



An  
Bord  
Pleanála

## Inspector's Report ABP 311782-21.

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### Development

Compulsory Purchase Order 2021 for Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions.

### Location

Atlas Avenue, Courtbrack Avenue and Dock Road, Limerick.

### Applicant

Limerick City and County Council.

### Local Authority

Limerick City and County Council.

### Objector

Patrick Gleeson.

### Date of Site Inspection

16<sup>th</sup> June 2022

### Inspector

Siobhan Carroll

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## **1.0 Introduction**

- 1.1. Limerick City and County Council (LCCC) made a Compulsory Purchase Order (CPO) for the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions Improvement Scheme on 12<sup>th</sup> October 2021. Notices were duly served on the affected landowners on 6<sup>th</sup> April 2021. Objections were original received from one party.
- 1.2. The CPO was the subject of an oral hearing, which was held virtually on 31<sup>st</sup> August 2022.
- 1.3. The CPO would entail the acquisition of lands and the extinguishment of public and private rights of way in connection with the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions, which received planning permission, under Part 8 of the Planning and Development Act, 2000 (as amended), on 15<sup>th</sup> February 2021.

## **2.0 Statutory Basis**

- 2.1. The Compulsory Purchase Order is made under Section 76 of the Housing Act, 1966, and the Third Schedule thereto, as extended by Section 10 of the Local Government (No. 2) Act, 1960, as substituted by Section 86 of the Housing Act, 1966, as amended by Section 6 of the Second Schedule to the Roads Act, 1993 – 2015, and as amended and extended by the Planning and Development Act, 2000 – 2019.

## **3.0 Site Location and Description**

- 3.1. The lands subject of the Compulsory Purchase Order (CPO), are situated at Atlas Avenue to the north of Dock Road Limerick City. Dock Road links the N18 with the Quays to the southern side of Limerick City. Dock Road contains a mix of uses comprising light industrial, commercial and residential. Courtbrack Avenue which is situated to the south of Dock Road contains predominantly residential properties.
  - 3.1.1. The property identified in the CPO documentation as parcel 102.a.01. The plot contains a commercial premises occupied by Kelliher Electrical which is an electrical

wholesale store. The building on site is of a light industrial nature featuring corrugated roofing. The property is bounded by palisade fencing.

- 3.1.2. Atlas Avenue is a cul de sac which serves commercial/industrial premises. They include Limerick Marine Search & Rescue, Shreelawn Oil, Limerick Glass and James J O'Donnell Engineering Limited. Atlas Avenue serves Ashbourne Business Park to the west which contains a number of business premises including Irish Red Cross, Fennessy Schoolwear, O'Mahony's Distribution Services, Hassett Nut & Bolt, Process Engineering and ISS Facility Services.

## **4.0 Purpose of the CPO**

- 4.1.1. To permanently acquire compulsorily the land described in the Schedule Part II hereto, and to extinguish the private rights of way described in the Schedule Part V hereto for the purposes of providing road improvements comprising;

- Widening of the Dock Road/Atlas Avenue junction layout
- Synchronised Traffic Lights
- Improved cycleway/footway facilities
- Public lighting
- Accommodation works
- Associated site works

At Dock Road, Limerick.

## **5.0 Policy Context**

### **5.1. Limerick Development Plan 2022 – 2028**

- 5.1.1. The subject lands at Atlas Avenue, Dock Road, Limerick are located on lands which are zoned 'Enterprise & Employment' under the provisions of the plan.
- 5.1.2. Objective: To provide for and improve general enterprise, employment, business and commercial activities.

- 5.1.3. Purpose: To provide for enterprise, employment and general business activities and acknowledge existing/permitted retailing uses. To accommodate compatible industry and employment activities that are incapable of being situated in the City Centre, in a high-quality physical environment. Marine related industry shall be allowed on Enterprise and Employment zoned lands on the Dock Road.
- 5.1.4. Chapter 7: Sustainable Mobility and Transport
- 5.1.5. Policy TR P4 – Promotion of Sustainable Patterns of Transport Use.
- 5.1.6. Policy TR P5 – Sustainable Mobility and Regional Accessibility.
- 5.1.7. Policy TR P7 – Sustainable Travel and Transport.
- 5.1.8. Objective TRO2 – Design Manual for Urban Roads and Streets – It is an objective of the Council to support the appropriate road design standards of all roads and streets within urban areas, including suburbs, towns and villages within the 60km/h zone as per the Design Manual for Urban Roads and Streets and TII Publication Standards DN-GEO-003084 The Treatment of Transition Zones to Towns and Villages on National Roads.
- 5.1.9. Objective TRO4 – Universal design – It is an objective of the Council to ensure that all transport schemes incorporate high-quality urban realm design that is attractive, safe, comfortable and accessible for all individuals.
- 5.1.10. Objective TR O6 – Delivering Modal Split.
- 5.1.11. Objective TR08 – Walking and Cycling Infrastructure.
- 5.1.12. Objective TR09 – Limerick Cycle network – It is an objective of the Council to implement in full, the Cycle Network, which will be set out in the final LSMATS, with priority given in the short term to delivering the primary cycle network and cycle routes serving schools.
- 5.1.13. Objective TR012 – Limerick BusConnects Programme – It is an objective of the Council to support the implementation of the Limerick BusConnects programme.
- 5.1.14. Objective TR013 – Core Bus Corridors – It is an objective of the Council to safeguard the proposed Core Bus Corridors from inappropriate development and ensure adequate set back is maintained to facilitate the implementation of the programme, in consultation with the NTA.

- 5.1.15. Objective TR028 – Docks and Ports – It is an objective of the Council to support the continued development of Shannon Foynes Port as an EU Core Network Port (TEN-T) and Limerick Docks as marine related assets, in accordance with the 2013 National Ports Policy.
- 5.1.16. Objective TR042 – Road and Streets – It is an objective of the Council to secure improvements to the road network in Limerick, including improved pedestrian and cycle facilities, in conjunction and co-operation with relevant stakeholders, subject to resources becoming available.

## **5.2. National Planning Framework – Project Ireland 2040**

- 5.2.1. The National Planning Framework (NPF) provides policies, actions and investment to deliver 10 National Strategic Outcomes (NSO) and priorities of the National Development Plan. These NSOs include compact growth, enhanced regional accessibility, sustainable mobility and transition to a low carbon and climate resilient society. Compact growth can be delivered by improving ‘liveability’ and quality of life, enabling greater densities and ensuring transition to more sustainable modes of travel.
- 5.2.2. Enhanced regional accessibility will be achieved by enhancing connectivity between centres of population of scale. In particular, more effective traffic management within and around cities and re-allocation of inner-city road space in favour of bus based public transport and walking/ cycling facilities should be enabled. NSO 2 refers to the need to advance orbital traffic management solutions.
- 5.2.3. Cities and major urban areas have become too heavily dependent on road and private, mainly car-based transport, with the result that roads are becoming more and more congested. The NPF will therefore encourage the expansion of attractive public transport alternatives to car transport to reduce congestion and emissions and enable the transport sector to cater for the demands associated with longer term population and employment growth in a sustainable manner. The development of a comprehensive network of safe cycling routes in metropolitan areas will be sought to address travel needs.

### **5.3. Climate Action Plan 2024**

- 5.3.1. Chapter 15 considers transport. The focus is transport abatement, to provide a reduction in total vehicle kilometres, a reduction in fuel usage and significant increases in sustainable transport trips and modal share. The framework to reduce car use and emissions is to apply the Avoid-Shift-Improve approach (reduce or avoid the need to travel, shift to more environmentally sustainable modes and to improve energy efficiency of vehicle technology). Spatial and land use planning is critical in this regard. Sustainable access, in terms of reduced travel time and well being. It includes the reallocation of road space.
- 5.3.2. Table 1.5 refers to Key Metrics to Deliver Abatement in Transport. A target to achieve a 50% increase in daily active travel journeys and 130% increase in daily public transport journeys.
- 5.3.3. A target to achieve a 30% reduction in private car escort to education journeys is set. DMURS is to be widely implemented to ensure placemaking and accessibility. 1,000 km of walking / cycling infrastructure is to be provided. National Cycle and Greenway networks are to be rolled out.

### **5.4. Design Manual for Urban Streets 2019**

- 5.4.1. The manual deals with street design in urban areas. It recognises that the design of the road should be influenced by where the road is located and that the needs of all users has to be balanced. Alternatives to private car use is to provided to create connections. Roads are to be designed to reduce road speeds. Walking and cycling are to be made more attractive, particularly for local trips.
- 5.4.2. Urban relief roads should direct traffic away from cities, towns and villages and should integrate into the surrounding street network. Moderate speeds reduce noise and pollution. A speed in excess of 50 kph should not apply to streets where pedestrians are active. Ideally, traffic speeds should be self-regulating, via design.

### **5.5. Southern Regional Assembly Regional Spatial and Economic Strategy (RSES)**

- 5.5.1. Limerick-Shannon Metropolitan Areas Strategic Plan forms part of the RSES. The principles underpinning the Limerick-Shannon MAPS include the effective integration



of transport planning with spatial planning policies and the alignment of infrastructure investment. It is set out in the Limerick-Shannon MAPS that the Limerick-Shannon Metropolitan Area Transport Strategy (LSMATS) will be instrumental in the regeneration and transformation of Limerick City and the wider Limerick-Shannon Metropolitan Area. It will deliver a high quality accessible integrated and more sustainable transport network.

5.5.2. Limerick-Shannon MASP – Policy Objective 7 refers to Sustainable Transportation.

5.5.3. Limerick-Shannon MASP – Policy Objective 8 refers to Strategic Road Infrastructure.

## **5.6. Limerick-Shannon Metropolitan Area Transport Strategy 2040 (LSMATS)**

5.6.1. The Limerick-Shannon Metropolitan Area Transport Strategy was prepared by the NTA in collaboration with Limerick City and County Council, Clare County Council and Transport Infrastructure Ireland.

5.6.2. Chapter 8 refers to Walking

5.6.3. Measure WK1 – Improvements to the Pedestrian Environment

It is the intention of the NTA and the local authorities to:

- Develop a primary pedestrian network throughout Limerick City, Shannon and other Metropolitan towns;
- Retrofit neighbourhood infrastructure to enhance walkability and increase the attractiveness of walking such as permeability and passive surveillance;
- Lower traffic speeds to improve pedestrian safety and enhance the attractiveness of the environment for walking;
- Improve junctions and pedestrian crossings through measures such as pedestrian countdowns, longer crossing times and crossings that align with desire lines;
- Remove unnecessary signage, advertising and other obstacles which impede pedestrian movement; and
- Incorporate safety and personal security considerations into the design and planning of pedestrian infrastructure.

5.6.4. Chapter 9 refers to Cycling

5.6.5. Measure CC1 – Develop a Comprehensive Strategic Cycling Network

5.6.6. It is the intention of the NTA and the local authorities to:

- Build upon the existing Limerick Metropolitan Cycle Network Study and Shannon and Environs Local Area Plan to deliver a comprehensive cycle network for the LSMA, in a manner consistent with the National Cycle Manual;
- Undertake the planning, design and development of cycling routes in full accordance with the Habitats Directive and transposing legislation;
- To deliver an integrated, fully connected high-quality cycle network linking all major origins and destinations within the LSMA;
- Develop an Inter-Urban network connecting Limerick City, Shannon, the Metropolitan town centres and Ennis;
- Develop a high-quality cycle network within the Metropolitan Towns of the LSMA;
- Identify local opportunities for permeability and feeder routes to improve links to the primary, secondary and greenway network and enhance the attractiveness of cycling for short trips;

Maintain and enhance existing infrastructure to a high standard;

Cooperate with An Garda Síochána in relation to the enforcement road traffic laws as they apply to cycle tracks and lanes; and

Undertake the planning, design and development of all cycling routes in full accordance with the Habitats Directive and transposing legislation.

5.6.7. Chapter 10 refers to Bus

5.6.8. Measure BC1 – BusConnects Limerick

It is the intention of the NTA and the local authorities to develop and deliver the BusConnects Limerick Programme. This will consist of: Changes to the service network to include:

- A 'branch and spine' network;

- Orbital routes;
- Additional Radial routes;
- Increased capacity and frequency;
- Enhanced interchange with rail services, where appropriate; and
- Demand Responsive Transport in locations where public transport patronage is low.

Greater levels of bus priority leading to shorter journey times and greater reliability, as follows:

- Continuous bus lanes on main radials where practicable;
- Bus gates in certain locations whereby only public transport vehicles and cyclists will be allowed on certain parts of the road network;
- Other traffic management arrangements which provide bus priority; and
- New bus-only links.

#### **5.7. Natural Heritage Designations**

- Lower River Shannon SAC (Site Code 002165) lies to the north at the closest point it is located circa 187m from the subject lands.
- River Shannon and River Fergus Estuaries SPA (Site Code 004077) lies to the north at the closest point it is located circa 187m from the subject lands.
- Tory Hill SAC (Site Code 000439) circa 12.4 km to the south-west of the subject lands.
- Askeaton Fen Complex SAC (Site Code 002279) circa 13.5km to the south-west of the subject lands.
- Glenomra Wood SAC (Site Code 001013) circa 11.8km to the north-east subject lands.

## 6.0 Planning History

Part 8 – Section 179 3(a) approval for the upgrading of junction of Atlas Avenue and Courtbrack Avenue with the Dock Road, Limerick. Development Comprises:-

- i. Upgrade of traffic signals and public lighting at both junctions, including synchronisation of signals to improve the efficiency of the two junctions;
- ii. Dedicated cycle facilities will be provided on the Dock Road and pedestrian facilities will be improved. Crossings for cyclists and pedestrians will be incorporated into the signalisation of each junction.
- iii. Access to private lands on the northern side of the Dock Road will be closed and the rights of way at these accesses extinguished. Replacement accesses will be provided on to the industrial estate road to the north of the sites;
- iv. Parking bays on Dock Road between Courtbrack Avenue and Atlas Avenue will be removed;
- v. The carriageway and footways on Atlas Avenue will be widened
- vi. The footway on the southern side of the Dock Road will be relocated to provide space for a cycleway and widened carriageway. The boundary wall between Dock Road and 'The Orchards' residential estate will be removed and replaced with a similar wall that the outside edge of the proposed footway. Existing trees will be removed/cut-back as required for the construction of the footway and replacement wall. A line of trees will be planted on the south side of the replacement wall;
- vii. Demolition of the existing Retail Unit on the western side of Atlas Avenue to facilitate the widening of Atlas Avenue;
- viii. Ancillary works for pavement, drainage, utilities and boundary treatment.

## 7.0 Objection

- 7.1. A preliminary objection was made by Hodgins McKeever Solicitors on behalf of their client Patrick Gleeson.

- 7.2. The notice was served on Patrick Gleeson of School Road, Lisnagry, Co. Limerick. It is stated that Patrick Gleeson is not the owner of the premises at Courtbrack Dock Road, Limerick. It is confirmed that the registered owner of the property is Patrick Gleeson Limited. The property was assigned to the company by Deed of Assignment on the 23<sup>rd</sup> of May 1990. It is submitted that the notice served is invalid.
- 7.3. Without prejudice the following objection is made. In the event that the compulsory purchase was to proceed it would deprive their clients Patrick Gleeson and Mary Gleeson the shareholders of Patrick Gleeson Limited of a livelihood. It is stated that the rental income derived from this premises has been their sole income for the last number of years.
- 7.4. They have rented the premises to M Kelliher 1998 Limited since 1995. In 2010 they were in receipt of an annual rent of €52,000.00. This was later reduced by agreement due to the recession and due to Covid. The premises is subject to a further rent review at present. It is stated that M Kelliher 1998 Limited are loyal tenants of their client's company and that is one of the reasons that they remain a tenant at the premises on Dock Road.
- 7.5. M Kelliher 1998 Limited have indicated to their clients that in the event that the property is compulsorily purchased it would lead to an immediate loss of employment of them of their employees. The tenants have indicated to their clients that they have made inquiries with regard to an alternative suitable premises in the area and there is none such available and a compulsory purchase order would force them to close this part of their business. They have indicated to the clients that if they find an alternative suitable premises in the area, that they would continue to rent such a premises from them.
- 7.6. It is stated that if their clients were to receive a lump sum payment in respect of the property that it would not adequately compensate them for their loss as they would not be in a position to generate an equivalent income from such a lump sum given the fact that banks are offering negative interest rates in relation to deposits. It is also stated that they would not be in a position to purchase similar property in a similar location as they have made inquiries and none are presently available.

- 7.7. It is stated that Limerick City & County Council have in no way engaged or consulted with their clients with this process. They state that they have in no way offered their clients alternative proposals in particular providing them with alternative suitable premises. It is stated that their clients are unaware as to whether any alternative locations were considered for the Dock Road Improvement Scheme.

## **8.0 Planning Authority Responses to Objectors**

- 8.1. No written response was provided by the Planning Authority.

## **9.0 Proceedings of Oral Hearing**

- 9.1. An Oral Hearing (OH) was held on 31<sup>st</sup> October 2022 in relation to the proposed compulsory acquisition of Compulsory Purchase Order 2021 for Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions. 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. On behalf of Limerick City & County Council (LCCC)**

- Cormac Mc Namara, Barrister at Law (BL) representing LCCC
- Robert Gallagher, Senior Engineer
- Barry Henn, Executive Planner
- Paul Bergin, Director, Kilgallen & Partners Consulting Engineers

#### Also in attendance:

- Olive Dodds, Executive Engineer

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

- Eamonn Galligan, Senior Council, instructed by Hodgins McKeever Solicitors on behalf of their client Patrick Gleeson.

- Mary Gleeson, Director, Patrick Gleeson Limited

Also in attendance:

- Patrick Gleeson

## 9.2. Opening of Oral Hearing

- 9.2.1. The opening of the hearing was delayed following a request from both Limerick City & County Council and the Objector to discuss certain matters privately. Inspector agreed to delay the start of the Oral Hearing until 10.30am.

The Inspector formally opened the hearing at 10.30am.

- The parties stated that they have reached agreement on one point.
- **Mr. Eamonn Galligan SC**, stated that the matter of point no. 4 set out in the written objection which refers to the absence of consultation was addressed. He stated that his client accepted that there has been some consultation. However, the parties differ in relation to the level of consultation which occurred.
- **Mr. McNamara** confirmed the above matter.
- The issue was raised by **Mr. Galligan** that an objection of Hodgins McKeever, Solicitors refers to the matter of the registered owner of the lands subject to the CPO. It is stated that the notice was served on Mr. Patrick Gleeson and that this is an error that the notice should have been served on Patrick Gleeson Limited.
- **Mr. McNamara on behalf of Limerick City & County Council** responds to this matter and states that the Council will seek to amend the CPO.
- Following some introductory remarks, it was requested that the Local Authority make its formal submission.

## 9.3. Submission by Limerick City & County Council

- The Council presented a brief overview of the CPO. Justification for land acquisition with reference to alternatives considered.
- Mr. McNamara sets out that the proposal to acquire the land serves both the scheme for junction improvements which was subject to Section 179 and Part 8 permission was approved by the Council.
- Submission from Robert Gallagher – Senior Engineer. He refers to the Draft Metropolitan Strategy in relation to EU Core Port. He refers to the importance of the Dock Road junction scheme. The Part 8 scheme was passed by the Council for this scheme. He sets out that the existing road is inadequate in terms of layout and that it is not in a fit for purpose condition. The junction is not fit to cater for the type turning movements needed in order to serve an enhanced junction to the port. An enhance junction for the Port is a requirement for sustainable travel which would provide critical infrastructure. The existing junction does not cater for cycling and walking in the context of LSMATS. Ted Russell Dock is regarded by Limerick City and County Council as critical infrastructure Mr. Gallagher stated that it is also regarded by the Department of Transport as critical infrastructure and they will part fund the project. That outlines the importance of this being carried out.
- LSMATS, what is LSMATS, Limerick and Shannon Metropolitan Area Transport Strategy. It is the path forward for transportation in the Limerick Metropolitan Area for the next twenty years. LSMATS is at draft format presently. It is hoped that the strategy will be finalised in September/October this year.
- Refers to LSMATS (Draft Limerick Metropolitan Area Transport Strategy. The strategy seeks to achieve changes to the nature of transportation within the area. Increase cycling by 15 - 20%. Increase walking by 30%. Important objective of LSMATS is to remove unnecessary vehicular journeys from the City Centre. It is put forward that this scheme does achieve this. Essentially the Council want to reduce vehicular traffic in the city by up to 20% and to provide much more sustainable transportation. In relation to the Area of Dock Road in the strategy, Dock Road is defined in the strategy as a strategic bus corridor. The Council will be putting in place as the strategy advances to put in a significant public transport corridor along Dock Road into the City Centre. One of the areas which the Council are concentrating on is a cycleway. The cycle route on Atlas Avenue is identified in LSMATS. The Council will be



putting it in place along Atlas Avenue if the CPO is approved and the scheme when constructed would provide safe cycling, safe walking and safe vehicular conditions for the use of this port.

- There is a synergy between transportation and the Development Plan. The Limerick Development Plan 2022-2028 is transport led. The Plan was adopted in July 2022. The plan puts transportation and sustainability at the very heart of what is need for the future development of Limerick. The provision of a 10 minute walkable city this is set out in LSMATS. It is the wish of the Council to deal with the stretch of Dock Road from Atlas Avenue into the City Centre under the strategy as making it more suitable for active travel. Cyclists coming from the Mungret direction along the banks of the river come as far as the dock will be veered out onto Atlas Avenue onto the Dock Road and they will have a choice to go into the city centre or up Courtbrack Avenue depending on their desire line. The route would be safe for cyclists if it goes ahead. In terms of the bus route and in terms of heavy commercial vehicles, as mentioned previously the Council want to discourage unnecessary vehicles from entering the city centre. If the scheme goes ahead, then the Council will be able to divert HGV's at Atlas Avenue and into the new layout in the Port. The scheme is consistent with LSMATS and consistent with the Development Plan. In summary the Dock Road would be divided into two parts and success of this scheme is very important in doing that. From the National Road interchange to the west as far as Atlas Avenue, Dock Road will be suitable for HGV's and for buses. From Atlas Avenue into the city centre the Council want Dock Road to be developed for buses and not necessarily for HGV's. Some HGV traffic will continue out of necessity, however the Council anticipate a small amount with the scheme in place. They want to improve the cycleway facilities and footpath facilities in the area by removing and discouraging heavy traffic.
- Mr. Gallagher stressed that the Shannon Foynes Port Company seek to maintain Ted Russell Dock, Limerick as a viable working Port, while at the same time exploring new business streams. Located on the City side of Atlas Avenue there is office/commercial development at Bannatyne Mills which has been granted permission. It is envisaged that this will be serviced by active travel. Mr. Gallagher refers to a planned Data Centre located at the north-eastern side of the Port near the existing weighbridge. If that Data Centre is to go ahead then the weighbridge needs to be moved from its location near Clinton Hotel down the south-western side of the docks adjacent to Atlas Avenue. HGV's up to now in order to use the weighbridge would have to travel 870m into the weighbridge and would also have the reverse journey back. The proposed scheme involving the rearrangement of the Port goes

ahead it would lead to the reduction of up to 150 HGV's with the revised access to the Port provided. This proposal is necessary in order to achieve the aims we have outlined. If the CPO is confirmed it is expected that construction on the road scheme would proceed in March/April 2023 and there would be a lead in period from the confirmation of the CPO.

- **Barry Henn, Executive Planner with the Active Travel Section of Limerick City & County Council.**
- Put forward a case on the consistency of the acquiring of the land with the existing development plan. A Part 8 application was assessed and found to be consistent with the policies and objective of the Limerick City Development Plan 2010-2016. Which was the plan which was in place at the time.
- The current development Plan. The Limerick Development Plan 2022-2028 covers both the city and county area. It was adopted in July this year. The proposal is considered to be consistent and in compliance with the policies and objectives of the new plan. Mr. Henn references the key policies and objectives that are applicable to the proposal. Policy TRP4 — Sustainable transport- promoting of sustainable patterns of transport use. It aims to be consistent with the policies of the National Planning Framework, RSES and the Department of Transport Smarter Travel and Sustainable Transport Future. Promotion of greater use of public transport and cycling and walking.
- Policy TRP5 – sustainable mobility and regional accessibility.
- Policy TRP7- refers to Sustainable Travel and Transport. This seeks to create the ten minute city and town concept. Promote compact growth and reduce the need for long distance travel.
- Objective TRO2- design manual for urban roads and streets. Objective TRO4 – Universal design. Trying to create well designed streets within the city and county.
- Objective TRO5 – Limerick Shannon Metropolitan Area Transport Strategy (LSMATS). The key objective is that the Council will facilitate proposals that are contained in the final draft of this document. This is very important as the Dock Road has been identified as a bus priority route and a green cycling route within that document.
- Dock Road is identified as a bus corridor. Objective TR06 – delivering modal split. This centres on moving people away from private car use. Providing alternatives including walking and cycling and making it more appealing to use. Objective TR08 – walking and cycling infrastructure. Centres on improving and providing safe infrastructure for people to use whether they are cycling or walking and also importantly retrofitting pedestrian and cycle routes

into the existing urban road network which the proposal is seeking to do. Objective TR09 – Limerick Cycle network. This is the cycle network that is identified within LSMATS and implementing that. Objective TR012 – Limerick Bus Connects and Objective TR013 refers to Core Bus Corridors. This is very important in the context of the Dock Road which has been identified in the LSMATS as a primary bus route. Objective TR028 – Docks and Ports, this is highly important in the context of the scheme as it identifies the strategic importance of the Limerick Docks within Limerick City. Objective TR042 – Road and Streets, the Council is seeking to secure improvements to the road network in Limerick, by improving pedestrian and cycle facilities which again is what the proposal seeks to do.

- **Paul Bergin, Engineer, Director of Kilgallen & Partners, Consulting Engineers**
- Mr. Bergin provided a synopsis of his written submission. There is a Community need for the scheme. The CPO seeks the acquisition of 0.15 hectares of private land and 0.66 hectares of public road and the extinguishment of two private Rights of Way. In relation to the existing junctions, only 75m separates the junction between the Atlas Avenue and Dock Road junction and the Courtbrack Avenue and Dock Road junction. As a result the operation of one junction has a significant impact on the operation of the other to the extent that they can be regarded as a single junction and will operate more efficiently if redesigned and as such it is the reason that the upgrade of both junctions is proposed as part of this development. Various maps have been provided which give a context for the existing junctions. The following features of the existing junctions make it unsuitable for the volume of traffic and nature of traffic movements through the area and are particularly unsuited to the safe movement of pedestrians and cyclists. There are no dedicated facilities for cyclists, thus effecting the safety of cyclists. In relation to pedestrian facilities these are not to a modern standard thus effecting the safety of pedestrian movements through the junction. The signals controlling the junctions are not fully synchronized and this reduces the efficiency of their operation.
- There are three accesses from the Dock Road to private sites between Courtbrack Avenue and Atlas Avenue. Two are to the same site and currently unused and the third is to a site adjoining Atlas Avenue to the site owned by Mr. Gleeson. The result of the configuration described is that between the two signalised junctions the movement for the accesses are not controlled by either junction therefore providing a confusing layout for through traffic. For example, a vehicle turning right from Courtbrack Avenue and then into the site

of the retail unit Kelliher Electrical would first accelerate through the green signal then slow suddenly to turn left onto retail unit access leading to a risk of collision of vehicles following behind. The access to the retail unit the Kelliher Electrical site is a particular problem as traffic at the access is easily confused with Atlas Avenue traffic. This is exacerbated by the poor geometry of the access. The cross section of Atlas Avenue itself is not to a standard appropriate to serve a strategic port and the heavy commercial vehicles which it generates and which under the LSMATS scheme which has been described by Mr. Gallagher is designated to receive a significant increase in the number of heavy commercial vehicles on that road. Both the carriageway and the footway on Atlas Avenue are not of sufficient width and there are no cycle facilities.

- In a general sense the approach to the two junctions from the Dock Road is poorly defined and does not give sufficient sense of direction to road users. Based on the existing junction described there is a clear and present current need to address the lack of safety for pedestrians and the conflicting traffic movements which occur.
  - Section 4.2 of the submitted document describes the requirement to meet the future strategic planning of Limerick City and County Council, particularly LSMATS. Mr. Gallagher has already described the importance of Atlas Avenue as an alternative route for heavy commercial vehicles which will remove a significant amount of movements from the Dock Road to the east of Atlas Avenue allowing it to fulfil its future objective as an urban city centre street.
  - Section 5 of the submitted document refers to the Planning Context. In relation to planning approval for the scheme, the scheme was subject to a process under set out under section 179 of the Planning and Development Act 2000, as amended and Part 8 of the Planning and Development Regulations, 2001. Part 8 planning approval for the scheme was confirmed by Limerick City and County Council at the Metropolitan District of Limerick meeting held on the 15<sup>th</sup> of October 2021. Drawings are provided.
  - Based on the need for the scheme
- (1) Economy – provide economic benefits through reduced accident costs that result from a safer junction arrangement.

(2) Environment – the scheme is designed to avoid significant environmental impacts if possible. Or where avoidance is not possible to mitigate the impact by operating appropriate mitigation measures into the design. The scheme encourages sustainable modes of transport.

(3) Accessibility and social inclusion – The scheme should not impact negatively on accessibility and social inclusion and should provide facilities for vulnerable road users.

(4) Integration – To meet the strategic objective for the docklands under LSMATS and to not impact on local land use strategy.

(5) Safety – To provide safe environment for all road users.

- As described already the existing junction layout comprises two separate junctions required to deal with complex traffic movement patterns through a staggered layout accommodating significant traffic movements on Dock Road and Atlas Avenue and Courtbrack Avenue. The problem is particularly acute during the morning and evening peaks on the Dock Road. The scheme is required to tie into Dock Road at Atlas Avenue and Courtbrack Avenue within a relatively confined space. This means the scope for an alternative layout is restricted and a significant realignment of any of the existing roads is not possible.
- Accordingly, the alternatives to the scheme are limited to alternative junction types at the same location at the existing junctions. The alternative of replacing the existing signalised junctions with roundabouts was considered. Normal roundabouts, compact roundabouts to slightly smaller size would require significantly more land acquisition than is the case than a scheme based on signalised junctions. Mini roundabouts could be constructed with less impact than normal or compact roundabouts however traffic flows are considered too large for the safe operation of mini roundabouts at these junctions. Furthermore, roundabouts are less friendly to pedestrians and cyclists than signals. Accordingly, the options for normal, compact or mini roundabouts were not considered appropriate for the scheme. The remaining option then for a scheme based on the existing configuration.

- Based on the need described already and, on the objectives, defined a design for the scheme was prepared and drawings of the scheme are included in the documentation submitted to the Board.
- The key features of the scheme are traffic signals at both junctions will be upgraded and synchronized to improve the efficiency of the two junctions. Dedicated cycle facilities will be provided on the Dock Road, Atlas Avenue and Courtbrack Avenue and pedestrian facilities will be improved. Toucan crossings will be incorporated into the signalisation of the junctions. The Toucan crossings will facilitate both pedestrian and cyclist crossing. Tactile paving will be improved to an appropriate standard. The site of the existing retail unit adjoining Atlas Avenue will be acquired and the buildings thereon demolished to facilitate the widening of Atlas Avenue. One of the two accesses to the unused site adjoining the retail unit will be closed and the right of way at that access will be extinguished. Parking bays on Dock Road between Courtbrack Avenue and Atlas Avenue will be removed. The carriageway and footway on Atlas Avenue will be widened. Public lighting will be upgraded and the proposed development will be at grade meaning that finished levels will be at or close to existing ground levels. The intended proposed development is constructed in accordance with a construction and environmental management plan compliant with appropriate guidelines from TII. The surface water runoff from the proposed development will discharge to the existing surface water drainage network along Dock Road. By pass separators will be installed on the existing network to provide first flush treatment to surface water network. The existing junctions are located within a 50kph speed limit zone and accordingly, design standards for the proposed development is the Design Manual for Urban Roads and Streets and the design speed is the posted speed limit. Cycle facilities have been designed in accordance with the National Cycle manual.
- The proposed development was subject to environmental assessment under a number of categories ecology, cultural heritage, air quality and climate, noise and vibration, hydrogeology, visual impact and flood risk. The site was subject to AA screening and the conclusion was that the proposed development was not likely to result in significant effects on either Natura 2000 sites identified as being in proximity to the development and therefore concluded that the proposed development individually or in combination with other plans or projects would not have a significant impact on any Natura 2000 site.
- In terms of cultural heritage no known archaeological sites or heritage sites were identified in the vicinity of the site. There were no predicted impacts. In

relation to air quality and climate the proposed development will not generate the vehicular traffic that is already passing through and it will improve facilities for sustainable modes of travel and will increase the efficiency of the two junctions for vehicles. The net effect is that the proposed development is expected to have a slight beneficial effect on air quality and climate during its operational stage.

- In terms of noise and vibration the proposed development will not generate additional vehicular traffic and will improve sustainable modes of traffic. In relation to hydrogeology an improvement to water quality is expected due to installation of by-pass separators. The proposed development is expected to have a slight beneficial impact on surface waters in its operational stage.
- In relation to visual impact to proposed development is at grade and there will be no significant embankments or cuttings which would lead to a significant visual impact. Regarding flood risk, the development was subject to a flood risk assessment in accordance with the flood risk management guidelines. Indicators of flood risk were identified using historically available data and the development was identified as being Flood Zone A & B as defined in the Flood Risk Guidelines. Accordingly, subject to the development management a justification test was carried out in accordance with the guidelines. The result of the test was that the development was appropriate under the guidelines.
- An EIA screening report was carried out and it was concluded that there was no requirement for EIA. In relation to the CPO the compulsory purchase order for the scheme made on the 12<sup>th</sup> of October 2021 and published on 3<sup>rd</sup> of October 2021 in the Limerick Leader. Prescribed notices of the making of the CPO were served on owners, lessees and occupiers. The prescribed notices informed those who received them of the closing date to received submissions to an Bord Pleanála was the 6<sup>th</sup> of December 2021. Limerick City and County Council facilitated the viewing of CPO documentation by appointment at their Offices. One objection was submitted to an Bord Pleanála, this being by Mr. Patrick Gleeson.
- Their submission refers to matters concerning compensation. Compensation is subject to a separate agreement independent of the decision concerning the CPO. In relation to the matter of consultation as discussed earlier in the hearing this issue has been addressed.

- It was stated in the submission that the clients were unaware as to whether any alternative locations had been considered for the Dock Road Improvement Scheme. Alternatives which were considered have been fully discussed. In conclusion the need for the scheme has been identified and the objectives to achieve this need have been set out. The proposed scheme meets these objectives. The lands to be acquired under the proposed CPO are necessary for the construction operation and maintenance of the scheme. The extinguishment of the rights of way referred to in the CPO are appropriate and adequate measures have been put in place to provide means of access.

**9.4. Submission by Objector - Mr. Eamonn Galligan SC, submission on behalf of the Objector, Patrick Gleeson Limited.**

- Reference is made to Patrick Gleeson and Patrick Gleeson Limited. Brief of evidence is presented on file and at the hearing.
- Mr. Galligan states that he reserves the right to respond to any further matters raised by the Council.
- Section 10 of the Council's submission is referred to - Fundamental objection from the Solicitors that the notice served is invalid. It stated that prescribed notices of the CPO were served on owners, lessees and occupiers. It is put forward that it is inaccurate because in fact the prescribed notices were not served on the owner of property reference number 102.a 01 which is Patrick Gleeson Limited, and I think that it is accepted by the Council that Patrick Gleeson Limited is the registered owner of the plot but the notice was not served. The notice was served on Mr. Galligan's client Mr. Patrick Gleeson who is not an owner, lessee or occupier of any property which is the subject of the CPO. While he is listed as the owner property reference number 102.a 01 he has no interest in this property. The owner of the property is Patrick Gleeson Limited, a company of which he is a director and shareholder together with his wife Mary Gleeson.
- Mr. Galligan states that he is instructed on behalf of Patrick Gleeson Limited to object to the CPO on the basis that the statutory procedures have not been followed and so far as the interests of Patrick Gleeson Limited have been omitted from the statutory process. Statutory notices were not served on the said company and were omitted also from the CPO itself. Section 10 of the brief of evidence records that there was one objection to the CPO submitted



to the Board that is correct. It is specifically stated however that this objection is reproduced in appendix C of the submission. This states that notice was served on Patrick Gleeson of School Road, Lisnagry, Co. Limerick. It is stated that Patrick Gleeson is not the owner of the premises at Courtbrack Dock Road, Limerick. It is confirmed that the registered owner of the property is Patrick Gleeson Limited. The property was assigned to the company by Deed of Assignment on the 23rd of May 1990. The Local Authority should or ought to have known the correct situation in relation to ownership. It is submitted that the notice served is invalid.

- The Council is under an obligation to make all due enquiries in relation to the ownership of the land. If they had carried out basis enquires, they would have ascertained that the owner of the particular plot was Patrick Gleeson Limited.
- Appendix C omits to refer to the fundamental objection to the confirmation of this CPO which is clearly set out in the first paragraph of the main evidence, it is inaccurate and unfair that the notice of the CPO was not served on the owner Patrick Gleeson Limited. Patrick Gleeson Limited is the registered owner. Mr. Patrick Gleeson is not the owner. Patrick Gleeson Limited is a company of which he is a shareholder. Therefore, they object to the CPO based on the statutory notices and the fact that the owner of the site was omitted from the CPO.
- Article four of the third schedule to the Housing Act 1966 is amended which is the basis, principle statutory basis on which this CPO is being put forward by the Council. This is a mandatory provision, which requires service of the notice of the making of a CPO on every owner, lessee and occupier. The use of the word shall indicate that it is a mandatory obligation, therefore the Council cannot adopt an a la carte approach as to what owner they will name and not others and therefore they don't have discretion in this regard. Non compliance of this provision renders the CPO invalid. Article four was not applied in the present case in so far as it concerns the interest of Patrick Gleeson Limited.
- Article four states that, before submitting the Compulsory Purchase Order to the Minister the Housing Authority shall serve on every owner, lessee and occupier of the land on which the order relates and notice of the prescribed form stating the effect of the order and the manner in which objections can be made thereto. The Board does not have the power to dispense of this statutory requirement to comply with the mandatory provisions of article four

or to allow the Council a derogation from its obligations in that regard. The mandatory procedure has not been complied with in the present case and the process must be started again if the Council wish to compulsorily purchase these premises.

- It stated that this is not simply a matter of amending something on the day of the oral hearing. This goes back to the requirement of the serve of notices and the Board have no power to dispense with statutory requirements in that regard. All of that is taken in the context of constitutional rights. There are ways in which companies are appropriately served with notices and the Council would be very familiar with these matters and it appears did not make due and reasonable enquiries in relation to that which clearly would have established the ownership of Patrick Gleeson Limited of this particular plot.
- For the above reasons alone the Board does not have power and therefore should refuse to confirm the CPO herein. The Council has also omitted to reference the right of access which Patrick Gleeson Limited enjoys onto the access road into the industrial estate to the rear of the premises. Mr. Galligan states that this access has been used for a period in excess of thirty years. Ms. Mary Gleeson on behalf of Patrick Gleeson Limited will give evidence to that effect. The Council have indicated that they are extinguishing other rights of way or rights of access that they clearly haven't indicated that any extinguishment of this particular right of access. It is noted that the access to that site is along the industrial estate road to the rear of the premises which runs parallel to the Dock Road and which accesses onto Altas Avenue.
- It is anticipated that the Council may seek to amend the reference in the schedule of the CPO to ownership or property reference 102.a 01. However, the statutory provisions do not confer any power on the Council or the Board. Nor does the Board have the power to make such an amendment. An expressed statutory power would be required to make such an amendment. Reference is made to the provision under article ten of the second schedule to the Gas Act of 1976 which provides for such an event in the context of acquisitions under that Act and sets out a detailed procedure to be followed. That indicates is that clearly where there a power is to be given to make such an amendment to a CPO. It must be expressly conferred. These are matters relating to constitutional and property rights and the matters relating to the serve of notices allowing the landowners opportunities to make submissions having been properly served with notices and being aware of their status or any hearing relation to any objections that they would wish to make as a person who has been served in the making of the order clearly has an interest in that regard. Where the legislature want to confer such a power, they do

confer it expressly. It can't be implied into any alternative or more general provision that Mr. Mc Namara may be seeking to rely on.

- It is stated that the Bord does not have the power to dispense with the statutory requirement to comply with the mandatory provisions of article four or to allow the Council any derogation from its obligations in that regard. The mandatory procedure has not been complied with in the present case and the process must be started again if the Council wish to proceed with this. That objection is being made principally on behalf of Patrick Gleeson Limited. Patrick Gleeson is an individual who is a director of the company. Mrs Mary Gleeson his wife is the other director of the company.
- Strictly without prejudice to the foregoing preliminary objection in relation to the validity of the CPO. Mr. Galligan's client Patrick Gleeson makes further submissions as he is the person who was served the CPO notice. First of all the CPO does not identify the scheme of development underlying the acquisition. We have heard from the Council's witnesses today, who made reference to the Part 8 approval of the 15<sup>th</sup> of February 2021. In terms of the Compulsory Purchase Order, there is no reference what so ever to Part 8 of the relevant statutory provisions nor is there any reference to section 179 of the Planning and Development Act, 2000.
- In the title of the CPO there is reference to a considerable number of provisions of various acts including the Planning Acts and including referring to Section 213 of the Planning Act. There is no reference to Section 179 nor in terms of the CPO itself. Has the scheme ever been referred to in the context of the CPO. In the context of what the Council can do in relation to a CPO if this were to be confirmed. There is no scheme which is linked with the CPO in that regard.
- While the brief of evidence refers to the Part 8 decision made by the Council in 2021. There is no reference in the CPO to the Part 8 decision nor are the relevant statutory provisions referred to in the title of the CPO. In short, the CPO does not identify any scheme of development for the purposes of which it is necessary to acquire the land specified in the schedule to the CPO. There is in fact nothing to connect the CPO to previous Part 8 decision.
- The Council witnesses have said that this is also necessary to deliver objectives of the Development Plan. But where is the objective for this particular road improvement scheme in the context of the Development Plan. There is no specific objective in that regard. Furthermore, there is no

reference to this even in the development contribution scheme as a specific project in respect of which funding will be obtained by means of development contributions. Some evidence has been given in relation to vague reference to where funding will come from. This is a specific project which is being put forward by the Council and in respect of which they say there was a part 8 approval on the 15<sup>th</sup> of February 2021 and the Plan was adopted in July 2022 and there is absolutely no reference to a specific objective to deliver this scheme.

- In relation to the question of the need to acquire the plot 102.a 01 of which Patrick Gleeson Limited is registered owner. Mr. Galligan states that without prejudice to his clients submission that the CPO is invalid because it does not identify the scheme of development underlying the acquisition. It is submitted that even if the Board were to accept that the underlying scheme was the Part 8 scheme all of the plot 102.a 01 is not required to enable that scheme to be implemented. In the context of every compulsory acquisition, it is necessary to establish the need for the acquisition and specifically in the context of a road scheme that all of the land being acquired is necessary for the construction, operation and or maintenance of the proposed scheme. The Council have said that they have given their evidence in relation to this aspect. But their evidence only goes so far as to indicate that there are general policy provisions and objectives in the Development Plan. And in a draft plan which they have referred to a transportation plan which generally support the proposal which they are putting before the hearing. But what they haven't done is establish the need for the acquisition of all of the land that is the subject of the CPO. In particular in relation to plot 102.a 01 they haven't established the need to acquire all of those lands because they are acquiring all of those lands even though it is quite clear if they are relying on the Part 8 that they are not entitled to. It is put forward that it is not necessary to acquire all of our clients lands to actually implement the works of construction, operation or maintenance of the proposed scheme.
- Section two of the brief of evidence of Mr. Bergin states as set out in this report there is a community need that is to be met by the acquisition of these lands and extinguishments of the rights of way. And in addition to this report tables 2-1 and 2-2 below set out in detail each of the land parcels proposed to be acquired and each of the right of ways to be extinguished are suitable and appropriate to meet that community need.
- They haven't indicated the right of access that we enjoy onto the road to the industrial estate access road to the rear of the property. Table 2-1 from Mr. Bergin's submission head lands to be permanently acquired and indicates in

the far right hand column the reason for the acquisition of each of the referenced lands. In the case of the plot 102.a 01 the reason for the acquisition is given as follows. Required to provide pedestrian and cyclist facilities on Dock Road and Atlas Avenue and to increase the carriageway width on Atlas Avenue to accommodate HGV movements. However, if this CPO is deemed valid it would only necessitate the acquisition of lands within plot 102.a 01 that are necessary to provide for the construction, operation and maintenance of the proposed scheme. It is not accepted that the part 8 is connected to the CPO process, there is no reference to it in the context of the CPO documentation. The brief of evidence provided by Mr. Bergin is not part of the CPO order.

- Appendix B in the submission from Mr. Bergin evidence, he refers to the part 8 process which was approved which the Council are putting forward is the scheme that they are trying to implement. The second drawing indicates a plan in relation to the junction. This is a composite plan, as Mr. Galligan understands it relates to the Part 8 approval and it has a lot of additional information superimposed on it. Including that there is a dashed blue line which outlines the site of the existing retail unit which is the plot in question. The rationale that's given is that given for the acquisition of these lands is to provide for the construction, operation and maintenance of the roadway which includes a cycleway and footpath. That leaves a substantial portion of the site which is not required for the scheme. The Council may consider what use is the rest of that site to the owner. But that is not a matter for the Council to take the view that the remaining area is not much use to them so they will acquire the whole lot of it. Also, into the left of the site, it says site to be retained by Limerick City and County Council and right of way between it and Dock Road to be extinguished. This indicates that the existing buildings are to be demolished. If the road were to go ahead then there could be partial demolition of those structures. There is no reason why the underlying plot cannot be given back to the registered owner of the lands. This is an importance principle in the context of compulsory acquisition and property rights. The acquiring authority, the Council are only entitled to acquire from land owners what is strictly necessary for the implementation of the purposes of the CPO. In this case the purpose of the CPO appears to be to provide for a certain amount of road widening and provision of footpath and cycle path at this location. It is clear that not all the lands are required for that purpose. If the structures were demolished on the site that the site could be returned to Patrick Gleeson Limited. It is indicated that the site is to be retained by Limerick City and County Council. No purpose for the retention is provided. It is stated that there is no statutory basis for retention of the rest of the site.

- The reason given in Mr. Bergin's brief of evidence that the acquisition is required to provide pedestrian and cyclist facilities on Dock Road and Atlas Avenue and to increase the carriageway width. If the CPO were valid it would only justify the acquisition of that portion of the lands comprised in plot 102.a 01 that are necessary to provide for the construction, operation and maintenance of the proposed scheme. It is stated in Mr. Bergin's brief of evidence that I am of the opinion that the land to be acquired under the proposed CPO are necessary and sufficient for the construction, operation and maintenance of the proposed scheme. It is put forward that the balance of the lands that is not required for the road improvements required for the scheme. It is stated that only a portion of the subject plot which is required for the subject scheme. The balance of the lands are not required for the Dock Road improvements scheme. The Council has indicated that the structures within the subject plot will have to be demolished. Even if it is accepted that it is necessary to demolish these structures, this only requires the temporary acquisition of the balance of the lands comprised in the plot that are not required to provide for the scheme itself.
- The brief of evidence also indicates that the Council intends to obtain the lands. But the real purpose for the obtaining of the lands has not been identified and it is clear that it is not necessary for the implementation of the Dock Road improvement scheme. Reference is made to the most recent text of Mr. Justice Simons on Planning Law, it refers to compulsory acquisition. Mr. Galligan states that his submission to the hearing are supported by that text. It is well established that an acquiring authority is only entitled to acquire such lands that are strictly necessary to give effect to the purpose of the scheme for acquisition for the acquiring authority to acquire more land than is strictly necessary offends against the constitutional principle of proportionality. Reference is made to the judgement of Mr. Justice Costello in 1993/1994. Reference is made to the case Clinton vs. An Bord Pleanála which related to the Carlton cinema site. The Supreme Court stated that, it is axiomatic that the making and confirming of a Compulsory Purchase Order to acquire a person's lands entails an invasion of his constitutional protected property rights. The power conferred on an administrative body such as a local authority or An Bord Pleanála to compulsorily acquire land must be exercised in the accordance with the constitution including respecting their property rights of the effected land owner. It refers then to East Donegal Cooperative vs. the Attorney General. Any decisions of such bodies are subject to judicial review. It would insufficiently protect constitution rights if the Court hearing their judicial review application merely had to be satisfied that the decision was not irrational or was not contrary to fundamental reason and common sense.

- The Inspector may consider that what has been said in relation to planning and the general policy provisions which appear to offer support for improvements to the junction at this location. Mr. Galligan is not accepting that as this proposal is not part of the development plan. The Inspector may take the view that there are a number of provisions which it is in harmony with to some extent. But that's not the extent of the inquiry which the Inspector and the Board must make. It is not simply as was said by the Supreme Court in *Clinton vs. An Bord Pleanála* for the Court of the Board to be satisfied that it was rational and there were reasons for it. The Board and the Inspector must be satisfied that all of the land that is the subject of the CPO is necessary to be acquired to give effect to the scheme. If any of it is not necessary for the construction of the road improvement at the junction at this location. The Inspector may take the view that there are a number of provisions of the development plan. But that's not the extent of the enquiry which the Board must make. The Board and the Inspector must be satisfied that all of the land that is the subject of the CPO is necessary to be acquired to give effect to the scheme. If any of it is not necessary for the construction of the road improvements then the Council should not acquire it. If the Council need it temporarily then the acquisition should only be on a temporary basis.
- An example of this is provided, in the context of Motorway schemes where construction compounds are provided for roads schemes on a temporary basis. Such lands will be returned then to the owner when their use is finished.
- The case of *Reid vs. the Industrial Development Agency* at the High Court. The Court confirms that a proportionality test forms part of a judicial review of a decision to compulsorily purchase. This review involves the following tests. (1) Is there a compulsory purchase provided by law that's connect to the object of the legislation. Is it arbitrary unfair or based upon irrational consideration. (2) Are the applicants rights as little impaired as necessary (3) Are the effects on his rights proportionate to the objective.
- It is stated that the property rights of Patrick Gleeson Limited who has not been served with notices and has not been included in the CPO.
- No provision is made for the Dock Road Scheme in the Council's Development Contribution Scheme. The cost of relevant projects are set out and scheduled in the contribution scheme. This particular project has not been included in schedule in the development contribution scheme. It is considered that the CPO if it were not otherwise invalid would be premature in such circumstances where no provision has been made for the funding of this

roads scheme in the context of Development Contribution Scheme. For all of the foregoing reasons the Board should not confirm this CPO.

- Regarding the evidence provided by Robert Gallagher, concern is expressed in relation to the Dock Road Scheme that it appears to be a piecemeal scheme in terms of dealing with cycleways and pathways. It is considered that it is a badly thought out scheme.
- Section 8.1 of the submission from the Council states realignment of the Dock Road is not possible. It is submitted that the subject scheme is a piecemeal scheme. Reference was made in the submission from the Council to draft policy in relation to cycleways and pathways and a widening of this junction and without considering what is to be done in relation to similar provision in the Dock Road. There is no overall design or engineering design in relation to that. It is submitted that it is a badly thought out scheme given that there is no overall engineering design for the Dock Road. In relation to the evidence from Mr. Bergin, it was stated that the scheme was required to tie into the Dock Road, Atlas Avenue and Courtbrack Road. This means the scope for alternative layouts is restricted and significant realignment of any of these roads is not possible. They are indicating that significant realignment of the Dock Road is not possible and how in those circumstances is this cycleway provision and pedestrian provision to be extended in some sort of integrated manner into the Dock Road generally. This is a piecemeal scheme and is premature pending an overall design and scheme for the Dock Road generally. It seems that there is considerable doubt whether an integrated scheme can be achieved where it is being indicated that significant realignment of this road is not possible. That seems to indicate that the Council don't intend to use any compulsory purchase powers. They have made reference to a draft policy which is not an adopted policy of the Council. The Board is not entitled to have regard to a draft policy. This particular scheme in relation to cycleways and pathways is entirely premature in the absence of an integrated design which would link in with an overall similar provision within the context of the Dock Road.
- In relation to the evidence given by Mr. Bergin regarding the alternatives, a roundabout was dismissed on the basis that the Council didn't favour it. Mr. Galligan states that there would have been scope for two roundabouts at that location. It seems to have been excluded on the basis that the Council don't want to acquire any further land at this location. The evidence presented by Mr. Bergin stated that the alternative of replacing the existing signalised junction with roundabouts was considered. He stated that normal roundabouts or compact roundabouts would require significantly more land acquisition than



is the case for a scheme based on signalised junctions. It seems that the roundabouts idea has not been fully explored because that it would require significantly more land acquisition. This is a matter that should be explored. On the CPO map contained in Mr. Bergin's evidence, at the junction directly opposite where Atlas Avenue joins onto the Dock Road the word tennis ground, there is a green space between the tennis ground and the Dock Road at that location. This land could be potentially used as part of lands for a roundabout at this location. It is considered that the possibility of roundabouts at this location was written off due to the cost of land acquisition at that location. The matter of further land acquisition being required is mentioned as an objection to the possibility of a roundabout in the evidence of Mr. Bergin.

- In relation to the issue of flood risk management and the justification test. It is referred to in Mr. Bergin's evidence, particularly the justification test. The oral evidence referred to the justification test in relation to the development plan while the written brief refers to the justification test in relation to development management and the proposed scheme. Mr. Galligan puts forward that it does appear that no development plan justification test was carried out. He states that he cannot see how a justification test under the development plan was done in the context of the flood risk guidelines. This project has not been listed as a specific objective of the development plan.
- The Port Company was discussed in the evidence. In relation to the Port Company they are not party to this acquisition. It is stated that there are no objectives in relation to the Port Company referred to in the CPO. There was reference also to a Data centre. Mr. Galligan states that he is not aware of any planning application for a Data centre. He states that there is no reference to an objective for a Data centre at this location in the development plan. It is difficult to see how a Data centre is now being used to support this CPO. It is noted that it was not referred to in Mr. Bergin's brief of evidence.
- It is stated that the Part 8 isn't linked to the CPO. That the part 8 application appears to be assessed under the 2010-2016 Development Plan, which was adopted 12 years ago. No part 8 has been the subject of an evaluation under the current development plan the 2022 plan.
- Ms Mary Gleeson is a director and shareholder of Patrick Gleeson Limited. That is together with her husband Mr. Patrick Gleeson. Patrick Gleeson Limited is the registered owner of the premises since 1990. It was assigned to the company by deed of assignment on the 3<sup>rd</sup> of May 1990. Kelliher Electrical have been in occupation of the premises since a month after Patrick Gleeson

Limited took ownership. Kelliher Electrical are wholesale electrical suppliers. It is stated that the owner Patrick Gleeson Limited have had good relations with the tenants Kelliher Electrical.

- Access to the premises is located off Atlas Avenue. There is a gated entrance located to the back of the building which is 4.5m wide. That entrance has been used since Patrick Gleeson Limited have owned it. The company which built the building in 1956 provided all the existing accesses. The access to the rear is used daily for deliveries. In relation to the rental income from the premises Ms Gleeson states that they are retired and that they have looked to seek an alternative premises in the last couple of years, however than nothing suitable is available.

#### **9.5. Response from Limerick City and County Council**

- Response from Limerick City and County Council made by Mr. McNamara.
- Regarding this question of an amendment, the Council fully accepts that Schedule 2 requires to be amended to reflect the identity of the correct landowner. That it is Patrick Gleeson Limited the corporate entity rather than Patrick Gleeson himself personally that should be recited there. The question for the Board in making its decision is to amend that CPO and to amend it is such terms as to correct this error of identification. The first thing that the Board will be concerned to know is that does it have the legal power to do this. Mr. Mc Namara says that it very clearly does because the third schedule of the Housing Act 1966 which is applicable in an acquisition of this kind, at article 5, it expressly states “where a compulsory purchase order has been submitted to the Minister and that of course must now read the Board, the Board if it thinks it fit and subject to the following provisions of this article (a) annul the order by an annulment order or (b) confirm the order with or without a modification by a confirmation order as respects all or part of the land which the compulsory purchase order relates and in case the Minister makes an annulment order or a confirmation order in respect of part of such land the Minister again the Board may make an annulment order or a confirmation order or a further amendment as the case may be in respect of any part of such land to which neither it previously never made an annulment order or previously made confirmation order relate. Mr. Mc Namara says that is an extraordinarily broad power of amendment and that it is designed to cater for a circumstance precisely like this.

- To treat with what in effect is an error, an administrative error. But of course, just because the Board enjoys a statutory power to do something doesn't mean that it must do so and as Mr. Galligan has been at pains to point out the Board must be cognisant at all times of the question as to whether if it grants such an amendment will it prejudice any party. Mr. Mc Namara states that in his submission that is the kernel of the question that the Board has to address when considering the Council's application for amendment. Does this application amendment prejudice any party. Mr. Mc Namara says that the answer to that is categorically no. The reason for that is in the objection received from Hodgins McKeever Solicitors on behalf of the Gleesons, Mary & Patrick Gleeson in November 2021. It is expressly recorded that the only shareholders in Patrick Gleeson Limited are Mary & Patrick Gleeson themselves. The fact that Patrick Gleeson Limited wasn't correctly recorded has given rise to no prejudice because the people with the ultimate beneficial interest in the company have had a full opportunity and have taken that opportunity to object to the CPO. So Mr. Galligan simply cannot point to any prejudice of any kind that would arise consequent on this amendment being granted. In those circumstances, Mr. McNamara says that the application should be exceeded to by the Board.
- A discrete point is made by Mr. Galligan that Article 4 in Schedule 3 expressly requires the Council as an acquiring authority to notify all interested parties and that to grant an amendment to this point would set at nought that mandatory requirement. Mr. Mc Namara says that is incorrect. The Council did attempt, they didn't ignore their obligation. They attempted to serve who they thought was the interested party and it is true that they recorded the incorrect party. In the event that any prejudice of any kind flowed from that inaccuracy the Council would accept that it would require the CPO to go back to that stage of the process. However there simply isn't any prejudice to point to at all. Mr. Mc Namara confirms that he does not ask the Inspector to make a determination today on that amendment but rather that it is for the Board when considering whether to confirm or not the CPO, to make that decision.
- Regarding the second point raised by Mr. Galligan he contends that the absence of a reference to Part 8 or Section 179 of the Planning and Development Act and specifically to the proposal that was sanctioned by the members in February 2021 invalidates the CPO. In response Mr. Mc Namara states that this is inaccurate for two reasons. The first is that in order to show jurisdiction in a CPO it is essential and a prerequisite to jurisdiction that the CPO should record the statutory provisions on foot of which the Council is moving. Mr. Mc Namara states that has been done correctly. The Council is

relying on Section 2 and 3 and Section 76 of the third Schedule of the Housing Act and Sections 10 of the Local Government Act no. 2 1960 as amended by Section 86 of the Housing Act 1966 and the Roads Act 1993 and the Planning and Development Act 2000. The statutory basis for issuing the CPO is fully recorded on the CPO order and on the face of the order itself it expressly records that the development concerns the upgrade of the Dock Road and at Atlas Avenue junction and at the Courtbrack Avenue junction. It actually does refer to the proposed development. What is absent is the document and Mr. Mc Namara states that it is not something that goes to jurisdiction is an express reference to Section 179 of Part 8. Mr. Mc Namara states that in their submission does not invalidate the CPO.

- In relation to the procedural objections Mr. Galligan states that you cannot entertain this CPO application because of those defects. Mr. Mc Namara states that he has addressed why he thinks that is incorrect.
- In relation to the substantive arguments which Mr. Galligan relies upon to support his position that the CPO not being confirmed. The overall legal framework within which the Inspector and ultimately the Board will adjudicate on whether the interests of Mr. Gleeson are appropriately addressed and protected in this CPO process. In that regard Mr. Mc Namara states there isn't that much between him and Mr. Galligan because, he fully accepts in the decision of the supreme court of Clinton v. An Bord Pleanála no. 2, 2007 for Irish report 701 that Mr. Justice Fennelly in paragraph 52 of that judgement states that an acquisition in respect of a private land owners land should only take place where it is required by the exigencies of the common good. He expressly states in that judgement that you must consider that through a proportionate framework and Messrs Galligan and others in their text book on compulsory acquisition give guidance on that concept and say that there are four considerations that an Bord Pleanála should have regard to when deciding whether to confirm or not to confirm a CPO having regard to the interests of a particular land owner. They are (1) That it is necessary for the local authority or acquiring authority to demonstrate a community need in respect of the project (2) That the lands that are going to be acquired are necessary to meet that community need (3) That there are no obvious better alternatives to what is being proposed (4) That the CPO conforms with the general development plan framework for the area.
- Mr. Mc Namara states that the Council has evidence to support all four of those positions in favour of confirming the CPO. Firstly, regarding community need both the evidence from the Council officials themselves and their Consulting Engineer Mr. Bergin clearly demonstrate that there is a need here

to improve the road network for cyclists and pedestrians and to make it safe for both of those road users and other road users in the area. They also make it clear that by facilitating this widening at Atlas Avenue the synchronized lighting and other matters that it will radically reduce the number of heavy commercial vehicles that will be using that route on the basis that it is anticipated that once this particular project is completed that the Shannon Foynes Port Company will relocate its weighbridge west of Atlas Avenue taking some 300 trips of heavy goods vehicles off that intersection between Atlas through to the city east and radically reducing the traffic there. There is a demonstration of clear community need.

- Regarding the matter that are the Council acquiring the land that is necessary. Mr. Galligan says that the Council have trespassed on his clients constitutional rights because the Council is attempting to acquire more land than is necessary to do so for the project. The response of the Council to that is firstly, if the project is to proceed all of the land will have to be acquired for that purpose to facilitate the construction process. Both Mr. Bergin and Robert Gallagher are available for questioning by Mr. Galligan on that fact later in the hearing. It is also correct that when the junction is constructed that there will be a portion of land that won't be required for operational use of the road way but the Council's view was that it would actually have been unfair to the landowner to attempt to leave them with that portion of land because it would be unviable. The Council reasonably took that view because in the objection from Hodgkin Mc Keever on November 21 and up until this morning there was no indication that the landowner wished to make the case that if the CPO were to be confirmed that only some of their land would temporarily acquire and returned back to them and that they had a residual and useful purpose for that land. The Inspector is entitled to have regard to the fact that Mary Gleeson has given evidence this morning and she hasn't said that she wants a portion of the land back in the event that it is confirmed. Mr. Galligan said that the CPO goes further than it is required. None of the factual evidence from Mrs Gleeson supports what he is saying. The position of the Council is that we believe what would be left there would be unviable. But if it is the case that Mrs. Gleeson is making the argument today that she requires to retain that portion of the land that won't be used in the operation of the junction after construction, then there is nothing to stop the Inspector from adjourning the hearing to allow the objector to furnish the Council with a draft plan of that portion of land which they could hold onto and indicate what purpose that would be used for and the CPO could be modified accordingly, if that is the case. Mr. Mc Namara states that the factual evidence does not support that. The Council's position is that it is an unviable site after acquisition and after

construction and that in truth the landowner would require to be compensation in relation of the full land acquisition.

- Another feature of the test Messrs Galligan and others outlined in their text is that is there a reasonable alternative. Mr. Galligan says that consideration of a large roundabout seems to be excluded simply because it would require the acquisition of more land. In response to that both Pat Bergin and Robert Gallagher are available to for questioning on this. What they say is in relation to it is that the large roundabout is not particularly suitable for cyclists or pedestrians. Certainly, the mini roundabout most definitely isn't as Mr. Bergin said in his report. But neither really is the large roundabout and the configuration that best meets the strategy that they are trying to achieve a user friendly and safe space for cyclists and pedestrians is achieved by dedicated lanes and synchronized lights which this junction seeks to achieve.
- The second point to be made on this matter is that there is something of a paradox here between this submission that Mr. Galligan makes and the earlier submission he makes about the acquisition of the land from Mr. & Mrs. Gleeson. Which is this, he is critical of the Council for acquiring more land than is necessary in his view when treating Mr. & Mrs Gleeson's property. But then suggests that the Council should acquire more land than is necessary to meet the project here. The Council have satisfied themselves that this project meets all of the particular needs identified and does so by compulsorily acquiring only that amount of land that is necessary to do so, save for that portion of unviable land that will be left on the Gleeson property.
- The next point is that Mr. Galligan said that it couldn't be said to be a well thought out proposal because there doesn't appear to be an overall engineering design for the Dock Road itself and in particular, he referenced the fact that in Mr. Bergin's report he had said the Dock Roadway couldn't be significantly realigned. The first thing to acknowledge is that Mr. Galligan is correct that there isn't an overall engineering design for the entire Dock Road and he is correct also that there isn't space for significant realignment of the road. But the answer of both Robert Gallagher and Pat Bergin to that is simply that the adaptation of the Dock Road Scheme to accommodate cyclists and pedestrians users will be achieved through a reassignment of road space within the existing road. As to the question of design while there isn't an overall design as of yet the configuration which is proposed and sanctioned by section 179 development is one that will fit in to any broader effort that is established there in future years.

- The next point that was raised was one relating to flood risk and whether it had been appropriately assessed. The position of the Council on that is all of those matters from a planning context were addressed within the section 179 process. So just as the question of screening for EIA and AA cannot be revisited at a CPO process, similarly Mr. Galligan can't seek to contend through this process that there was some deficiency in the planning process that accompanied the section 179 process. Next there was criticism for Mr. Gallagher for referencing a data centre being considered for a location just off the Dock Road. He said that as far as he was aware there was no such planning application made. In fact, there is a planning application for a data centre and planning permission has been granted by the Council and it is under appeal to An Bord Pleanála and an Inspector has prepared a report. The planning application number is 18/1135. But actually, whether that ultimately comes to fruition or not doesn't dislodge the principle point that Mr. Gallagher was making which is that it is envisage that once this adjustment has been made to Atlas Avenue that the port will relocate its weighbridge west of Atlas Avenue and that enormous benefits as both Mr. Bergin and Mr. Gallagher have outlined.
- The next point that is made is that LSMATS (Limerick Shannon Metropolitan Area Transport Strategy) draft document is not a matter that you are entitled to have regard to in this CPO. At TRO5 of the Limerick Development Plan 2022 – 2028 it specifically states that regard should be had for the final draft of the LSMATS. Mr. Gallagher has indicated in his evidence that he believes that the LSMATS is at that stage. It is entirely appropriate that all be it indirectly through the development plan that you do have regard to that strategy. What Mr. Gallagher was saying in that regard was that strategy was in favour of improving bus networks, cycle networks and pedestrian networks to the city which is entirely consistent with the development plan itself and the series of objectives which Mr. Henn identified in the hearing this morning. Another point that the Council are anxious to emphasize is that the zoning for this matter, the development that is underlying this CPO, the Section 179 the upgrade is entirely consistent with the zoning and again Mr. Bergin and Mr. Gallagher are available for any questions on that matter. That then deals with the substantive response to what Mr. Galligan had said this morning. There is one additional feature, Mr. Galligan did not raise any evidence about MK Kelliher, he was careful not to seek to represent any of their views when he wasn't acting on their behalf. However, their letter of objection of the 29<sup>th</sup> of November 2021 at paragraph two makes a number of unverifiable statements about the position of MK Kelliher Limited and there is a reference to the fact that there would be an immediate loss of jobs and that they cannot source an alternative premises. Those two matters Mr. Mc. Namara states are unverified

and he states that he has hearsay evidence which would tend to challenge that but in the event that's not being relied upon, Mr. Mc. Namara states that he would not intend to call the hearsay evidence to challenge what is their hearsay evidence. If MK Kelliher had any serious issue with the CPO they would have actively participated in this process and you will see from the package of documents that you received from the Council that the notice was served on them by registered post. Mr. Mc. Namara states that he has evidence of contact with MK Kelliher but he would not intend to call it in the event that the Inspector does not intend to have regard to paragraph two. At this point and subject what Mr. Galligan may have to say, Mr. Mc. Namara would be inviting a moving on that as to whether you intend to rely on that or whether you wish to hear what is similarly hearsay evidence from the Council official in relation to this matter.

- Mr. Galligan on behalf of the objector interjects in relation to the Kelliher issue and states, I think what Mr. Mc Namara says in relation to hearsay is reasonable and I am not purporting to rely then on hearsay evidence that might be in my submission. All I rely on in that regard is what Ms. Gleeson has said which is that they have had a long relationship running over 30 years with Kelliher and that she is herself made extensive enquiries to see if there is another available premises on the Dock Road and elsewhere as well and she has drawn a blank in relation to that. Mr. Galligan states that he is not standing over any evidence as to what Kelliher's have said to them on the basis that it is hearsay, I think that Mr. Mc Namara is right in that and I don't think that the Board should be relying on hearsay evidence.
- Mr. Mc Namara says that is extremely helpful from Mr. Galligan and I think in those circumstance that I won't be calling any further oral evidence. Mr. Bergin, Mr. Gallagher and Mr. Henn are available for questions from any party. There are two short matter which I want to address before I close. That is firstly Mr. Galligan also made reference to the right of way in the rear of the property and that the extinguishment of that right of way has not been contained within the CPO. Obviously in circumstances where the Council is acquiring the entire site there is no requirement to extinguish that right of way. That issue would be for discussion and debate if Mr. & Mrs. Gleeson take up this idea of requesting the Council to only temporarily acquire a portion of the property as reference earlier. That doesn't seem to be something they do want, notwithstanding Mr. Galligan's objection. The next point is a general commentary on the objection you received from the Gleeson's in November 2020 is that all of those matters are of relevant consideration in arbitration on what value should be placed on compensation but are not obstacles to the CPO being granted. It may well be that the economic of this purchase is quite dramatic indeed and I make to concession in that regard. But that is certainly



the position that the Gleesons advance. But that is not something for the Inspector to consider and the Inspector outlined at the beginning of the hearing that the Board is not concerned here as to what level of compensation if any would be appropriate.

#### 9.6. Response from Eamonn Galligan

- Mr. Galligan makes some responses to legal arguments.
- Mr. Mc Namara relies in his application on amendment article 5 sub article 1 of the third schedule to the Housing Act which refers to a modification of the CPO. Mr. Mc Namara states that this clearly is not a modification of the CPO it's a fundamental amendment which goes to the property rights of Patrick Gleeson Limited. There is no specific provision for an amendment in that regard. By contrast, Article 10 of the Second Schedule to the Gas Act of 1976 which although it provides the Minister with a power of amendment not in identical terms but in amendment. It provides entirely separately for a specific power to amend references to properties then in the CPO under article 10. It is quite a detailed procedure, and it is not just a question of the Minister or the Board of making a verbal amendment.
- When you look at the CPO order you will see that in relation to the other companies their addresses and their company office numbers etc have been put in. Although Mr. Mc Namara says that this was a situation where they served who they thought was the interested party it is not good enough for them to think well who do we think is the interest party. The Council are under an obligation to make reasonable enquiries as to who the registered owner is. There is no evidence given as to what those reasonable enquiries were. It would have been very easy for them to discover that the registered owner of the company was Patrick Gleeson Limited.
- There is an requirement under article 4 of the first schedule of the Housing Act to serve the notice on every owner and occupier of the relevant land under the CPO. When you look at the wording of that before submitting the CPO they shall, so it is absolutely mandatory that it must be done before submitting the CPO. Mr. Galligan states that the procedure has been wrong here. Neither the Inspector nor the Board has any power to revisit that procedure. It is a mandatory procedure that has been put in by the legislature. It is a serious encroachment on the doctrine of the separation of powers if the Board was to decide we will dispense and we will not make that a requirement. That statutory requirement is not something we will enforce we will just overlook it in this instance because we don't think that Patrick

Gleeson Limited is prejudiced in any way. Mr. Galligan states that Patrick Gleeson Limited is clearly prejudiced because they have not been served with the notice. They haven't been given the status of an objector in the context of this hearing and they haven't been invited to make their views because the invitation to make submissions applies to those served notices in that regard.

- There was another similar incidence of this occurring in the context of a site at Cabhain Trathain, Connemara, Co. Galway where Irish Water served notices and made a CPO which was submitted to the Board for a hearing and in that particular case, they had only notified one of the companies who was involved in ownership of the particular plot of land concerned and not the other company, and in those circumstances Irish Water withdrew the CPO and reserved the notices properly in that regard. That is a hearing which has not taken place there are other court procedures including a recent hearing in the Supreme Court in relation to statutory instruments being translated into Irish as this is a site located in Connemara. It shows what the proper step for an acquiring authority are to take, to withdraw a CPO and reserve the notices properly on the relevant parties to it.
- There is a deficiency in the CPO process here because Mr. Mc Namara has said that they have effectively relied on the provisions of the plan but in fact there is no reference to this specific project in the development plan in terms of a specific objective, notwithstanding the fact that there a Part 8 procedure which was confirmed as far back as February 2021. In relation to the response the legal submission on the transport strategy which is still in draft, they rely on the Development Plan referring to Objective TRO5. But the development plan cannot incorporate another draft document without it being included in the actual text of the plan and particularly where it is a draft and where there is no indication as to when it will be final. At the time the development plan was adopted the elected members had no indication whether that would be a final document or not.
- In terms of the right of way Mr. Mc Namara says that it is not necessary to record the right of way. It would have been nice if they hadn't indicated that there were only two accesses to the particular property. There is a third access to the rear and that shows a lack of investigation by the acquiring Authority. Whilst they indicated the extinguishment of the other access on Dock Road, why did they indicate the extinguishment of that right of way. They should have indicated that they were going to extinguish the right of way and that should have been put before the Board in the context of the CPO and in the context of this hearing.

- Mr. Galligan refers to a package of documents having been received from the Council and wonders are those documents were available for public inspection.
- In relation to the suggestion by Mr. Mc Namara that they were only trying to be nice to the landowners in this instance in taking all of their land rather than leaving them with some. But the point is that they can't make those judgements before they make a CPO. They seem to have decided that they would acquire all the land. What's more Mr. Bergin gave evidence to say that all of it was necessary for the construction, operation and maintenance of the road which clearly it isn't and all that is required is a temporary acquisition in that regard. There is no obligation on Ms. Gleeson to contact the Council in advance and say I want some of the land back. The suggestion that this hearing should be adjourned to allow us to furnish a plan showing what purpose we would use the land for is extraordinary and is born on a misconception as to the powers of the acquiring authority. They are only entitled to acquire what is strictly necessary for the particular scheme that they are seeking to validly implement in the context of a CPO.
- In relation to the overall piecemeal nature of this scheme they say that they can accommodate it within the existing roadway in terms of cycleways. But the point is that there are no plans before the Board in this context and in another context if an ordinary developer was to submit a scheme showing only part of an overall development the Board would be saying this is premature till we see a masterplan until we see everything that you are doing in relation to this, how does it fit in with surrounding land. There is no indication as to how that would be carried through in the rest of the Dock Road. Therefore, reliance cannot be placed on that.
- It is concluded that the CPO is invalid and that the Board has no power to amend it.

#### **9.7. Questioning – Objector to the Limerick City and County Council**

- Mr. Galligan stated that he did not have any questions for the Local Authority.

#### **9.8. Questioning – Limerick City and County Council to the Objector**

- Mr. Mc Namara stated that he did not have any questions for the Objector.

## 9.9. Questioning by the Inspector

Question: Can the Local Authority give a summary of the examination of reasonable alternatives, specifically to explain how the current proposal which entails the acquisition of this property is demonstratively preferable to the other alternatives.

- Response from Mr. Bergin he states that in his report it does refer to that. The realignment of roads that lead into the scheme is not possible or practical and that has already been addressed in Mr. Mc Namara's evidence. Outside the scheme it is a question of tying back into the existing roads. There can be reassignment of the usage of those roads however we are stuck with that basic configuration of the roads. When we were looking at that we have to match the basic configuration and then we are looking at the types of junction which we can do to match that. Roundabouts were looked at as an option as part of the alternatives considered. As described in our report there are several options where types of roundabout can be used and basically that comes down to size. Some are larger and some are smaller.
- Normal roundabouts have a bigger footprint there are large compact and slightly smaller and then mini roundabout is smaller again. A mini roundabout is akin to a raised central area. An alternative to the roundabout solution would be a signalised junction matching the configuration that is there with a signalised upgrade to the junction system. In terms of that roundabouts are discouraged under DMURS because they are less cycle friendly and less pedestrian friendly. There are degrees of this. A normal roundabout would be less unfriendly to pedestrians and cyclists than very example a mini roundabout. But none of these types of roundabout is preferred under DMURS. The recommendation is to go with signalised junction or priority junctions which is basically the same configuration with no signals rather than roundabout controlled option. The reason for that is they are seen as being less safe for pedestrians and cyclists. In examining the alternatives for this scheme we did look at roundabouts but given that they are less suitable for pedestrians and cyclists to advance a scheme with a roundabout would require an overriding reason to do so. There would have to be some factor that would justify their use even though they are less suited to an urban situation. No such factor was identified, so there is no rationale for their use.

Accordingly, the scheme became one of an upgrade on the existing configuration based on a signalised junctions.

- **Question by the Inspector**

Question: Can the Local Authority detail how the permanent acquisition of this property is proportionate to the interests of the common good served by the proposed project.

- The acquisition of the property as shown is necessary for the construction of the scheme. The footprint of the widened Atlas Avenue which includes the cycleway and footway encroaches significantly into the site and includes existing elements of buildings significantly on the site. Therefore, to construct a scheme it would be necessary to demolish those buildings. To do so safely requires acquisition of the site. There is also a difference in elevation of between the site and Atlas Avenue which would have to be catered for as well. The design allows for acquisition of the full scheme and that addresses any issues that arise from the demolition requirements and also updates any need to address the change in elevation on the basis that sufficient land is available to deal with any changes in level. That said as Mr. Mc Namara said there will remain after construction a portion of the lands that could possibly be returned and done by way of temporary acquisition rather than permanent acquisition. The exact extent of that we cannot be certain because the design has not done on the basis of temporary acquisition. It is done on the basis of permanent acquisition. So, the extent of land to be returned would be in essence would be that we would have some requirement for lands outside the immediate footprint of Atlas Avenue the exact extent we would have to determine.
- It is necessary to look at what the construction would involve. If you look at the footprint of the road, cycleways etc that involves demolition of existing buildings. You can't demolish part of a building and expect the rest of it to remain intact as a viable option. Essentially, it would require the demolition of the entire building. That removes the viability of that as a workable site. Our decision afterwards was that there was no viable working use of that property afterwards. Which is why we included it in the land required.

- **Question by the Inspector**

Question: Are there any specific objectives in the Development Plan which refer to the subject Dock Road Improvement Scheme.

- The Development Plan refers to the Objectives of LSMATS. It actually doesn't refer to the draft LSMATS it refers to the final LSMATS Objectives. The issues that are under question at the moment do not involve the consideration of the bus routes spoken about. Though the Development Plan indicates and offers support for the bus priority and cycle priority requirements of LSMATS. In an indirect way it refers to all of the bus routes, the corridors that are in the LSMATS document of which Dock Road is one of those. So, it is an indirect reference to the Dock Road by it being included as a bus route/cycle route in LSMATS.
- Yes, there is support for priority bus corridors and active travel corridors in LSMATS. The Dock Road/Atlas Avenue are two of the corridors are shown in that document. Therefore, there is an implication that Dock Road is included and supported.
- In relation to the funding of the scheme, there are two sources of funding which are being used for this project. One is funding from the Department of Transport. They have given the Council a substantial amount of funding, last year and this year in order to advance the scheme to where it is at the moment. They are also using funding source for the Dock Road improvement which includes for this particular junction as well. It is a contribution development fund scheme. So, it is the Council's own development funding which they have been using. To date regarding the Dock Road they have spent in the order of €500,000.00. Which is quite a substantial amount of money spent on developing improvements on the Dock Road. The major source of funding which is being used is a grant from the Department of Transport and the second source is the Council's development fund.

## 9.10. Closing comments

### 9.10.1. Closing comments from Objector – Mr. Galligan

- They have objected both in a preliminary way both on behalf of Patrick Gleeson Limited and Patrick Gleeson to the validity of this CPO. Firstly, on the basis that Patrick Gleeson Limited was not served the notices and secondly wasn't referred to in the orders. Thirdly, there is no power to amend the CPO now. The Council aren't seeking to amend the notices which clearly can't be amended at this stage.
- More generally, apart from that without prejudice to that fundamental issue that it is clear now from the Inspectors questioning that there is no specific objective for the scheme in the Development Plan referring to the Dock Road Scheme. Notwithstanding the fact that the Council appear to be relying on a

scheme which was confirmed in February 2021. That scheme we know was assessed under the previous 2010 Development Plan which is now twelve years old. Therefore, it is put forward that there is no basis when the Council rely on the Development Plan to carry out this project. There is no clear basis in the Development Plan for this specific project. Secondly, although the last speaker indicated that the funding is from the Department of Transport but that is to advance the scheme where it is, in the context of not of acquisition but in terms of the CPO process to date. The second thing is that the funding is coming from their own development contribution fund. It is stated that there is no reference to this specific project in the development contribution scheme. They are relying on an approval from February 2021 that was not assessed in the context of the current development plan. It is submitted that it is a piecemeal scheme that is being put forward as some kind of fix in this situation. It appears to facilitate an application that was made in respect of a Data Centre, however it cannot be seen how that could justify a specific scheme which has not been reference in the Development Plan.

- For those reasons, they put forward that the Board is legally obliged to reject the CPO and even if it wasn't legally obliged to reject it as being invalid then it should do so for the reasons which have been provided.

#### 9.10.2. Closing comments from Limerick City and County Council – Mr. McNamara

- They Council has demonstrated that they have statutory authority to acquire this land on foot of a valid CPO notice that adequately and accurately records the requisite provisions to founder jurisdiction. The Council submit that they have demonstrated that the lands that are being acquired to address a specific community need.
- That the lands that are being acquired are no more than is necessary to deal with the matter. Given that the residual land which would remain after the completion of the development in our view would be of no value to the party. We note that Ms. Gleesons did not submit in evidence that they would want to hold onto that residual portion of land.
- Therefore, the Council state that they have it is clearly demonstrated both the community need that the lands to be acquired are necessary for to meet that need. They submit that this is the best proposal and that there is no obvious alternative.
- In relation to this question of does it conform to the Development Plan. It is correct that in this Development Plan and in the previous Development Plan that there is no specific reference to this specific development but there are a

whole range of objectives that grounded the Part 8 development in the first instance and which Mr. Henn and Mr. Gallagher have referenced today that support this particular project. Consider the radial nature of the case made by Mr. Galligan that if that particular type of development is not expressly recorded in a Development Plan that it is not open to a Council to proceed with that matter. They clearly have the permission at this point pursuant to Section 179 and you cannot reinterrogate that process. There are plenty of objectives which are stated in the Development Plan which clearly support this project and given that a bulk of this development deals with the question of addressing the safe use of road, it would be odd having received technical expertise on the matter that hasn't been rebutted to conclude that this is not a necessary development.

- Mr. Mc Namara, responds to the matter raised by the objectors where they stated that he invites the Board to ignore Article 4 of the third Schedule of the Housing Act and the specific requirement there that the Local Authority is obliged to notify the land owner. Mr. Mc Namara is not suggesting that this section should be ignored but rather that you could only ever invoke the amendment power in Article 5 if you were satisfied that amendment would not trespass on the constitutional rights of Mr. Gleeson or Patrick Gleeson Limited. There is absolutely no prejudice to Patrick Gleeson Limited or to Patrick Gleeson and Mary Gleeson here. They have had an opportunity to fully participate in the process, have ventilated their concerns and the only purpose of the notification in the first instance is so that they can participate in the process which is exactly what they have done. The following analogy can be used that in court proceedings it is an absolute prerequisite to a valid set of proceedings that they are served appropriately on a defendant in a case. However, in the event that a person appears to those proceedings in court through a solicitor or otherwise any deficiency in the notification is cured and that is a similar process here. If you can detect or isolate no prejudice then you are fully entitled to invoke the amendment procedure. It is at the discretion of the Inspector make a recommendation to the Board and it is ultimately a matter for the Board to make a decision on the matter.

#### **9.11. Closing of Oral Hearing**

- The Inspector made some brief final comments and closed the Oral Hearing.



## 10.0 Assessment

### 10.1. Overview

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

- that it serves a community need and the acquisition is necessary
- that the lands are suitable and proportionate
- that the development to be served accords with planning policy and the development plan
- that alternatives have been considered and that there is no alternative which is demonstrably preferable
- additional issues raised by the objectors

### 10.2. Community Need

- 10.2.1. At the outset I note that the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions has been subject to approval under Part 8 of the Planning and Development Act 2000, as amended, and that there has been no challenge to the approved scheme.
- 10.2.2. Paul Bergin, Engineer, Director of Kilgallen & Partners Consulting Engineers in his submission at the hearing on behalf of Limerick City and County Council outlined that the compulsory purchase of the plot of lands outlined is necessary. The subject CPO seeks the acquisition of 0.15 hectares of private land and 0.66 hectares of public road and the extinguishment of two private Rights of Way. Mr Bergin outlined that regarding the configuration of the existing junctions that only 75m separates the junction between the Atlas Avenue and Dock Road junction and the Courtbrack Avenue and Dock Road junction.
- 10.2.3. Mr Bergin in his submission outlined that the compulsory purchase of the subject lands is necessary for the Scheme for the following reasons:

- the operation of one junction has a significant impact on the operation of the other to the extent that they can be regarded as a single junction and will operate more efficiently if redesigned and as such it is the reason that the upgrade of both junctions is proposed as part of this development.
- the existing junctions are unsuitable for the volume of traffic and nature of traffic movements through the area and are particularly unsuited to the safe movement of pedestrians and cyclists. This is because there are no dedicated facilities for cyclists, thus effecting the safety of cyclists.
- in relation to pedestrian facilities these are not to a modern standard thus effecting the safety of pedestrian movements through the junction.
- the signals controlling the junctions are not fully synchronized and this reduces the efficiency of their operation.
- The existing road layout which comprises three accesses from the Dock Road to private sites between Courtbrack Avenue and Atlas Avenue. The result of the configuration described is that between the two signalised junctions the movement for the accesses are not controlled by either junction therefore providing a confusing layout for through traffic.
- Atlas Avenue is not to a standard appropriate to serve the strategic port.
- the carriageway and the footway on Atlas Avenue are not of sufficient width and there are no cycle facilities.

10.2.4. Therefore, the case put forward regarding the community need is based on the existing junction configuration which as set out above is substandard. The existing junction configuration and road alignment requires to be addressed due to the lack of safety for pedestrians and cyclists and the conflicting traffic movements which occur.

10.2.5. Having visited the location of the existing junctions at Atlas Avenue & Courtbrack Avenue, I would agree that the Scheme would be beneficial for the above stated reasons. Mr. Bergin outlined that given the deficiencies in the existing junction configuration that it is in the interest of public safety and improvement of traffic safety that the community need has clearly been demonstrated to improve the road network.

10.2.6. In addition, I note that there are currently no cycle facilities in place along Dock Road. The upgrade and improvement of pedestrian and cycle facilities along Dock Road will provide a safe route for all users along the road and may also encourage uptake of more sustainable modes of travel within the area.

10.2.7. Accordingly, I conclude that need for the CPO can be justified by the exigencies of the common good and that the community need for the scheme has been established.

### **10.3. Suitability of lands to Serve Community Need and Proportionality and Necessity for the Level of Acquisition Proposed**

10.3.1. The lands comprised in the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions Improvement Scheme, which are the subject of a Part 8 approval, are the same as the lands comprised in the subject CPO. This Improvement Scheme would provide road and junction upgrades, as well as the provision of enhanced pedestrian and cyclist facilities that would meet the identified community need.

10.3.2. Mr. Bergin representing Limerick City and County Council at the oral hearing outlined that the CPO seeks the acquisition of 0.15 hectares of private land and 0.66 hectares of public road and the extinguishment of two private Rights of Way. The property identified in the CPO documentation as parcel 102.a.01 which contains a commercial premises occupied by Kelliher Electrical is in the ownership of the Objector, Patrick Gleeson Ltd.

10.3.3. During the submission to the hearing from Mr. Eamonn Galligan, Barrister representing the Objector stated that the Council had not established the need for the acquisition of all of the land which is the subject of the CPO. Mr. Galligan put forward that it was necessary for the Council to establish the need for the acquisition of all of the land which is the subject to the CPO in respect of plot 102.a.01. He argued that it is not necessary to acquire all of his clients lands to actually implement the works of construction, operation or maintenance of the proposed scheme.

10.3.4. Mr. Galligan stated that if any of the land is not necessary for the construction of the road improvements then the Council should not acquire it and that if the Council

needs the land temporarily then the acquisition should only be on a temporary basis. Mr. Galligan argued that only a portion of the subject plot is required for the subject scheme and that the balance of the lands are not required for the Dock Road improvements scheme. He noted that the Council has indicated in their description of the scheme that the structures within the subject plot will have to be demolished. He put forward that even if it is accepted that it is necessary to demolish these structures, this only requires the temporary acquisition of the balance of the lands comprised in the plot that are not required to provide for the scheme itself.

10.3.5. Mr. Mc Namara on behalf of the Council responded to these matters raised by the Objector. He submitted that if the project is to proceed all of the land will have to be acquired for that purpose to facilitate the construction process. He acknowledged that Mr. Galligan was correct, that when the junction is constructed that there will be a portion of land that won't be required for operational use of the road way. However, he stated that it was the Council's view that it would actually have been unfair to the landowner to attempt to leave them with that portion of land because it would be unviable. Mr. Mc Namara also stated that the objection on file from Hodgkin Mc Keever Solicitors did not include an indication that the landowner wished to make the case that if the CPO were to be confirmed that some of their land would be temporarily acquired and returned back to them. Furthermore, it was noted that Mary Gleeson in her submission to the hearing did not state that she wanted a portion of the land back in the event that the CPO is confirmed.

10.3.6. The matter was further explored during the questioning. Mr. Gallagher on behalf of the Council reiterated their case that the acquisition of the property as shown is necessary for the construction of the scheme. In relation to the subject scheme, they confirmed that the footprint of the widened Atlas Avenue including the cycleway and footway would encroach significantly into the site including existing elements of buildings on the site. Accordingly, it would be necessary to demolish the buildings on plot 102.a.01 in order to construct the scheme. It was also highlighted that there is also a difference in ground level between the site and Atlas Avenue which would have to be addressed as part of the scheme. It is put forward therefore, that the acquisition of the full plot would facilitate the demolition requirements and it would also address the change in site level. Mr. Gallagher in his response acknowledged

that after construction there would remain a portion of the lands that could possibly be returned by way of temporary acquisition rather than permanent acquisition. However, he stated that the exact extent of that portion of land cannot be certain because the design of the scheme has not been done on the basis of temporary acquisition. In conclusion, it was stated that it is the position of the Council that the portion of land which would remain would be unviable and therefore the decision was made to permanently acquire the subject plot.

10.3.7. I am satisfied that the CPO lands are suitable for their intended use to facilitate the road improvement works. I am also satisfied that the extent of land take is justified in principle, that it is proportionate because it has been kept to the minimum to facilitate the works approved as part of the Part 8 process and minimise impacts on the site. I conclude that the lands comprised in the CPO are suitable to meet the identified community need.

#### **10.4. Compliance with Planning Policy/Development Plans**

10.4.1. The Limerick Development Plan 2022-2028 is the relevant statutory development plan for the CPO lands. Under this Development Plan, there are a number of general and more specific objectives which either directly or indirectly support the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions, which would be facilitated by the subject CPO. The following Objectives contained in Chapter 7 of the Limerick Development Plan 2022-2028 which refer to Sustainable Mobility and Transport are supportive:

- Policy TR P4 – Promotion of Sustainable Patterns of Transport Use – which seeks to implement in a positive manner, in cooperation with other relevant authorities and agencies, the policies of the NPF, RSES and the Department of Transport's Smarter Travel, A Sustainable Transport Future 2009-2020 (and any subsequent updates), to encourage more sustainable patterns of travel and greater use of sustainable forms of transport, including public transport, cycling and walking.
- Policy TR P5 – Sustainable Mobility and Regional Accessibility – which seeks to support sustainable mobility, enhanced regional accessibility and connectivity within Limerick, in accordance with the National Strategic

Outcomes of the National Planning Framework and the Regional Spatial and Economic Strategy for the Southern Region.

- Policy TR P7 – Sustainable Travel and Transport - which seeks to support facilitate and co-operate with relevant agencies to secure sustainable travel within Limerick and seek to implement the 10-minute city/town concept, promote compact growth and reduce the need for long distance travel, as a means to reduce the impact of climate change.
- Objective TR 02 – Design Manual for Urban Roads and Streets – It is an objective of the Council to support the appropriate road design standards of all roads and streets within the urban areas, including suburbs, towns and villages within the 60km/h zone as per the Design Manual for Urban Roads and Streets and TII Publication Standards DN-GEO-03084 The Treatment of Transition Zones to Towns and Villages on National Roads.
- Objective TR 04 – Universal Design – It is an objective of the Council to ensure that all transport schemes incorporate high-quality urban realm design that is attractive, safe, comfortable and accessible for all individuals.
- Objective TR 05 – Limerick – Shannon Metropolitan Area Transport Strategy – It is an objective of the Council to facilitate the implementation and delivery of the proposals that will be contained in the final Limerick Shannon Metropolitan Area Transport Strategy, in conjunction with the National Transport Authority, Transport Infrastructure Ireland and Clare County Council and other relevant stakeholders.
- Objective TR 06 – Delivering Modal Split – It is an objective of the Council to:  
(a) Promote a modal shift away from the private car towards more sustainable modes of transport including walking, cycling, carpool and public transport in conjunction with the relevant transport authorities; (b) Support investment in sustainable transport infrastructure that will make walking, cycling, carpool and public transport more attractive, appealing and accessible for all.
- Objective TR 08 – Walking and Cycling Infrastructure – It is an objective of the Council to: (a) Improve and provide clear, safe and direct pedestrian linkages, cycle networks, including the greenways and primary segregated cycle routes,

between the employment zones, shopping areas and residential areas throughout Limerick; (b) Maintain and expand the pedestrian route network, infrastructure and where possible, retrofit cycle and pedestrian routes into the existing urban road network, to provide for accessible safe pedestrian routes within Limerick.

- Objective TR 09 – Limerick Cycle Network – It is an objective of the Council to implementation in full, the Cycle Network, which will be set out in the final LSMATS, with priority given in the short terms to delivering the primary cycle network and cycle routes serving schools.
- Objective TR 012 – Limerick BusConnects Programme – It is an objective of the Council to support the implementation of the Limerick BusConnects programme including the following: (a) An improved Metropolitan Bus Service Network which will deliver a step change in the quality of bus service across the City and suburbs; (b) A programme of Core Bus Corridors, which seeks to provide end-to-end full bus priority on key bus routes via measures such as new bus lanes, bus gates and bus priority signals, in order to ensure that bus services are no longer subject to traffic congestion impacts in Limerick. The following corridors are a priority: • from the M7/Dublin Road junction to the City Centre; • from Mungret, Raheen and Dooradoyle to the City Centre; • on the Ennis Road to the City Centre; • on the Ballysimon Road from the proposed Park and Ride site to the City Centre and on Childers Road between Parkway Roundabout and Ballinacurra Road; (c) To provide for further bus priority measures on radial routes into the City Centre, as identified by the NTA and Limerick City and County Council as part of BusConnects Limerick;
- Objective TR 013 – Core Bus Corridors - It is an objective of the Council to safeguard the proposed Core Bus Corridors from inappropriate development and ensure adequate set back is maintained to facilitate the implementation of the programme, in consultation with the NTA.
- Objective TR 028 – Docks and Ports - It is an objective of the Council to support the continued development of Shannon Foynes Port as an EU Core

Network Port (TEN-T) and Limerick Docks as marine related assets, in accordance with the 2013 National Ports Policy.

- Objective TR 042 – Roads and Streets – It is an objective of the Council to secure improvements to the road network in Limerick, including improved pedestrian and cycle facilities, in conjunction and co-operation with relevant stakeholders, subject to resources becoming available.

10.4.2. In his submission to the oral hearing, Barry Henn, Executive Planner from Limerick City & County Council outlined the above cited objectives of the Development Plan. He concluded that the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions would accord with these objectives and hence the relevant statutory development plan. Mr. Galligan on behalf of the objector put forward the case at the hearing that the subject scheme is not specifically referred to in the previous Development Plan, the Limerick City Development Plan 2010 - 2016 or the current Development Plan, the Limerick Development Plan 2022 - 2028. In response to the matter Mr. Mc Namara from Limerick City & County Council stated that it is a radical case made by Mr. Galligan that if that particular type of development is not expressly recorded in a Development Plan that it is not open to a Council to proceed with that matter. In response it was highlighted that there is a Part 8 permission for the subject scheme and that there are a whole range of objectives that grounded the Part 8 development in the first instance which were discussed by Mr. Henn at the hearing.

10.4.3. The subject CPO would facilitate this permitted Improvement Scheme namely the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions which has been subject to the provisions of Part XI of the Planning and Development Act 2000, as amended, and approved under Part 8 of the Planning and Development Regulations 2001, as amended.

10.4.4. I conclude, too, that the works comprised in the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions would accord with the provisions of the Limerick Development Plan 2022 - 2028.

10.4.5. Furthermore, I am also satisfied to conclude that the proposed scheme would be in accordance with the provisions of the National Planning Framework as they relate to



making stronger urban places and developing healthy communities. In relation to the Climate Action Plan 2024, the subject scheme which comprises the Upgrade of Atlas Avenue & Courtbrack Avenue Junctions to facilitate improved pedestrian and cycle access is in accordance with the central tenet of the Plan which seeks to achieve a shift to transport modes with zero or low carbon emissions such as active travel, with the provision of walking and cycling networks. It is acknowledged in the Plan that the provision of safe and accessible walking and cycling infrastructure is key to encouraging modal shift away from private car use towards walking and cycling. Table 1.5 of the Plan refers to Key Metrics to Deliver Abatement in Transport. This details that there are targets set to achieve a 50% increase in daily active travel journeys, a 130% increase in daily public transport journeys and a 30% reduction in private car escort to education journeys.

- 10.4.6. The provisions of the Regional Spatial and Economic Strategy for the Southern Region (RSES) are also of particular relevance. Limerick-Shannon Metropolitan Areas Strategic Plan forms part of the RSES. The principles underpinning the Limerick-Shannon MAPS include the effective integration of transport planning with spatial planning policies and the alignment of infrastructure investment. It is set out in the Limerick-Shannon MAPS that the Limerick-Shannon Metropolitan Area Transport Strategy (LSMATS) will be instrumental in the regeneration and transformation of Limerick City and the wider Limerick-Shannon Metropolitan Area. It will deliver a high quality accessible integrated and more sustainable transport network.
- 10.4.7. Limerick-Shannon MASP Policy Objective 7 refers to Sustainable Transportation. It is an objective to support the following sustainable transport priorities in the Limerick-Shannon Metropolitan Area subject to their consistency with the recommendations of LSMATS and the outcome of environmental assessments and the planning process – investment in sustainable transport infrastructure and public transport services. Other transport measures for consideration, across the wider Mid-West area, may include implementation of improved public realm, walking and cycling routes and facilities.
- 10.4.8. Limerick-Shannon MASP Policy Objective 8 refers to Strategic Road Infrastructure. It is an objective to maintain and deliver the sustainable development of strategic road infrastructure for the Limerick-Shannon Metropolitan Area and improve transport

connectivity to the wider Region. This will include the delivery of the following subject to their consistency with the recommendations of LSMATS, the outcome of appropriate appraisal, environmental assessments and the planning process. Upgrade of arterial roads from the motorway network to increase capacity including the provision of public transport infrastructure and Park and Ride, including for example R527 Dock Rock, R445 Dublin Road, including Junction 28 and R527 Tipperary Road.

10.4.9. The final report of the Limerick Shannon Area Transport Strategy 2040 (LSMATS) has been published by the National Transport Authority. It was prepared by the NTA in collaboration with Limerick City and County Council, Clare County Council and Transport Infrastructure Ireland. The following measures set out in LSMATS, contained in Chapter 8 of LSMATS which refers to Walking, Chapter 9 of the which refer to Cycling and Chapter 10 which refers to Bus are supportive:

- Measure WK1 – Improvements to the Pedestrian Environment

It is the intention of the NTA and the local authorities to:

- Develop a primary pedestrian network throughout Limerick City, Shannon and other Metropolitan towns;
- Retrofit neighbourhood infrastructure to enhance walkability and increase the attractiveness of walking such as permeability and passive surveillance;
- Lower traffic speeds to improve pedestrian safety and enhance the attractiveness of the environment for walking;
- Improve junctions and pedestrian crossings through measures such as pedestrian countdowns, longer crossing times and crossings that align with desire lines;
- Remove unnecessary signage, advertising and other obstacles which impede pedestrian movement; and
- Incorporate safety and personal security considerations into the design and planning of pedestrian infrastructure.

- Measure CC1 – Develop a Comprehensive Strategic Cycling Network

It is the intention of the NTA and the local authorities to:

- Build upon the existing Limerick Metropolitan Cycle Network Study and Shannon and Environs Local Area Plan to deliver a comprehensive cycle network for the LSMA, in a manner consistent with the National Cycle Manual;
  - Undertake the planning, design and development of cycling routes in full accordance with the Habitats Directive and transposing legislation;
  - To deliver an integrated, fully connected high-quality cycle network linking all major origins and destinations within the LSMA;
  - Develop an Inter-Urban network connecting Limerick City, Shannon, the Metropolitan town centres and Ennis;
  - Develop a high-quality cycle network within the Metropolitan Towns of the LSMA;
  - Identify local opportunities for permeability and feeder routes to improve links to the primary, secondary and greenway network and enhance the attractiveness of cycling for short trips;
  - Maintain and enhance existing infrastructure to a high standard;
  - Cooperate with An Garda Síochána in relation to the enforcement road traffic laws as they apply to cycle tracks and lanes; and
  - Undertake the planning, design and development of all cycling routes in full accordance with the Habitats Directive and transposing legislation.
- Measure BC1 – BusConnects Limerick

It is the intention of the NTA and the local authorities to develop and deliver the BusConnects Limerick Programme. This will consist of: Changes to the service network to include:

- A 'branch and spine' network;
- Orbital routes;
- Additional Radial routes;
- Increased capacity and frequency;

- Enhanced interchange with rail services, where appropriate; and
- Demand Responsive Transport in locations where public transport patronage is low.

Greater levels of bus priority leading to shorter journey times and greater reliability, as follows:

- Continuous bus lanes on main radials where practicable;
- Bus gates in certain locations whereby only public transport vehicles and cyclists will be allowed on certain parts of the road network;
- Other traffic management arrangements which provide bus priority; and
- New bus-only links.

10.4.10. Specifically in relation to Dock Road, I note it is identified as a Green Route for cycling and a part of the Bus Priority Route in LMATS.

10.4.11. Accordingly, in relation to compliance with policy, I conclude on this basis that the CPO complies generally with national and regional policy set out in the National Planning Framework, the Climate Action Plan 2024, Regional Spatial and Economic Strategy for the Southern Region specifically the Limerick-Shannon MASP, Limerick Shannon Metropolitan Area Transport Strategy 2040 and with the objectives listed above from the Limerick Development Plan 2022-2028.

## 10.5. **Consideration of Alternatives**

10.5.1. The matter of consideration of alternatives was discussed at the hearing. In response, Limerick City and County Council confirmed in their statement to the hearing setting out the scheme that alternatives were considered. The Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions received approval from the Council in February 2021. The development comprises the following elements;

- Upgrade of traffic signals and public lighting at both junctions, including synchronisation of signals to improve the efficiency of the two junctions;

- Dedicated cycle facilities will be provided on the Dock Road and pedestrian facilities will be improved. Crossings for cyclists and pedestrians will be incorporated into the signalisation of each junction.
- Access to private lands on the northern side of the Dock Road will be closed and the rights of way at these accesses extinguished. Replacement accesses will be provided on to the industrial estate road to the north of the sites;
- Parking bays on Dock Road between Courtbrack Avenue and Atlas Avenue will be removed;
- The carriageway and footways on Atlas Avenue will be widened.
- The footway on the southern side of the Dock Road will be relocated to provide space for a cycleway and widened carriageway. The boundary wall between Dock Road and 'The Orchards' residential estate will be removed and replaced with a similar wall that the outside edge of the proposed footway. Existing trees will be removed/cut-back as required for the construction of the footway and replacement wall. A line of trees will be planted on the south side of the replacement wall;
- Demolition of the existing Retail Unit on the western side of Atlas Avenue to facilitate the widening of Atlas Avenue;
- Ancillary works for pavement, drainage, utilities and boundary treatment.

10.5.2. In respect of the subject site at Atlas Avenue the matter of alternatives discussed referred to alternative junction designs considered by the Council in determining the overall design of the scheme. The case made by the objector is that alternative junction designs including roundabouts would require different land takes and that they consider that the Council did not favour the option of a roundabout on the basis that it would require the acquisition of further land at this location. Therefore, they put forward that the alternative of a roundabout design at the junction has not been fully explored. They suggest that there is land available on the southern side of Dock Road specifically the green space between the tennis ground and the Dock Road.

10.5.3. Regarding the design of the scheme Mr. Gallagher, Senior Engineer with Limerick City and County Council set out that the subject scheme is required to tie into Dock

Road at Atlas Avenue and Courtbrack Avenue within a relatively confined space and that therefore, this means the scope for an alternative layout is restricted and that a significant realignment of any of the existing roads is not possible. The case made by the Council in relation to the matter is that alternatives to the subject scheme are limited to alternative junction types at the same location as the existing junctions.

- 10.5.4. The presentation of the scheme by the Council set out that the alternative junction type which was explored was a roundabout design. Mr. Gallagher stated that a normal roundabout design, compact roundabout design and a small sized roundabout had been considered. He referenced that normal roundabouts have a bigger footprint and there are large, compact, and slightly smaller roundabouts and then a mini roundabout is smaller again. A mini roundabout is akin to a raised central area.
- 10.5.5. They concluded that the construction of all of these roundabout types apart from a mini roundabout would require significantly more land acquisition than is the case than the scheme based on signalised junctions.
- 10.5.6. In relation to matter of the most appropriate type of junction in respect of what the Council were seeking to do in terms of improving junction safety and providing for a junction arrangement which is suitably safe and accessible for pedestrians and cyclists, the Council determined that the use of a roundabout was not considered appropriate because roundabouts are less friendly to pedestrians and cyclists than signals. The Council highlighted in their response that having regard to the recommendations contained in the Design Manual for Urban Roads and Streets (DMURS) that the use of large roundabouts should be restricted to areas where pedestrian activity is low. In relation to this I noted that it is stated on page 105 of DMURS that “large roundabouts are generally not appropriate to urban areas. They require a greater land take and are difficult for pedestrians and cyclists to navigate, particularly where controlled crossings/cycle facilities are not provided, and as such vehicles have continuous right of way.” The guidance set out in DMURS regarding the provision of roundabouts is therefore that their use is appropriate to locations of low pedestrian activity or locations where vehicle flows are not sufficient to warrant full signalisation, such as on Links, and pedestrian activity is more moderate such as in Suburbs and Neighbourhoods.

- 10.5.7. Mr. Gallagher for the Council outlined that in examining the alternatives for this scheme that while they did consider a roundabout given that they are less suitable for pedestrians and cyclists that to advance a scheme with a roundabout there would have to be an overriding reason to do so.
- 10.5.8. Mr. Gallagher stated that roundabouts are discouraged under DMURS because they are less cycle friendly and less pedestrian friendly and that there are degrees of this. A normal roundabout would be less unfriendly to pedestrians and cyclists than for example a mini roundabout. But none of these types of roundabouts is preferred under DMURS. The recommendation is to go with signalised junction or priority junctions which is basically the same configuration with no signals rather than roundabout controlled option because they are seen as being less safe for pedestrians and cyclists. In examining the alternatives for this scheme, Mr. Gallagher reiterated that the Council did look at roundabouts but given that they are less suitable for pedestrians and cyclists to advance a scheme with a roundabout would require an overriding reason to do so. There would have to be some factor that would justify their use even though they are less suited to an urban situation. No such factor was identified, so there is no rationale for their use. Accordingly, the scheme became one of an upgrade on the existing configuration based on a signalised junctions.
- 10.5.9. Accordingly, I consider that in the course of the hearing including the questioning at the hearing that the matter of alternatives have been fully explored and that there are no other suitable alternatives.
- 10.5.10. I conclude that alternatives with respect to the design of the scheme have been fully considered and that there is no alternative which is demonstrably preferable.

#### **10.6. Additional Issues Raised by Objector**

- 10.6.1. In relation to the very basis of the subject CPO legal arguments have been made by both the Limerick City and County Council and the Objector. Mr. Galligan on behalf of the Objector stated that the prescribed notices in respect of the CPO was not served on the owner of the property, plot 102.a.01 which is Patrick Gleeson Limited. Mr. Galligan stated that the notice was served on Mr. Patrick Gleeson and that Mr.

Gleeson is not the owner, lessee or occupier of any property which is subject of the CPO. Mr. Galligan stated that the registered owner of the property is Patrick Gleeson Limited. The property was assigned to the company by Deed of Assignment on the 23rd of May 1990. It was clarified that Mr. Patrick Gleen is a shareholder of the company Patrick Gleeson Limited.

10.6.2. Mr. Galligan submitted that the notice served was invalid and that the Council is under an obligation to make all due enquiries in relation to the ownership of the land. Mr. Galligan stated that under Article four of the third schedule to the Housing Act 1966 as amended that there is a mandatory provision, which requires service of the notice of the making of a CPO on every owner, lessee and occupier. Mr. Galligan submitted that the CPO should therefore not be confirmed. Mr. Galligan also submitted that there is no reference to Section 179 in respect of the CPO and that there is no reference in the CPO to the Part 8 decision and that this invalidates the CPO.

10.6.3. In response to these matters Mr. Mc Namara on behalf of the Council stated that they acknowledge that Schedule 2 requires to be amended to reflect the identity of the correct landowner. They acknowledge that the owner of the subject site is Patrick Gleeson Limited the corporate entity rather than Mr. Patrick Gleeson.

10.6.4. Mr. Mc Namara submitted that the Board in making its decision can chose to amend the CPO in terms of correcting this error of identification. He set out that the Board does have the legal power to do this under article 5 of the third schedule of the Housing Act, 1966, as amended. Mr. Mc Namara cited article 5 which states “where a compulsory purchase order has been submitted to the Minister and that of course must now read the Board, the Board if it thinks it fit and subject to the following provisions of this article (a) annul the order by an annulment order or (b) confirm the order with or without a modification by a confirmation order as respects all or part of the land which the compulsory purchase order relates and in case the Minister makes an annulment order or a confirmation order in respect of part of such land the Minister again the Board may make an annulment order or a confirmation order or a further amendment as the case may be in respect of any part of such land to which neither it previously never made an annulment order or previously made confirmation order relates.”



- 10.6.5. Accordingly, this section of the Housing Act, 1966, as amended, does provide the Board with the mechanism to make this amendment to the wording in terms of the correction of the ownership. Mr. Mc Namara stated that is an extraordinarily broad power of amendment and that it is designed to cater for a circumstance precisely like this. Mr. Mc Namara in his response further pointed out that the Board should be satisfied that the provision of such an amendment is used to treat what in effect is an error which is an administrative error.
- 10.6.6. Mr. Galligan in submission to the hearing made the point that the Board must be cognisant at all times of the question as to whether if it grants such an amendment will it prejudice any party. In response to the matter of Mr. Mc Namara stated that the Board must be satisfied that the application of an amendment does not prejudice any party. He asserts that it would not on the basis that the fact that the objection to the CPO received from Hodgins McKeever Solicitors was on behalf of the Gleesons, Mary & Patrick Gleeson in November 2021. Furthermore, he stated that it is expressly recorded that the only shareholders in Patrick Gleeson Limited are Mary & Patrick Gleeson themselves. Therefore, Mr. McNamara concluded that the fact that Patrick Gleeson Limited wasn't correctly recorded has given rise to no prejudice because the people with the ultimate beneficial interest in the company have had a full opportunity and have taken that opportunity to object to the CPO.
- 10.6.7. Further, in relation to the matter Mr. Galligan stated that Article 4 in Schedule 3 expressly requires the Council as an acquiring authority to notify all interested parties and to provide for an amendment would therefore not accord with this mandatory requirement. In response to the matter Mr. McNamara stated that he did not consider this stance correct. He stated that the Council did attempt to fulfil this obligation in that they attempted to serve who they thought was the interested party. Therefore, Mr. McNamara submits that there was no prejudice on that basis.
- 10.6.8. Having regard to the arguments provided and in the context of the provisions of the relevant legislation as set out above, I consider that there is provision for the Board to modify the wording of the CPO, in relation to the ownership of the subjects lands. Therefore, I would recommend the confirmation of the CPO with modification of the ownership of the subject to lands to Patrick Gleeson Ltd. However, should the Board not agree with this recommendation, then they may decide not to confirm the CPO

on the basis of the primary objection put forward by Mr. Galligan on behalf of the objector.

- 10.6.9. Mr. McNamara addressed the second point raised by Mr. Galligan where he stated that there was no reference to Section 179 in respect of the CPO and that there was no reference in the CPO to the Part 8 decision and that it invalidates the CPO. Mr. Mc Namara argued that this is not correct because in order to show jurisdiction in a CPO it is essential and a prerequisite to jurisdiction that the CPO should record the statutory provisions on foot of which the Council is moving. Mr. Mc Namara stated that this had been done correctly. He set out that the Council is relying on Section 2 and 3 and Section 76 of the third Schedule of the Housing Act and Sections 10 of the Local Government Act no. 2 1960 as amended by Section 86 of the Housing Act 1966 and the Roads Act 1993 and the Planning and Development Act 2000. Therefore, he submitted that the statutory basis for issuing the CPO is fully recorded on the CPO order and on the face of the order itself it expressly records that the development concerns the upgrade of the Dock Road and at Atlas Avenue junction and at the Courtbrack Avenue junction and therefore that it actually does refer to the proposed development.

## **11.0 Conclusion**

- 11.1. I have examined all of the issues raised within the submissions received. I am satisfied that the proposed extent of land acquisition is reasonable and proportional to the stated purpose of the Proposed Scheme. I am also satisfied that the process and procedures undertaken by the applicant have been fair and reasonable and it has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable. I consider that the proposed acquisition of the lands would be justified by the exigencies of the common good and would be consistent with national, regional and county level planning policies and objectives.
- 11.2. I am satisfied that: the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that Limerick City and County Council has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to facilitate the provision of the Dock Road

Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions Improvement Scheme.

- 11.3. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of lands, acquisition of wayleaves, and extinguishment of rights of way as set out in the compulsory purchase order and on the deposited maps as follows, pursues and is rationally connected to, a legitimate objective in the public interest, namely the provision of safer, efficient, sustainable public and private transport and active travel facilities.
- 11.4. I am also satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as little as possible; in this respect, I have considered alternative means of achieving the objective referred to in submissions to the Board, and I am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.
- 11.5. The effects of the CPO on the rights of affected landowners are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands on a permanent basis, acquisition of wayleaves, and extinguishment of rights of way would be consistent with the policies and objectives of the Limerick City & County Development Plan 2022-2028, which includes Objective TR 02 which seeks to support the provision of appropriate road design standards of all roads and streets within the urban areas, Objective TR 08 which seeks to improve walking and cycling infrastructure and Objective TR 042 which seeks to secure improvements to the road network in Limerick, including improved pedestrian and cycle facilities. Accordingly, I am satisfied that the confirmation of the CPO is clearly justified by the exigencies of the common good.

## 12.0 Recommendation

I recommend that the Board **CONFIRM** the Compulsory Purchase Order, with the modification of the ownership of the subject to lands to Patrick Gleeson Limited and as otherwise submitted by Limerick City and County Council on the 27<sup>th</sup> of October 2021, based on the reasons and considerations set out below.

## 13.0 Reasons and Considerations

Having considered the objections made to the compulsory purchase orders, the report of the person who conducted the oral hearing into the objections, the purpose of the compulsory purchase order and also having regard to:

- (a) the constitutional and Convention protection afforded to property rights,
- (b) the purpose of the compulsory acquisition for the Dock Road Improvement Scheme – Upgrade of Atlas Avenue & Courtbrack Avenue Junctions which has been subject to the provisions of Part XI of the Planning and Development Act 2000, as amended, and approved under Part 8 of the Planning and Development Regulations 2001, as amended,
- (c) the community need, public interest served and overall benefits, especially in terms of traffic management and road safety, to be achieved from the proposed road improvement works,
- (d) the design of the proposed Dock Road Improvement Scheme including the upgrade of Atlas Avenue & Courtbrack Avenue Junctions which constitutes a design response that is proportionate to the identified need,
- (e) the provisions of the National Planning Framework, the Climate Action Plan 2024, the Southern Regional Assembly Regional Spatial and Economic Strategy, the Limerick-Shannon Metropolitan Area Transport Strategy 2040 and the policies and objectives of the Limerick Development Plan 2022 – 2028, which are not materially contravened, and
- (f) the submissions and observations made at the oral hearing, and
- (g) the report and recommendation of the Inspector,

It is considered that, the acquisition by Limerick City and County Council of the lands in question, and the acquisition of wayleaves and extinguishment of rights of way, as set out in the compulsory purchase order and on the deposited maps, is necessary for the purpose stated, which is a legitimate objective being pursued in the public interest, and that the CPO and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

In reaching this conclusion, the Board agrees with and adopts the analysis contained in the report of the person who conducted the oral hearing into the objections.

## **14.0 Schedule**

The Compulsory Purchase Order shall be modified with the ownership of the subject to lands stated as Patrick Gleeson Limited and it shall be as otherwise in accordance with the documentation submitted by Limerick City and County Council on the 27th of October 2021.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Siobhan Carroll  
Planning Inspector

30<sup>th</sup> April 2024