr Rooney’s submission, are not necessary to execute the scheme, and this is a fundamental consideration in assessing whether the amount of land take is proportionate or not.
- 8.6.12. I acknowledge the concerns raised by the Objector in relation to increased potential for public liability risk due to the presence and proximity of the future greenway to his lands. However, as users of the greenway would have no direct access to this area from the greenway route itself, I do not consider that any such concerns of this nature are likely to eventuate, or be significantly exacerbated, by the project itself. I do not therefore consider that potential issues regarding public liability risk is sufficient grounds for which to annul the CPO.
- 8.6.13. It is also in the interests of the Council to discourage anti-social behaviour from happening along what is intended to be an important tourism product for the County. I further consider that the increased pedestrian and cyclist activity brought into the area because of the greenway would lead to increased passive surveillance and informal monitoring of activities. Finally, and on this point, I would note that there is a potential option available to the Objector to serve a notice on the Council to acquire the subject land parcels, but that such a mechanism cannot form part of Board’s assessment of the proposed CPO.
- 8.6.14. In summary, I consider, it is not possible, nor appropriate, for the Board to compel the Council to extend the amount of land take that is proposed to be compulsorily acquired for the purposes of delivering the subject scheme. The Board would be acting beyond their remit if there was an attempt to do so. In any case, I do not consider the land in question to be necessary to accommodate the greenway and

that this is one of the tests upon which to assess the appropriateness of the proposed CPO.

- 8.6.15. Therefore, the Board's assessment of the subject CPO is confined to whether the land proposed to be acquired is necessary to accommodate the proposal and if it is in accordance with the relevant Development Plan, which in this case is the Louth County Development Plan 2021 – 2027.
- 8.6.16. In relation to Mr Patrick Heaney's lands, I note that a recurring issue raised by objectors in relation to this estate was the potential removal of an existing accessway to accommodate the greenway. This concerned Plot No. 108a.02. The objectors state that there is an existing gateway associated with this land parcel that is used to access a field, shed, and stables from the public road (i.e., the L30541). The acquisition of this plot would render the onsite infrastructure inaccessible and requires new form of accessway in lieu of the gateway lost. The matter was discussed at length during the Oral Hearing, and it was argued that any new access required to compensate for the loss of the gateway in question would incur excessive costs.
- 8.6.17. In response, the Local Authority confirmed that the extent of land take has been kept to a minimum and that every effort has been made to facilitate landowner requests. The Council also noted during the Oral Hearing that the amount of land take for Plot No. 108a.02 could potentially be reduced. The existing gateway could then be left in place and remain fully intact, while still accommodating the greenway and without compromising the required spec or safety standards. This could be done as part of future discussions between the Council and landowner in terms of the accommodation works agreement.
- 8.6.18. In terms of potential impacts on privacy, the greenway will have fence screening installed at various locations where the route moves close to existing residential properties. It is proposed to develop a unique screening requirement to reduce such impacts on Point View, as well as other properties along the greenway, and that this would be agreed through the accommodation works agreement.
- 8.6.19. In the light of the above assessment, I conclude that LCC has demonstrated that the CPO would meet all the relevant criteria for establishing that it would be clearly justified by the common good.

8.7. Additional Issues Raised by Objectors

Proximity of Proposed Route to Residential Properties / Houses

- 8.7.1. Several objectors raised concerns regarding the proximity of the greenway to their residential properties / houses and that this would lead to an unacceptable nuisance in terms of noise, invasion of privacy, litter, security issues, etc.
- 8.7.2. For example, I note that the selected route passes close to a house owned by Mr Connolly. It is Mr Connolly's contention that the greenway route would intrude upon his family home (Railway Cottage), particularly a bedroom and, thus, negatively affect his existing residential amenity. Mr Connolly submits that the greenway should instead be developed by acquiring an alternative section of land from a neighbouring landholding, on the opposite side of the road, and which is currently used for agricultural purposes. This would be further away from his house and avoid taking part of his garden.
- 8.7.3. In my opinion, the proposed greenway would be at very close quarters at the southeastern (gable end) and southwestern side of this house. The Local Authority also acknowledged this concern during the Oral Hearing. LCC confirmed that the route is intended to incorporate screening measures at these types of sensitive locations, and others like it, where proximity to existing residential houses could lead to a reduction in privacy or residential amenity for certain residential properties. In relation to Railway Cottage, the Council's Engineering Section acknowledged that a unique solution would be required in this regard, and that the Council are committed to discussing this in detail with Mr Connolly in due course. The potential use of 'one-way glass', fins and louvres were referenced as potential design options.
- 8.7.4. I note that Beachcombe House (A91 XP62), Point View (A91 XF75) and other houses along Shore Road would also be affected in similar ways due to the proximity of the route chosen for the greenway. LCC noted during the Hearing that a solution would also be agreed with the owners of these properties as part of the future accommodation works agreement and that land acquired will be kept to a minimum.
- 8.7.5. It was also submitted by the Council that as each individual property has unique screening requirements these would need to be agreed through individual discussions with landowners, which I consider reasonable and appropriate. It was

submitted by the Local Authority that the overall selected route is the most appropriate one from a design perspective and that it has been chosen to interrogate with the existing features of the area. I acknowledge that the Local Authority's legal representative confirmed during the Oral Hearing that a separate scheme of compensation would be available to cover potential losses – including the loss of private lands, agriculture farmland or private open space – because of the CPO, but I note that such matters lie outside the scope of this case, which is concerned exclusively with land acquisition matters only. Other landowners who would be similarly affected may also be liable for potential compensation; however, I reiterate, that this is a matter for a separate forum.

- 8.7.6. In relation to the concerns raised by Mr O'Loughlin regarding his property on Shore Road, I note the main concerns raised were around potential impacts on the privacy currently enjoyed by his home and that the proposed scheme would affect his future plans to renovate and extend an existing derelict cottage on the land [I should note that Mr O'Loughlin supports the proposed greenway in principle and does not object to its proposed route, but that certain matters need be addressed in his view, as per his submission.]
- 8.7.7. The Council noted during the Oral Hearing that Mr O'Loughlin would have a full right-of-way (RoW) to pass over the land comprising this section of the greenway and there would be no limitation whatsoever in terms of his ability to access or approach his lands from this direction. This is important so that the subject cottage can be accessible for potential future construction works.
- 8.7.8. In this regard, I would bring the Board's attention to the fact the CPO was amended shortly before the Oral Hearing took place and that the Council formally confirmed their intention to delete Plot 121a.01 from the CPO schedule. Their intention was to address Mr. O'Loughlin's concerns regarding expanding the existing onsite cottage, the drilling of a deeper well for freshwater purposes and the relocation of a pump house (see Section 6.7 above for further details). The ongoing health and maintenance of a mature tree on this plot was also referred to by Mr O'Loughlin as it currently provides shelter and enjoyment to him and his family. I consider the amendment to the CPO appropriate and note that Mr. O'Loughlin also welcomed this change to the CPO schedule.

8.7.9. I consider that the greenway – with unfettered access rights for Mr O’Loughlin to his property – would be adequate to transport and accommodate heavy vehicles and the type of machinery and materials typically required to construct / extent any future house(s) on Mr O’Loughlin’s lands. The greenway is 4m in width in this location with 0.5m verges on either side. I also consider that the measures undertaken by the Council to prevent unauthorised vehicles accessing the greenway and, thus, causing potential obstruction or hindrance are appropriate. In this regard, I note the Local Authority’s intention to install a set of closely spaced and staggered barriers to form a type of restricted access arrangement or chicane. This proposed setup would facilitate access for local people living in the area, as well as walkers and cyclists but, importantly, not vehicles being driven by unauthorised persons or other third parties. Landowners would be able to pass though the barriers unhindered. The Local Authority has also undertaken to install appropriate signage to help control and deter unauthorised car parking from happening, which is a concern cited by several objectors. I consider that this – in tandem with other measures – would be beneficial and assist in addressing this concern.

Traffic and Car Parking

8.7.10. Concerns were raised by objectors regarding traffic safety; mainly due to the volume of walkers and cyclists that are envisaged to use sections of the public road network, pass-by private driveways and interact with various forms of road traffic. In particular, objectors cited the part of the greenway route which would be on-road and incorporate a section of the L70451.

8.7.11. In my opinion, the parts of the proposed greenway that are intended to utilise local roads are limited, and this has only occurred where it has shown that taking an alternative route would be less advantageous. The sections of road which would be used as part of the greenway would also result in some minor road improvements and upgrades, which would be to the benefit of improved traffic and public safety generally. Such a scenario is not uncommon for other successful greenways operating elsewhere in the country whereby small sections of the public road form part of the overall greenway route. Therefore, I am satisfied that traffic safety would not be an issue and that utilising sections of the public road network would not be prejudicial to public health.

- 8.7.12. Concerns raised in relation to unauthorised parking of vehicles along public roads would not be condoned by the Local Authority and this would be discouraged by signage and other means of car parking control. Similarly, cul-de-sac roads and laneways leading to the greenway off the R173 will be marked with 'no access to greenway' signposts to dissuade such practices from occurring. Therefore, it would be far more convenient and likely for greenway users to park at the formally designated and advertised starting locations in my opinion.
- 8.7.13. I consider such measures sufficient to control the potential for unauthorised parking next to the Greenway and note that these methods are commonplace for other types of walking and cycling routes where similar concerns exist.

Illegal Dumping

- 8.7.14. The issue of illegal dumping was referenced by several third parties as a recurring concern during this part of the Oral Hearing. It was stated that the proposed route includes land that has been subjected to fly tipping and this has led to potential contamination of the land. Certain landowners stated that some of this illegal dumping is occurring outside their homes and along the shoreline. Materials include discarded tarmac, concrete and various pieces of construction and demolition waste.
- 8.7.15. However, while such a problem may exist – and I note that potential activity of this sort was observed during my physical inspection of the site – such matters lie outside the remit of the CPO process. In other words, the relevant considerations in relation to land acquisition / CPO matters are confined to those relating to the CPO process only, and this does not extend to environmental considerations, including alleged matters of illicit dumping and potential soil/land contamination. [This is clearly set out in the High Court case of *Wymes v An Bord Pleanála and Meath County Council* [2002] No. 196 JR] HC 275/04 where the Judge adjudicated that considerations in respect of land acquisitions by way CPO are limited to those pertaining to the CPO process and not the planning process.]
- 8.7.16. I note that Louth County Council submitted a detailed Site Investigation Report to the Board during the OH, which was in turn was circulated to the third parties. The report was commissioned for the purposes of the previous (approved) Part VIII application process; and I note the Local Authority confirmed during the Hearing that

it was made available 'as a courtesy' only and should not bear any relevance to the proposed CPO that is currently being assessed.

Other Issues

- 8.7.17. During the Oral Hearing Mr Flynn Rogers noted that he and the Council have reached agreement in terms of keeping the greenway as close as possible to the shoreline and seawall and that it would avoid – insofar as possible – mature beech trees which are present on his land. In respect of these trees, I note that the Council agreed during the proceedings that the future accommodation works agreement would take into account this concern and that the detailed design of the project would make suitable arrangements.
- 8.7.18. Mr Flynn Rogers also acknowledged that the issue concerning the zoning of his lands, which he submitted in his written submission was recently changed by the Council from 'strategic reserve' to 'residential', was not an appropriate matter for discussion at the Oral Hearing.
- 8.7.19. Mr Feist confirmed on behalf of himself and Ms Walker that they were satisfied with Council's response to their objection and these concerns could be dealt with as part of the future accommodation works agreement.

9.0 Recommendation

9.1. Having regard to the above, I conclude that:

- the acquisition of lands proposed under the CPO would serve a community need that advances the common good,
- the 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.

9.2. I recommend that the Board **confirm** the Compulsory Purchase Order, with the modifications, as submitted by Louth County Council on 21st October 2022, based on the reasons and considerations set out below.

10.0 Reasons and Considerations

10.1. 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 of the compulsory acquisition of lands for the 'Carlingford Lough Greenway, Omeath to Border, Compulsory Purchase Order 2021',
- b) the community need, public interest served and overall benefits that would be derived, particularly in terms of encouraging and facilitating active travel, promoting tourism and healthy living, enabling more sustainable forms of mobility on a cross-border basis, increasing cross-border commuting by cycling and walking, improving cross-border social cohesion, improving cyclist safety through the construction of a predominantly 'off-road' shared cycle / pedestrian network, and reducing energy consumption and carbon emissions,
- c) the design of the proposed greenway that is proportionate to the identified need,
- d) the policies and objectives of the Louth County Development Plan 2021 – 2027, which are not materially contravened, and
- e) the modifications submitted to the Board by Louth County Council on 21st October 2022, and
- f) the submissions and observations made at the Oral Hearing held on 26th October 2022, and
- g) the report and recommendation of the Inspector,

it is considered that the permanent and temporary compulsory acquisition of the lands comprising the Compulsory Purchase Order by the Louth County Council are necessary for the purpose stated in the Order, Schedule, and Deposited Maps, and that the objections cannot be sustained having regard to this necessity.

Ian Boyle
Planning Inspector

25th November 2022

Appendix A: Proceedings of the Oral Hearing

Background

An Oral Hearing (OH) was held on Wednesday, 26th October 2022 in relation to the proposed compulsory acquisition sought by Louth County Council (LCC) to construct a greenway from Omeath Pier to the County Bridge in Omeath, Co. Louth. 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.

1. Submissions on behalf of Louth County Council (LCC)

- Michael O'Donnell, BL representing LCC – ***legal context***
- Eugene McManus, Administrative Officer, LCC – ***opening remarks and making of the CPO***
- Barry Baxter, Executive Engineer, LCC – ***greenway design and engineering specification; LCC's written response to objections***
- Patricia Hughes, Senior Executive Planner, LCC – ***planning context and CPO's compliance with the County Development Plan***
- John McGahon BCL, Daniel O'Connell and Son, Solicitors, representing LCC
- Ann Kieran, Administrative Officer, LCC
- John O'Hagan, Senior Engineer, LCC
- Frank Magee, Senior Executive Engineer, LCC
- Pat O'Rourke, Technician, LCC
- Doran Consulting (Planning Consultants) acting for LCC

2. Submissions by Objectors

- Patrick Rooney represented by Cormac McNamara, BL (instructed by Edward Johnston of Clark Hill Solicitors) and Gordon White (Gordon White Consulting Engineers)
- Louise McMasters
- Owen Connolly

- David Heaney
- Fidelma Heaney
- Steven Heaney
- Hugh McCourt (Junior)
- John O'Loughlin
- Fergus Flynn Rogers
- Lorna Walker and Matthias Feist
- Lawrence and Mary Connolly
- Tony Eubanks (EHP Services) representing Martin Ward

3. Opening of Oral Hearing

- The Inspector formally opened the hearing at 10.00am.
- Following some introductory remarks, and confirmation of attending parties, it was requested that the Local Authority make its formal submission.

4. Submissions by Louth County Council

Overview of CPO and Justification

Michael O'Donnell

- Mr O'Donnell, BL for the Local Authority opened by indicating who was present to give evidence on behalf of the Local Authority.
- Went on to set the context for the CPO and that it is for the purposes of developing a Greenway. Also explained who would make submissions on behalf of LCC, including Eugene McManus (Administrative Officer), Patricia Hughes (Senior Executive Planner) and Barry Baxter (Executive Engineer). Other people on behalf of the Council also available to answer questions.
- Mr O'Donnell expressed condolences for the passing of Mr Patrick Heaney and Mr Hugh McCourt (Senior).

Eugene McManus

- Mr McManus confirmed that a Part 8 application for the scheme was granted at the Municipal District of Dundalk meeting on the 21st September 2020.
- Set out the key dates for CPO, including that the CPO was made on the 8th September 2021 by Order of the Chief Executive of Louth County Council.
- Some amendments required to the Schedule of Landowners, Lessees and Occupiers, including that the Council proposes to delete one Plot, 121a.o1, from the CPO.

Patricia Hughes

- Ms. Hughes further outlined the CPO scheme, and that the Council intends to acquire the necessary lands to construct a c.4.2km Greenway from Omeath Pier in Omeath village to the national border between Northern Ireland and the Republic of Ireland.
- The Part 8 Consent for the greenway has already dealt with the relevant planning and environmental considerations arising.
- The judgement of Geoghegan J. in Clinton v An Bord Pleanála [2007] IR 701 sets out that a CPO should be clearly justified by the 'common good'.
- Ms. Hughes concluded that the proposed CPO is in accordance with the relevant tests in this regard. [Also see Council's submission (Planner's Report, Pages 2 – 5 in this regard)].

Barry Baxter

- Mr Baxter provided a project overview, outline of the proposed greenway design, site information, site description and design standards, and other technical engineering specifications.
- Outlined that certain measures would be undertaken to in relation to environmental management, control of noise, landscaping and boundary treatments and earthworks.
- Concluded that all the lands which are the subject of the proposed CPO are necessary to implement the design works.

5. Council Response to Written Submissions

- The Inspector then called for the Council to respond to the objectors' written submissions and the Council's individual responses to the Observers were read into the record. While several matters were clarified at this stage, no new or significant matters arose.
- Note: The Council's response is outlined in the Council's written submission to the Board which is on file and entitled 'Louth County Council Response to Submissions – Carlingford Lough Greenway CPO'.

6. Submissions by Objectors, elaborating on written submissions

- The Inspector reopened proceedings after a short break, at approximately 2pm, and confirmed that the next section of the Hearing was for objectors to elaborate on their written submissions.
- Each of the various plot owners, or their representatives, made submissions to the CPO. Concerns are summarised in Section 6 of this report and assessed in further detail under Section 8.
- No significant new issues outside of the written submissions made to the Board were identified by the submitters during this part of the OH. However, objectors took the opportunity to expand upon their written submissions during the proceedings and, in some cases, posed questions to the Local Authority to clarify certain matters.
- One objector made a further written submission to the Board prior to the Hearing. Mr Patrick Rooney, through Mr Cormac McNamara (BL) and Gordon White (Gordon White Consulting Engineers) submitted documentation supporting Mr Rooney's objection and this was read into the record. The information is on file.
- The Local Authority responded directly to the submissions made by each objector.

6. Questioning between Parties

- The objectors were afforded the opportunity to question Louth County Council.

- Several points were discussed and/or expanded upon during this stage of the proceedings. However, no new significant matters arose. Relevant points of interest are referred to in the assessment section of this report above (Section 8).
- I note also that this part of the Oral Hearing is available on the digital recording of the OH proceedings.

7. Closing Comments

The following parties made closing comments, and these are summarised as follows:

Cormac McNamara on behalf of Patrick Rooney

- Responded to Mr O'Donnell's position that there is no basis upon which the Board can include additional lands within the CPO and to do so would be ultra vires. Mr McNamara argued that the Board has a statutory power to modify a CPO in accordance with constitutional principles and that this includes increasing the amount of land that can be acquired by the relevant Authority.
- Mr McNamara referenced the LCC Planner's Report where it states that 'the scheme has been mitigated, to the maximum possible extent, impacts so that adverse affects have been resolved. The impact and affects on all landowners are proportionate to the public need and its level of acquisition'. In this regard, it was submitted that the Board is charged with a statutory responsibility of supervising the accuracy of this statement.
- In respect of the purple and blue lands shown in Mr Rooney's submission, these are lands which have been omitted from the CPO in a way that is disproportionate to the landowner, and there is no reason as to why those lands cannot be included – they should be included. Furthermore, the Board should direct the Council to provide a right-of-way to Mr Rooney across this land so that he gain direct access to the slipway. It is appropriate to include these lands in the CPO as it best respects the property rights of Mr Rooney and would not leave him with any greater exposure to public liability risk.
- In relation to the orange shaded lands, which are situated alongside the blue-hatched lands (i.e. lands recently acquired by Irish Water), Mr McNamara noted that the Local Authority has provided assurances that an access would

be provided here that enables Mr Rooney to travel from one part of his lands to the other. The Board is requested to compel LCC to temporarily acquire these lands to construct the necessary access. However, if the Board is not minded to do so then, at a minimum, the Council's undertaking to construct the access in time and user-friendly fashion is noted on the record. The Inspector notes that during the Hearing the Local Authority confirmed that they would construct and facilitate an appropriate access arrangement as part of the accommodation works agreement and I consider that this is the appropriate mechanism by which to achieve this.

Tony Eubanks on behalf of Martin Ward

- Mr Ward has not been given the opportunity to properly engage with the Council or be given an explanation as to why a section of the preferred yellow route has been set aside in favour of the green route where it traverses Mr. Ward's lands.
- Mr Eubanks stated that Mr O'Donnell submitted that the yellow route has been dismissed because of infrastructure and amenity issues (including the presence of septic tanks along this route option). However, Mr. Ward is not aware of any septic tank issues, and this was not communicated to him when the Council visited his property. Domestic wells are present, but these would not be a problem.
- Mr Eubanks submitted that he is not therefore in agreement with Mr O'Donnell as to why the yellow route was dismissed. The yellow route is the optimum route for this part of the greenway.
- Notwithstanding the Council's comments, the section of public road which the Greenway would utilise, i.e., the L70541, is not considered suitable for pedestrian and cyclist traffic, mainly because of low visibility, twists and turns in the road, and its deficient width, meaning it is not capable of achieving appropriate safety standards and separation between users.
- Given many cyclists would be unused to cycling along such a road ,and interfacing with traffic in this type of environment, this concern cannot be properly served by signage alone.

Owen Connolly

- Raised concerns in relation to the safety and ongoing maintenance of the Greenway.
- Stated that previous incidents have occurred elsewhere on the Greenway and that these have been reported in the media.
- The Council could have handled the consultation component of the project better. The local community would have provided better feedback as a result.
- Generally, in support of the proposed greenway and noted that it has the potential to be very beneficial. However, the proposed route which takes in public roads is not ideal, particularly for young children.

John O'Loughlin

- Mr O'Loughlin supports the project and looks forward to its conclusion. However, he raised the point that where mutual agreement can be so easily achieved, why is there still need for a CPO. This is a draconian measure which could have been avoided.
- Mr O'Loughlin reiterated his support for the project and is looking forward to further future discussions to address his concerns.

David Heaney

- The Local Authority could have handled consultation of the project and the communication and engagement aspect much better.
- The Council have still not provided adequate solutions to address the concerns raised.

Michael O'Donnell

- In response to Mr Rooney's submission, the Board can modify a proposed CPO scheme, but only within 'the four corners' of what has been submitted. It cannot add additional land to the scheme, and to do so would be ultra vires.
- Expressed concern that the Board might proceed on the basis of adding additional land to the CPO, but that this would be misconceived and in error.

- It was also stated that adding any additional land to the CPO would be an untenable proposition. This is because if this principle were to be established other landowners would be entitled to have the totality of their lands acquired. Furthermore, as the land is not required for the scheme, this prevents the Council, and the Board, from including it in the CPO.
- The Council has sought to minimise and mitigate the impacts consistent with the design of the scheme proposed.
- The proposed greenway project has been subject to real and substantive engagement and the Council have sought to accommodate the wishes of landowners.
- The scheme was originally conceived as a voluntary scheme. However, this proved impossible because nobody was prepared to commit to the project. Therefore, the CPO process was applied for and instigated.
- The proposed project would deliver significant public amenity, economic, cultural and political benefits and this public interest exceeds the particular individual as the project is in the interests of the common good.
- The land reflects the previously approved Part 8 Approval, and the proposed CPO is fully compliant with the County Development Plan.
- The scheme has been demonstrated as appropriate for CPO purposes. It should be confirmed by the Board.

8. Closing of Oral Hearing

- The Inspector made some brief final comments and thanked the participants.
- It was confirmed that a report would be prepared and presented to the Board, who will make a determination on the proposed CPO in due course.
- The Inspector closed the Oral Hearing at approximately 5.15pm.