



An  
Bord  
Pleanála

## Inspector's Report ABP 312747-22.

### Development

Killarney Inner Link Road (Bohereen-Na-Goun to Monsignor O'Flaherty Road) Compulsory Purchase Order of 2022.

### Location

Townlands of Inch and Coolegrean, Killarney, Co. Kerry.

### Local Authority

Kerry County Council.

### Objectors

- (1) John Quill
- (2) Jaroslaw Dabrowski
- (3) Pawel Komosa
- (4) Pat & Mark Culloty
- (5) Dunnes Stores

### Date of Site Inspection

5/5/2023 & 5/6/2024

### Inspector

Siobhan Carroll

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## Appendix A – Summary of Oral Hearing

## **1.0 Introduction**

- 1.1. Kerry County Council (KCC) made a Compulsory Purchase Order (CPO) for the Killarney Inner Link Road (Bohereen-Na-Goun to Monsignor O'Flaherty Road) Compulsory Purchase Order of 2022 on the 1<sup>st</sup> of February 2022. Notices were duly served on the affected landowners on the 8<sup>th</sup> of February 2022. Objections were originally received from five parties.
- 1.2. The CPO was the subject of an oral hearing, which was held virtually on 25<sup>th</sup> June 2024.
- 1.3. The CPO would entail the acquisition of lands and the extinguishment of public rights of way in connection with the Killarney Inner Link Road (Bohereen-Na-Goun to Monsignor O'Flaherty Road) which 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) on the 4<sup>th</sup> of July 2005.

## **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 in the townlands of Inch and Coolegrean in Killarney. The proposed development of a new road would link Monsignor O'Flaherty road and Bohereen Na Goun. Monsignor O'Flaherty road which is an existing cul de sac extends for circa 230m south from High Street. Chapel Lane extends to the south of Monsignor O'Flaherty road and provides pedestrian access to the surrounding residential and commercial properties located on Fleming's Lane and Barry's Lane. Pedestrian access is provided from Chapel Lane to New Street.

- 3.2. Bohereen Na Goun extends for circa 200m it is a cul de sac which has a junction with New Street to the south. It provides access to a number of commercial premises along the western side of the road. Bohereen Na Goun connects with St. Mary's Road. St. Mary's Road is a one-way street. Dunnes Stores is located on the corner of New Street and Bohereen-Na-Goun. There is access to the car parking serving Dunnes Stores to the south and to the premises of Eir to the east from Bohereen-Na-Goun. There is a vehicular gate serving the Dunnes Stores service yard on the eastern side of Bohereen Na Goun.
- 3.3. St. Brendan's College is situated to the western side of St. Mary's Road. There is a high stone wall which runs along the boundary of the college and St. Mary's Road. The properties along the eastern side of St. Mary's Road comprise two-storey terraced houses on narrow plots. The properties no's 1-20 St. Mary's Terrace are served long narrow rear gardens which are separated from the rear of the dwellings by a laneway.
- 3.4. Killarney Enterprise Centre is located to the north of Bohereen na Goun. Vehicular access to the centre is off St. Mary's Road. Killarney Enterprise Centre contains a collection of buildings which are arranged around a small internal cul-de-sac road. There are two buildings on either side of the entrance which are old stone buildings. The buildings to east within the centre are more modern additions. The business premises located within the centre include a bakery, a nail salon, a motor parts shop, motor service garage and car valeting service. To the eastern end of the centre there is an area where cars associated with the various businesses are parked. Killarney Enterprise Centre is bounded by a high block wall to the south at Bohereen na Goun and to the east with the adjoining Eir premises.
- 3.5. The Folly stream is situated to the west of Monsignor O'Flaherty road. It runs from north to south and it is culverted over on the Monsignor O'Flaherty road.

#### **4.0 Purpose of the CPO**

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

- Construction of a new section of single carriageway urban road approximately 150m in length in Killarney town centre. Linking Bohereen Na Goun to Monsignor O’Flaherty Road and all ancillary and consequential works in the townlands of Inch and Coolegrean, Killarney, Co. Kerry.
- The scope of works includes the following;
  - Construction of a new section of road;
  - Re-surfacing of the existing road;
  - Construction of new footpaths;
  - Installation of a new culvert to replace an existing concrete channel;
  - New boundary walls;
  - New and replacement public lighting;
  - Storm and foul drainage;
  - Diversion of electrical and telecommunications services;
  - Road markings and signs;
  - All associated accommodation work.

## 5.0 Policy Context

### 5.1. Kerry County Development Plan 2022-2028

- 5.1.1. The Killarney Town Development Plan 2009-2015 (as extended and varied) is incorporated into the Kerry County Development Plan 2022-2028.
- 5.1.2. The subject lands at the townlands of Inch and Coolegrean are located on lands which are zoned Objective to ‘M2’ – Mixed Use Town Centre under the provisions of the plan. As detailed on Map B – Killarney Town zoning map.

#### 5.1.3. Killarney Town Strategic Objectives

It is an objective of the Council to:

- 5.1.4. KA 1 - Plan for and facilitate the development of Killarney in accordance with RSES RPO 11 and RPO 18.

- 5.1.5. KA 7 - Improve subject to environmental assessment, inclusivity, accessibility, permeability and connectivity throughout the town and where appropriate with the National Park for alternative modes of transport, including cycling and walking.
- 5.1.6. KA 8 - Alleviate traffic congestion by the transition to Low Carbon and Sustainable Mobility Policies.
- 5.1.7. KA 11 - Develop Killarney as an innovative climate resilient environmentally sustainable low carbon town consistent with the National Climate Action Plan 2021, European Commission policy initiatives that align with the European 'Green Deal' priorities.

5.1.8. Killarney Town Traffic Model/Traffic Management Study and the Killarney Local Transport Plan Objectives

It is an objective of the Council to:

- 5.1.9. KA 74 - Facilitate the proposed traffic management measures, as contained in the Killarney Town Traffic Model/Traffic Management Study and the future Local Transport Plan for Killarney Town.

- 5.1.10. KA 75 - Develop a Local Transport Plan for Killarney Town.

5.1.11. Roads & Infrastructure Objectives

It is an objective of the Council to:

- 5.1.12. KA 79 - Facilitate the enhancement of Killarney as a 10-minute town.
- 5.1.13. KA 80 - Facilitate improvement of existing footpaths and roads with the provision of amenity areas at appropriate locations.
- 5.1.14. KA 81 - Provide an inner relief road linking Bohereen na Goun and Monsignor O'Flaherty Road.

## 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.
- 5.2.3. NSO 1 refers to Compact Growth. From an urban development perspective, we will need to deliver a greater proportion of residential development within existing built-up areas of our cities, towns and villages and ensuring that, when it comes to choosing a home, there are viable attractive alternatives available to people. Combined with a focus on infill development, integrated transport and promoting regeneration and revitalisation of urban areas, pursuing a compact growth policy at national, regional and local level will secure a more sustainable future for our settlements and for our communities.
- 5.2.4. NSO 4 refers to Sustainable Mobility in relation to public transport it seeks to provide public transport infrastructure and services to meet the needs of smaller towns, villages and rural areas and to develop a comprehensive network of safe cycling routes in metropolitan areas to address travel needs and to provide similar facilities in towns and villages where appropriate.
- 5.2.5. NSO 7 refers to Enhanced Amenities and Heritage. It seeks to provide ease of access to amenities and services supported by integrated transport systems and green modes of movement such as pedestrian and cycling facilities. Appealing places are also defined by their character, heritage and sense of community. This includes attractive buildings and street layouts, civic spaces and parks and regeneration of older areas and making places feel safe through active use and design.
- 5.2.6. NPO 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.
- 5.2.7. NPO 64 seeks to improve air quality and help prevent people being exposed to unacceptable levels of pollution in our urban and rural areas through integrated land



use and spatial planning that supports public transport, walking and cycling as more favourable modes of transport to the private car.

### **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 15.5 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 Roads and 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 Spatial and Economic Strategy (RSES)**

5.5.1. Killarney is designated as a Key Town in the (RSES). It is the Region's eight largest urban settlement outside the cities. It has a significant sub regional role and is a key national tourism town. The policies in the RSES are under Regional Policy Objectives (RPOs) and Metropolitan Area Strategic Plan (MASP) Policy Objectives.

### **5.5.2. RPO 11 - Key towns**

- a. Local Authorities are supported in targeting growth of more than 30% for each Key Town subject to capacity analysis and sustainable criteria under Section 3.3 A Tailored Approach, RPO 3 Local Authority Core Strategies and the sustainable requirements under the following sub sections of RPO 11 Key Towns. The appropriate level of growth is to be determined by the Core Strategy of Development Plans;
- b. It is an objective to seek investment in holistic infrastructure inclusive of utilities, transportation, social and community, digital infrastructure and smart technologies environmental (including facilitation of climate change mitigation and of biodiversity promotion), climate change adaptation and future proofing infrastructure including flood risk management measures and flood defence schemes, recreational, arts and cultural that will deliver sustainable growth in Key Towns subject to the outcome of the planning process and environmental assessments;
- c. It is an objective that a Local Transport Plan will be prepared for all the Key Towns, on the basis provided for in RPO Local Transport Plans in Chapter 6;
- d. To support and promote vibrant, culturally-rich and revitalised Key Towns with enhanced social inclusion, engaged and active voluntary, non-profit and social enterprise sectors, sustainable neighbourhoods and a high level of environmental quality to ensure an excellent quality of life for all;
- e. To support and promote placemaking in all Key Towns to include public realm regeneration and urban renewal initiatives and public private partnership approaches for town centre regeneration;

### **5.5.3. RPO 18 - Killarney**

- a. To sustainably strengthen the role of Killarney as a strategically located urban centre of significant influence in a sub-regional context, a centre of excellence in tourism, recreation and amenity sectors, to promote its role as a leader in these sectors, in particular training and education, and strengthen its overall multi-sectoral dynamic as a key settlement in the Kerry Hub Knowledge Triangle accessible to regional airport, port, rail and road assets;
- b. To seek investment to sustainably support its compact growth and regeneration, attributes and infrastructure, including key inter-regional connectivity (transport networks and digital) on the strategic road network between Cork and Limerick-Shannon Metropolitan Areas, the Atlantic Economic Corridor and the Kerry Hub Knowledge Triangle, subject to the outcome of the planning process and environmental assessments;
- c. To strengthen 'steady state' investment in existing rail infrastructure and seek investment for improved infrastructure and services to ensure its continued renewal and maintenance to a high level in order to provide quality levels of safety, service, accessibility and connectivity;
- d. To support infrastructure investment and the regeneration of opportunity sites including the Sara Lee, Aras Phadraig and St Finians;
- e. To seek investment in infrastructure that provides for both the resident population and extensive influx of visitors;
- f. To support investment in infrastructure and the development of lands to the north of the existing by-pass in accordance with proper planning and sustainable development objectives including the appropriate master plans in consultation with statutory stakeholders;
- g. Future growth of the town should be planned for on a phased basis in consultation with the local authority and Irish Water to ensure that sufficient wastewater capacity is accounted for and that further growth avoids negative impacts on the downstream freshwater ecosystem in the National Park (River Deenagh, Lough Leane)

## 5.6. Natural Heritage Designations

- 5.6.1. Killarney National Park, Macgillicuddy Reeks and Caragh River Catchment SAC (Site code 000365) and Killarney National Park SPA (Site code 004038) are located within 300m of the location of the subject CPO.

## 6.0 Planning History

- 6.1.1. **Part XI/Part 8** – The road subject of the CPO underwent the approval process as provided for under the Part XI/Part 8 process of the Planning and Development Act, 2000 as amended and the Planning and Development Regulations, 2001, as amended, by being put before what was then the Killarney Town Council on the 4<sup>th</sup> of July 2005 and not having been the subject of any decision by the members to vary or modify same or not to proceed with same.
- 6.1.2. **ABP 306096-19 & Reg. Ref. 19/974** - Permission was refused for (a) Extend 3 no. industrial units and demolish existing boundary and (b) construct 1 no. industrial unit, all associated site works at Killarney Enterprise Centre, St. Mary's Road, Inch, Killarney. Permission was refused for the following reasons;
1. Having regard to the location of the site which is zoned Town Centre Existing Developed/Residential Area, and to the northern part of the site to the rear of St. Mary's Terrace which is designated as a Housing Protection Area, to the distinctive character and pattern of development of this established residential area, which is characterised by narrow laneways which separate the terraced houses from their rear gardens, and to the objectives of the Killarney Town Development Plan 2009-2015, (as extended), to resist the subdivision and development of such residential sites and to preserve their distinctive character, it is considered that, the proposed development of a new industrial unit with associated car parking on this restricted site comprising the rear gardens of several terraced houses, would result in a congested layout, and would constitute overdevelopment of the site and contribute to piecemeal development of the area. The proposed development would, therefore, conflict with the provisions of the Town Development Plan, would create an undesirable precedent which would compromise any future comprehensive planning of the lands to the rear of St. Mary's Terrace, would seriously injure

the amenities of the area, and would be contrary to the proper planning and sustainable development of the area.

2. The proposed industrial unit and associated enclosed car parking area would result in the separation and loss of amenity space associated with the terraced houses fronting St. Mary's Terrace and would introduce a commercial use of the space which would be likely to give rise to noise and disturbance and in a loss of privacy and outlook. The proposed development would, therefore, seriously injure the residential amenity of these properties and would be contrary to the proper planning and sustainable development of the area.
3. Having regard to the designation of Nos. 3 and 5 St. Mary's Terrace as Protected Structures, it is considered that the construction of a large industrial unit in the rear garden of No. 3 and directly adjoining the garden of No. 5 St. Mary's Terrace, by reason of its excessive scale, height, mass and bulk and use of materials, together with the change of use of the remainder of the garden area to a commercial car park enclosed by a fence, would permanently separate the Protected Structures from their associated attendant grounds, would adversely affect the character and setting of the Protected Structures and would be contrary to Policy BH-04 of the Killarney Town Development Plan 2009 (as extended).
4. Adequate car parking spaces, loading and turning spaces have not been provided within the curtilage of the existing Enterprise Centre. The proposed development, notwithstanding the proposed car parking area in the northern part of the site, would therefore result in haphazard parking within the estate and in on-street parking on the adjoining streets which would give rise to conflict between pedestrians and vehicles and result in congestion on the adjoining roads, both of which would endanger public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

(The refusal issued by the Board included two notes which are of relevance to the subject CPO.)

**Note 1:** While the proposed minor extensions to the existing units would be generally acceptable in principle, the Board considered that, having regard to the lack of clarity in relation to the proposed new vehicular entrance from the existing Enterprise Centre onto the proposed Killarney Inner Link Road, the lack of clarity regarding car parking provision for the existing units in the centre resulting from the implementation of this Link Road and new entrance, and the lack of clarity regarding the proposed uses of the expanded units, it was considered appropriate to refuse the entire development, rather than making a decision to grant permission for the minor extensions and refuse permission for the industrial unit and associated car parking.

**Note 2:** The Board concurred with the Inspector that the imposition of condition number 5 of the planning authority's decision was problematic, particularly because the application was specifically for an industrial unit. However, the Board did not agree with the Inspector in relation to condition number 11 of the planning authority's decision, and considered that the imposition of this condition, requiring the ceding of land, rather than its acquisition by the local authority by agreement or through the statutory provisions for compulsory purchase, was ultra vires the powers of the planning authority and (as noted in the Development Management Guidelines) is unacceptable in a planning decision.

- 6.1.3. **ABP 312623-22 & Reg. Ref. 21/271** - Permission was granted for the construction of 33 no. apartments contained in a six-storey apartment at Monsignor O'Flaherty Road, Collegrean, Killarney, Co. Kerry.

## 7.0 **Objections**

7.1. There were 5 no. objections to the order.

7.2. (1) Jaroslaw Dabrowski

- An objection on behalf of Mr. Dabrowski was submitted by Harrison O'Dwyer LLP Solicitors.
- Mr. Dabrowski operates a car wash and valeting business, DY Car Wash and Valeting, Killarney Enterprise Centre, St. Mary's Road, Killarney for over 12 years.

- He is leasing the property along with parking for purposes of operating his business.
- Mr. Dabrowski objects to the CPO on the basis that a significant and critical portion of the business is located within the confines of the area subject of the CPO. Therefore, the ability to earn a living from the business would cease if the CPO is approved.
- The business which comprises valeting and car washing is an extremely busy. The operation of the business is such that cars are dropped off/parked by customers and they are washed and valeted. In the ordinary course of business there would be circa 8 cars on the premises.
- Patrons of the business will no longer be able to leave cars to be valeted. Therefore, the ease and convenience of the business will be adversely affected.
- It is stated that Mr. Dabrowski was not contacted or invited to any discussion in relation to the proposal by the Local Authority with a view to accommodating his business.
- If the CPO is approved then it will not be possible for the business to be accommodated within the remainder of the Enterprise centre.
- The majority of businesses in the Enterprise centre are motor related. There is an interdependency and reliance between businesses. Therefore, the closure of any individual business will have a detrimental effect on the centre as whole.
- It is the opinion of Mr. Dabrowski that the area which is subject of the CPO is both unnecessary and unwarranted. It would create a bottleneck and further congestion at the junction with Bohereen na Goun.
- No traffic impact assessment or road safety audit were furnished to Mr. Dabrowski. It is considered that the proposal would not comply with the requirements of road safety audit due to the already excessive levels of congestion in the area.
- If the CPO is approved, it would result in the loss of parking and turning areas in the Enterprise centre. This would result in predominately a pedestrian

access to centre being available with vehicles being unable to turn and therefore having to drive in and reverse out of the centre, increasing potential for traffic hazard.

- It is submitted that the proposal is substandard in terms of its design and having regard to the details provided in the objection to approve the CPO would be contrary to the proper planning and sustainable development of the area.

### 7.3. (2) Pawel Komosa

- An objection on behalf of Mr. Komosa was submitted by Harrison O'Dwyer LLP Solicitors.
- Mr. Komosa operates as a motor mechanic, trading as D and P Motor Sport Services at Killarney Enterprise Centre, St. Mary's Road, Killarney for over 12 years.
- Mr. Komosa is leasing the property along with parking for the purposes of operating his business.
- Mr. Komosa objects to the CPO on the basis that a significant and critical portion of the business is located within the confines of the area subject of the CPO. Therefore, the ability to earn a living from the business would cease if the CPO is approved.
- It is an extremely busy motor service garage which provides servicing of motor vehicles for private individuals in primarily the Killarney, Kilgarvan and Kenmare areas. The business operates on the basis that customers drop off their vehicles where they are serviced and collected later in the day.
- The business also facilitates customer drop ins who drop vehicles to the garage for the purposes of small essential maintenance such as replacement of bulbs and other essential maintenance.
- In the ordinary course of business Mr. Komosa could be working on two to three cars on the premises and with other cars waiting in the parking area, either to be serviced or collected.



- The premises is located next to a motor factory shop where parts are readily and conveniently available to facilitate the business.
- If the CPO is approved the business would cease to exist.
- Customers of the business will no longer be able to drive in and out for essential maintenance works.
- At no stage was Mr. Komosa contacted or invited to any discussions on the proposal by the Local Authority.
- If the CPO is approved, it will not be possible for the business to be accommodated with the remainder of the Enterprise centre.
- Most businesses in the Enterprise centre are motor related and there is interdependency and reliance between businesses which function most efficiently where parts and equipment are readily available from adjoining businesses where the closure of any individual business will have a detrimental knock-on effect on the centre as a whole.
- Mr. Komosa has three employees.
- It is considered that the area which is the subject of the CPO is both unnecessary and unwarranted and will only serve to create a bottle neck and further congestion at the junction with Bohereen na Goun.
- No traffic impact assessment or road safety audit has been furnished to Mr. Komosa.
- It is considered that the proposal would not comply with the requirements of a road safety audit due to the already excessive levels of congestion in the area.
- If the CPO was approved the loss of parking and turning areas would result in the centre becoming a pedestrian access centre of sorts with vehicles being unable to turn and consequently having to drive in and reverse out of the centre, increasing the likelihood of a traffic hazard.
- The material effect of the proposal on the functioning and viability of the Enterprise centre cannot be underestimated.

- It is submitted that the proposal is substandard in terms of its design and having regard to issues raised in the objection to grant approval for the CPO would be contrary to the proper planning and sustainable development of the area.

#### 7.4. (3) John Quill

- The objection is submitted by Terence F. Casey & Company LLP solicitors on behalf of Mr. John Quill.
- Mr. Quill is the proprietor of the premises and known as Killarney Enterprise Centre, St. Mary's Road, Killarney, Co. Kerry.
- The premises contains ten units with ancillary car parking, loading space and turning space. The units are occupied and comprise a Motor Part Shop, car mechanics and diagnostics centre, a car valeting and car wash service, a dog groomers, lawn mower service centre, carpet wholesaler and bakery.
- Mr. Quill objects vehemently to the proposed CPO.
- The proposal is in respect of a plan to construct an Inner Link Road and is proposed within the Killarney Town Development Plan 2009-2015 as extended and varied under policy INFRA-01 but this is not a standalone policy.
- There is a further policy in the Development Plan to widen and realign St. Mary's Terrace. It is noted that there is no proposal at this stage to implement the policy of widening or realignment of St. Mary's Terrace.
- St. Mary's Terrace is a one-way system with on street parking. Traffic exiting from St. Mary's Terrace is limited to a right hand turn only during certain periods of the day coinciding with school drop off and collection times. The proposal will only lead to further congestion and would have to be subject of a comprehensive assessment and audit.
- It is stated that the property is not suitable to be acquired for the proposal. The very nature of the use of the Enterprise centre it requires vehicular access in particular space for loading, parking and turning. The proposal will have a disproportionate impact on the landowner and the operation of business. Significant concerns are raised by the landowner that the entire

viability of the business is at risk in the context of the absence of an alternative to the parking arrangements that have been in place.

- If the CPO is approved, it would have detrimental effect on the operation of the centre. Patrons of the businesses will no longer be in a position to park vehicles in the centre or to have deliveries.
- It is stated that the drawings provided by the Local Authority are lacking in sufficient detail to indicate that appropriate pedestrian facilities will be implemented. A conflict between vehicle users and pedestrians will be created with the implementation of the proposal.
- There has been a lack of engagement with the landowner. The particular needs and requirements of the landowner have not been considered by the Local Authority.
- The proposal is lacking in clarity and consistency and there can be no doubt that an oral hearing would be required. They respectfully request that an oral hearing be held to further consider their objection.

#### 7.5. (4) Pat & Mark Culloty

- Pat and Mark Culloty own and operate a business known as “The Motor Shop” located in the Killarney Enterprise Centre.
- They welcome the provision of an inner link road in Killarney in this general area. However, they strongly object to the proposal to utilise part of the Enterprise Centre site for the construction of an inner link road.
- The two sections of land applicable to this objection are section 1101a and 1101b.
- The reduction in the Enterprise Centre site will result in a loss of existing parking spaces.
- The parking provided at this location which is in the south-eastern corner of the Enterprise Centre site formed part of a planning application to create a two-bay car wash and a three-bay garage under Reg. Ref. 14/205468.
- The removal of parking spaces within the Enterprise Centre in particular the parking spaces indicated on the previous application Reg. Ref. 14/205468

should not be allowed unless these parking spaces are facilitated at another location nearby to the Enterprise Centre.

- Reference is made to a previous planning application Reg. Ref. 19/974 & ABP 306096-19 for the construction of an industrial unit and to extend 3 no. industrial units at Killarney Enterprise Centre. The Board's decision in relation to the application was to refuse permission. The Inspectors report in relation to that case indicated that the existing parking provision within the Enterprise Centre to be 16 to 18 spaces.
- It was further stated in the report that the proposed reduction in the site size which is the same area which is subject of the CPO would result in an estimated loss of 8 to 10 car parking spaces.
- The reduction of 8 to 10 car parking spaces within the Enterprise Centre would be detrimental to the operation of the businesses within the Enterprise Centre.
- The current situation in relation to parking provision within the Enterprise Centre is extremely restricted and does not allow for any turning area within the curtilage of the site which results in haphazard parking and dangerous turning movements.
- It is detailed in the report of the Planning Inspector that "the existing parking on site is generally ad-hoc, but there are two distinct areas which are used for perpendicular parking bays, although not delineated on site. The first area provides for 4 car parking spaces near the existing entrance adjoining the northern boundary. The second area is shown on the plans submitted with the history file Reg. Ref. 14/205468. It is likely that up to 12 car parking spaces are accommodated in front of the existing units. The existing parking provision is estimated to be 16 to 18 car spaces."
- It is considered that the use of south-eastern corner of the Enterprise Centre will breach the development granted under Reg. Ref. 14/205468 and will result in an unsafe and haphazard revised layout.
- It is submitted that the section of the inner link road proposed to run through the Killarney Enterprise Centre is not a suitable location due to the detrimental

effects it will have on the operation of the Enterprise Centre. There are other alternative configurations for this inner link road which should be considered whereby less or none of the ground within the Enterprise Centre is utilised.

#### 7.6. (4) Dunnes Stores

- Dunnes Stores objects to the CPO as it pertains to Dunnes Store property plots 1103a, 1103b and 1103c.
- Dunnes Stores is located in the centre of Killarney bordered by New Street to the south, Bohereen Na Goun Road to the west and St. Mary's Road to the north.
- The sites car park and enclosed service yard is accessed via St. Mary's Road with delivery vans and lorries exiting through the sites western service yard gates onto the Bohereen Na Goun Road. A stone wall surrounds the service yard on St. Mary's Road and Bohereen na Goun.
- In terms of Dunnes the proposal will reduce the sites service yard by circa 60sq m. It would entail the removal of the stone wall. It is submitted that it would create a traffic hazard by causing the service yards existing exit onto Bohereen na Goun unsafe and unusable due to insufficient visibility splays to the modified Dunnes Stores service yard.
- It is highlighted that Dunnes Stores have no objection to the proposed Inner Relief Road scheme in principle. They object on the basis of the disproportionate infringement of Dunnes Stores property rights.
- They object to the Council's preferred road design because they consider that it will make the Dunnes Stores service yard's exit onto the Bohereen na Goun unsafe and unusable and would cause a traffic hazard.
- The proposal will have a disproportionate adverse impact on the stores commercial operations by limiting the service yard lands available for the safe manoeuvring of delivery vehicles and for the storage of goods.
- It is stated that the notice is invalid as it was incorrectly served and the ownership of plots 1103a, 1103b and 1103c are incorrectly described in the CPO.

- The area of permanent land take from the service the service yard is 60sq m and not 56sq m.
- Kerry County Council has failed to give reason or the CPO or as to why the Dunnes Stores property is required or appropriate to be included in the CPO.
- It is stated that Kerry County Council has failed to demonstrate a justifiable common good for acquiring plots 1103a, 1103b and 1103c.
- Kerry County Council will not be able to demonstrate this in terms of community need where the proposal will create a safety hazard.
- The new Inner Relief Road is designed to accommodate a higher volume of faster moving traffic. It is essential that the sites service yard exit onto Bohereen Na Goun has approximate visibility splays (minimum of 2.4m x 45m)
- With the new Link Road in place the service yard's exit would only have visibility splays of 2.0m x 23m to the centreline to the left and 2.0m x 8m to the right thus rendering the service yard's exit unsafe and unusable.
- When it comes to the siting and design of transportation infrastructure that Killarney Town Development Plan 2009-2015 (as extended and varied) clearly states that safety must always come first.
- The new Inner Relief Road represents a significant investment in the areas' infrastructure, it is only right that access to and from the Dunnes Stores service yard is designed in accordance with national design standards (e.g. DMURS) and the Council's own development plan. It is considered that the proposal is in breach of the Council's own development plan.
- The principle of proportionality requires Kerry County Council to justify the proposed acquisition by demonstrating that alternatives are not available or appropriate.
- The Council has failed to show in their CPO that all alternative road design options have been thoroughly considered and ruled out. They submit that the Council have not meet these and will not be able to meet the high threshold required to justify its infringement of Dunnes Stores property rights.

- The permanent acquisition of the service yard lands represents a 21% land take, which is significant. It has the potential to compromise the service yard's workplace safety and efficiency as there will be less space available for the safe manoeuvring of delivery vehicles and for unloading/storage of goods.
- If the CPO is approved, it could have a disproportionate negative impact on Dunnes Stores commercial operations during the construction and operational phases of this road project.
- The problem is exacerbated by the intention of the Council to acquire an extra 75sq m of the service yard during the construction phase (which is an additional 15% land take).
- They challenge the legitimacy of acquiring any land through the CPO process on a temporary basis. If lands are not required for permanent compulsory acquisition they should be deleted from Schedule Part II of the proposed Order.

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

8.1. No written responses were provided by the Planning Authority.

## **9.0 Assessment**

### **9.1. 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

## **9.2. Community Need**

- 9.2.1. At the outset I note that Killarney Inner Link road scheme (Bohereen-Na-Goun to Monsignor O’Flaherty Road) has been subject to approval under Part 8 of the Planning and Development Regulations, 2001, (as amended) and the procedure set out in Part 11, Section 179 of the Planning and Development Act, 2000 (as amended). As outlined by Esmonde Keane, SC acting for Kerry County Council at the hearing, the scheme was put before Killarney Town Council on July 4<sup>th</sup> 2005, and it was not subject to any decision by the elected members to vary or modify it or for it not to proceed.
- 9.2.2. Subsequent to the decision of the members to approval the part 8 in respect of Killarney Inner Link Road scheme, Killarney Town Council was dissolved under the provisions of the Local Government Reform Act of 2014. Pursuant to Section 25 of that Act all actions, decisions made by the Town Council remained and continued in full force and effect. Accordingly, while the functions got transferred to the County Council the validity of the Part VIII/Part XI approvals remained entirely valid and remained effective.
- 9.2.3. Brian O’Connor, Senior Engineer with Kerry County Council in his submission at the hearing outlined that the compulsory purchase of the plots of lands outlined is necessary. The subject CPO seeks the acquisition of just over 0.5 acres comprising approximately 0.3 acres of land and approximately 0.2 acres of existing roads and footpaths and the extinguishment of the existing public right of way between line A1 to line A2 over the section of Bohereen-Na-Goun in the townland of Inch for a distance of approximately 55m as shown on drawing A of the deposited map.
- 9.2.4. The Killarney Inner Link Road - Bohereen-Na-Goun to Monsignor O’Flaherty Road comprises approximately 120m of new and of graded road to form a vehicular and pedestrian link between New Street and Monsignor O’Flaherty Road and all ancillary and essential works.
- 9.2.5. Mr. O’Connor in his submission outlined that the compulsory purchase of the subject lands is necessary for the project because it will serve to provide for sustainability by encouraging compact growth in Killarney town centre, improving transport making it



a more attractive place to live and participate in recreational activities. Providing connectivity between residential, education, employment and retail and uses. It would improve permeability and enhances active travel opportunities. Would provide for more efficient travel. Killarney is integral to tourism within Ireland and tourism contributes significantly to the local economy. Many local businesses are dependent on the influx of visitors most notably during the summer season which generates both high levels of vehicular and pedestrian activity. The proposal would provide improvements to the road, cycle and pedestrian network. If existing transport problems are not addressed, it would affect the town as a holiday destination. The development of the subject route is necessary to ease congestion and it would enable reduction in traffic on New Street and will enable opportunities for the public realm and streetscape and for pedestrians and cyclists within the town centre and make it safer and more attractive.

- 9.2.6. Mr. O'Connor submitted to the hearing that the Killarney Inner Link Road would connect schools within the area by providing direct vehicular, pedestrian and cycle links and that it would provide increased catchment connectivity to the town centre and in the area to the west of Bohereen Na Goun.
- 9.2.7. It was put forward in the closing comments by Esmonde Keane, SC for Kerry County Council that the development of the scheme underlying the CPO herein has been shown to be required in the public interest and will meet a significant community need.
- 9.2.8. Having visited the location of the existing cul de sacs Bohereen-Na-Goun and Monsignor O'Flaherty Road, I would agree that the Scheme would be beneficial for the above stated reasons and that it is in the interest of permeability and accessibility, public safety and improvement of traffic safety that the community need has clearly been demonstrated to improve the road network.
- 9.2.9. 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.

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

- 9.3.1. The lands comprised in the Killarney Inner Link road scheme (Bohereen-Na-Goun to Monsignor O’Flaherty Road) which are the subject of a Part 8 approval, are the same as the lands comprised in the subject CPO. This road Scheme would improve connectivity through Killarney, enable opportunities for improved public realm, streetscapes and pedestrian and cyclist facilities within the town and improve the overall efficiency of the transport networks in Killarney that would meet the identified community need.
- 9.3.2. Mr. O’Connor representing Kerry County Council at the oral hearing outlined that the CPO seeks the acquisition of just over 0.5 acres comprising approximately 0.3 acres of land and approximately 0.2 acres of existing roads and footpaths and the extinguishment of the existing public right of way. The property identified in the CPO documentation are set out in a total of 15 number parcels which are 1101a, 1101b, 1101c, 1102a, 1102b, 1102c, 1102d, 1102e, 1103a, 1103b, 1103c, 1105a, 1106a, 1107a and 1108a.
- 9.3.3. Esmonde Keane, SC for Kerry County Council submitted at the hearing that acquisition of the lands subject of the CPO are proportionate and achieve the public good in the construction of the Killarney Inner Link Road while minimising so far as is reasonably possible the compulsory purchase of lands from third parties. In relation to the lands sought to be acquired from Dunnes Stores the Council submitted in response to their objection that the CPO comprises a proportionate impact on Dunnes Stores property rights and that area of the acquisition has been curtailed to limited lands required for the project.
- 9.3.4. I questioned Kerry County Council at the hearing and requested that they confirm that the proposed acquisition of the subject lands is proportionate and that there is a clear rationale basis for the permanent and temporary acquisition of the subject lands. Mr. O’Connor for the Council addressed the matter. He confirmed that as provided in the brief of evidence and as presented to the Board that the lands to be acquired are proportionate and are needed for the construction of the scheme. The acquisition of lands comprises both on a permanent and temporary basis.

- 9.3.5. In relation to the temporary acquisition of lands, Mr. O'Connor confirmed at the hearing that the temporary acquisition of land is required in order to carry out the scheme as approved under the Part VIII which includes the reconstruction of boundary walls, similar in nature to walls that are there. He highlighted that the proposed walls are quite high and in the construction of the foundations and walls themselves the temporary acquisition of lands is necessary to facilitate the safe construction of those walls against the adjoining landowners. Kerry County Council will require the working contractor to construct walls in a sufficient manner on the plots of land subject to the acquisition to be occupied for a minimum period necessary.
- 9.3.6. The matter of the temporary acquisition of lands within the Killarney Enterprise Centre was also raised during the questioning. Geraldine Kearney, Solicitor from Harrison O'Dwyer Solicitors represented the objectors to the CPO, Mr. Dabrowski and Mr. Komosa who operate businesses within the Killarney Enterprise Centre. Ms. Kearney queried could the Council elaborate on their statement that the temporary acquisition would be for the shortest practicable period. She highlighted that the period of time is fundamental to their client's business and specifically in relation to Mr. Dabrowski who operates a car valeting business that any occupation of the premises will have a detrimental effect. In response Mr. O'Connor stated that the Council will work with Mr. Dabrowski and including in the contracts with the Contractor in order to establish any restrictions to the site and for how long they might be occupying the site. Also, that area will be constructed in as quick a manner as possible to minimise the impact to Mr. Dabrowski. Ms. Kearney sought clarification on the duration of the works and Mr. O'Connor confirmed that it would be approximately a week.
- 9.3.7. The Council has set out the requirement for the permanent acquisition of the lands subject of the CPO on the basis that it is entirely necessary to expedite the development of the approved roads scheme the Killarney Inner Link Road (Bohereen-Na-Goun to Monsignor O'Flaherty Road). The Council has also set out the requirement for the temporary acquisition of the lands subject of the CPO on the basis it is necessary to facilitate the safe construction of walls against the adjoining landowners.

9.3.8. Accordingly, I am satisfied that the CPO lands are suitable for their intended use to facilitate the development of the road scheme. 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.

#### 9.4. **Compliance with Planning Policy/Development Plan**

9.4.1. The Kerry County Development Plan 2022-2028 which incorporates the Killarney Town Development Plan 2009-2015 (as extended and varied) 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 provision of the Killarney Inner Link Road (Bohereen-Na-Goun to Monsignor O'Flaherty Road), which would be facilitated by the subject CPO. Chapter 14 of the of the Kerry County Development Plan 2022-2028 refers to Connectivity. As set out in chapter 14 the aim of the chapter of the plan to maintain and provide additional key infrastructure and to enhance regional and county connectivity through the implementation of the policies and objectives set out in the chapter. It is the policy of the Council to facilitate the improvement of the quality of life of all citizens of the County by providing quality transportation and communication infrastructure. The following Objectives contained in Chapter 14 support improvements to pedestrian and cycling infrastructure, public transport corridors and works which enhance the urban environment and are supportive of the scheme:

- KCDP 14-1 – Deliver sustainable transport infrastructure investment as identified for the road network, public/rural transport, and walking/cycling infrastructure to facilitate and realise the 10-minute town concept.
- KCDP 14-3 – Support and promote the sustainable development of walking, cycling, public transport and other sustainable forms of transport, as an alternative to the private car, by facilitating and promoting the sustainable development of necessary infrastructure at appropriate locations and by promoting initiatives contained within “Smarter Travel, A Sustainable

Transport Future 2009-2020” and the “National Cycle Policy Framework” and any future national sustainable mobility policy.

- KCDP 14-10 – Promote a shift away from the private car to greater use of active travel (walking and cycling) and public transport.
- KCDP 14-13 – Support and promote the sustainable development of walking, cycling, public transport and other sustainable forms of transport, as an alternative to the private car, by facilitating and promoting the sustainable development of necessary infrastructure at appropriate locations and by promoting initiatives contained within “Smarter Travel, A Sustainable Transport Future 2009-2020” and the “National Cycle Policy Framework” and any future national sustainable mobility policy.
- KCDP 14-15 – Promote the sustainable development of the public footpath network, the walking and cycling routes and associated infrastructure in the County, including where possible the retrofitting of cycle and pedestrian routes into the existing urban road network and in the design of new roads.

9.4.2. Section 14.3.3 of the Development Plan refers to Sustainable Transport and it sets out that it is a strategic aim of the Development Plan to co-ordinate transport and land use planning and that the effective integration of land-use and transportation will generate and reinforce sustainable settlement patterns that make the most efficient use of land, minimise the need to travel by car and reduce CO<sub>2</sub> emissions.

9.4.3. Chapter 4 of the Development Plan refers to Towns and Villages. Section 4.2.6 refers to accessibility and mobility and it is set out in the plan that to reverse the trend of car dependency in town centres, and increase enjoyment of town centre areas, it is critical to enhance mobility and that efforts are needed to make town centres across the County more pedestrian and cyclist friendly to ensure that sustainable modes of travel are encourage and supported. Section 4.2.6.1 refers to 10 Minute Town and it sets out that it is policy to support the delivery of compact growth which is supported by the necessary amenities within a 10 minute walk or cycle. The following objectives contained in Chapter 4 of the Development Plan are supportive of accessibility and mobility in the context of the 10 Minute Town:

- KCDP 4-17 – Facilitate the development of sustainable compact settlements with the “10-minute” town concepts, whereby, a range of community

facilities and services are accessible in short walking and cycle timeframes from homes, with walkways and link routes to Greenways or are accessible by high quality public transport services connecting people to larger scaled settlements delivering these services.

- KCDP 4-18 – To prioritise walking routes and to deliver a high level of priority and permeability for walking, cycling and public transport modes, in accordance with the principles of movement, place and permeability as laid out in the Design Manual for Urban Roads and Streets 2019, to ensure the creation of accessible, permeable links to places of work, retail, services, educational and community facilities.

- 9.4.4. Chapter 2 of the Development Plan refers to Climate Change and Achieving a Sustainable Future. It is detailed in this chapter that it is the aim of the Council to support the increased use of sustainable modes of transport; the integration of spatial planning with transport planning; enhanced county and regional accessibility; the transition to a low carbon energy efficient transport system; and the development of a safer, more efficient, effective, and connected transport system within County Kerry.
- 9.4.5. Objective KCDP 2-11 states that it is an objective of the Council to: Improve the efficiency, sustainability and the integration of sustainable transport and mobility, with a preference for active travel and including improved and expanded public transport capacity, networks and infrastructure, attractive fares, encouraging vehicle sharing (where appropriate), integrated walking and cycling infrastructure and improved traffic management and bus priority.
- 9.4.6. The Killarney Town Development Plan 2009-2015 (as extended & varied) is incorporated into the Kerry County Development Plan 2022-2028 and is contained in Volume 2. It is set out in the town plan that it is the aim of the Council to improve connectiveness throughout the town and orientate the town to the National Park. This plan seeks to improve connectivity through walkways and cycleways linking the town centre with surrounding areas with particular emphasis on the National Park. It is highlighted in the plan that the development and promotion of sustainable mobility options will improve connectivity and permeability into and around the town. Section 2.11.1 of the Killarney Town Plan refers to Active Travel and advises that cycling and

walking routes not only facilitate leisure and recreational use but have significant potential to serve as commuter routes providing access to places of work, school and other destinations. Kerry County Council is committed to developing cycling and walking infrastructure. It is set out in the plan the key to this is improving connectivity with the construction of Cycle lanes, Wayfinding/ Green linkages, Safety School Access and promote Park and Stride through a necklace of car parks with strong pedestrian permeability and links to the town centre. Improvements shall be facilitated in the following areas:

- Town Centre laneway upgrade
- Parking strategy
- Wayfinding
- School accesses
- Green linkages
- Smarter Travel Cycleways/walkways
- Safe Routes to Schools

9.4.7. Section 2.11.3 of the Town Plan refers to Roads and Infrastructure and it sets out that Kerry County Council shall facilitate the sustainable implementation of the recommendations of the Killarney Town Traffic Model / Traffic Management Study to alleviate the traffic pressures on the town in order to sustainably, economically and inclusively benefit Killarney including the following specific projects:

- Completion of the Inner Relief Road linking Bohereen Na Goun and Monsignor O'Flaherty road is necessary.
- Construction of a new strategic link road from the N22 Killarney Bypass to the Park Road to alleviate traffic in the town centre. (A-C road)
- Construction of a network of radial cycle lanes from the town centre to residential areas, heritage buildings, tourist attractions and the National Park.

9.4.8. Kerry County Council submit that the subject scheme the Killarney Inner Link road scheme (Bohereen-Na-Goun to Monsignor O'Flaherty Road) achieves the following objectives contained in the Killarney Town Plan:

- KA 76 – Develop and promote a more cycle and pedestrian friendly network and ancillary infrastructure throughout Killarney, having regard to environmental designations in the area.
- KA 78 – Develop cycling and walking linkages between Killarney town centre, key strategic public amenities and residential neighbourhoods in the town, having regard to environmental designations in the area.
- KA 79 – Facilitate the enhancement of Killarney as a 10-minute town.
- KA 81 – Provide an inner relief road linking Bohereen Na Goun and Monsignor O’Flaherty road.

9.4.9. In his submission to the oral hearing, Damien Ginty, Senior Planner from Kerry County Council outlined the above cited objectives of the Development Plan. He concluded that the Killarney Inner Link road scheme (Bohereen-Na-Goun to Monsignor O’Flaherty Road) would accord with these objectives and hence the relevant statutory development plan.

9.4.10. The subject CPO would facilitate this permitted Road Scheme namely the Killarney Inner Link road scheme (Bohereen-Na-Goun to Monsignor O’Flaherty Road) 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. I conclude, too, that the works comprised in the Killarney Inner Link road scheme (Bohereen-Na-Goun to Monsignor O’Flaherty Road) would accord with the provisions of the Kerry Development Plan 2022-2028 and Killarney Town Development Plan 2009-2015 (as extended & varied) which is incorporated into the Kerry Development Plan.

9.4.11. In respect of the National policy context Project Ireland 2040 – NFP provides strategic outcomes and priorities. Specifically of relevance are the National Strategic Outcomes and Priorities of achieving compact growth and sustainable mobility. National Strategic Outcome 1 refers to Compact Growth and mechanisms to achieve this include through urban regeneration and tailored funding. Specifically in relation to the subject scheme it would serve to improve accessibility and transition to more sustainable modes of travel. National Strategic Outcome 4 refers to Sustainable Mobility and it seeks to expand 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 through a number of measures including to develop a comprehensive network of safe cycling routes in metropolitan areas as well as towns and villages. National Strategic Outcome 7 refers to Enhanced Amenities and Heritage and it seeks to improve ease of access to amenities and services supported by integrated transport systems and green modes of movement such as pedestrian and cycling facilities. National Policy Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages. National Policy Objective 64 seeks to improve air quality and help prevent people being exposed to unacceptable levels of pollution in our urban and rural areas through integrated land use and spatial planning that supports public transport, walking and cycling as more favourable modes of transport to the private car. The subject scheme would also align with these two national policy objectives.

9.4.12. The provisions of the Regional Spatial and Economic Strategy for the Southern Region (RSES) are also of particular relevance. Killarney is designated as a Key Town in the (RSES). In terms of its strategic attributes Killarney has a significant sub regional role and it is key national tourism town. Regional Policy Objective (RPO) 18 refers to Killarney. Part (b) is particularly relevant 'To seek investment to sustainably support its compact growth and regeneration, attributes and infrastructure'. RPO 11 refers to Key Towns and Part (b) is particularly relevant it sets out that it is an objective to (b) to seek investment in holistic infrastructure inclusive of utilities, transportation, social and community, digital infrastructure and smart technologies environmental (including facilitation of climate change mitigation and of biodiversity promotion), climate change adaptation and future proofing infrastructure including flood risk management measures and flood defence schemes, recreational, arts and cultural that will deliver sustainable growth in Key Towns subject to the outcome of the planning process and environmental assessments.

9.4.13. In relation to the Climate Action Plan 2024, the subject scheme which comprises development of an inner link road to facilitate improved vehicular, pedestrian and cycle access in Killarney 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 15.5 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.

- 9.4.14. 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 and with the objectives listed above from the Kerry County Development Plan 2022-2028 and Killarney Town Development Plan 2009-2015 (as extended & varied) which is incorporated into the Kerry County Development Plan.

## **9.5. Consideration of Alternatives**

- 9.5.1. The matter of consideration of alternatives was discussed at the hearing. In response, Kerry County Council confirmed in their statement to the hearing setting out the scheme that alternatives were considered. Brian O'Connor, Senior Executive Engineer with Kerry County Council outlined the project description and stated that alternatives were considered. He stated that due to the constraints of the urban environment that there are limited options to link Bohereen Na Goun to Monsignor O'Flaherty Road. Accordingly, the route selection involved the investigation of two options. The 'do nothing' option and the 'do something' option. The Design report for the Killarney Inner Link Road Bohereen Na Goun to Monsignor O'Flaherty Road was prepared by Malachy Walsh and Partners, Engineering and Environmental Consultants. The report sets out the summary of the route selection process including the evaluation of alternatives.
- 9.5.2. The route selection involved the consideration of two options. The first option is the 'Do nothing' option in which the two existing streets remain as they are without a connection between them. The second option involved the proposed Killarney Inner Link Road which would link the two cul sacs Bohereen Na Goun and Monsignor O'Flaherty Road. Traffic modelling and a Project Appraisal was carried out by

AECOM to compare the two options. The Project Appraisal report found that when comparing the overall road network in Killarney in the Do-Nothing scenario with the scheme not to progress versus the Do-Something scenario to progress with the scheme that the overall total travel time and travel distance reduced as a result of the proposed scheme which demonstrated that the proposed project improves the overall efficiency of the road network. It was concluded in the appraisal report that with the project in place that it would alleviate town centre traffic congestion through the provision of a circulatory town centre route which will provide an alternative route to New Street/High Street.

- 9.5.3. Mr. O'Connor detailed that in relation to the 'do something' option, the provision of the Killarney Inner Link Road that alternative alignments linking the two cul-de-sacs were investigated and not progressed further. Alternative proposals linking Monsignor O'Flaherty Road to St. Mary's Road through Killarney Enterprise Centre also was not pursued as it would not meet design standards. This access would emerge onto St. Mary's Road a one-way street and existing buildings would also be impacted.
- 9.5.4. The matter of alternatives was further explored during the questioning at the oral hearing. I questioned Kerry County Council at the hearing and requested that they elaborate upon the exploration of alternatives to the subject route. Mr. O'Connor confirmed that in terms of the current proposal, the subject CPO, that to ensure that everything was in accordance with best practice the consideration of alternatives was reviewed. Mr. O'Connor outlined that in endeavouring to join the two cul-de-sacs Bohereen Na Goun and Monsignor O'Flaherty Road it was necessary to ensure the design of the road complies with the relevant design standards and that it has as little impact on existing buildings. Mr. O'Connor highlighted to the hearing the location the CPO lands relative to the surrounding existing buildings, specifically the garage and car wash of Mr. Dabrowski and Mr. Komosa, the Dunnes Stores service yard and the Eir building which is the exchange for Killarney. He noted that there are a lot of buried fixtures at the Eir premises. Accordingly, that they were left with very limited consideration of alternatives. Therefore, the route as proposed in the Part VIII was deemed to be the only viable option given those constraints.
- 9.5.5. It was put forward in the closing comments by Esmonde Keane, SC for Kerry County Council that there are no viable alternatives. He submitted that Mr. O'Connor's

evidence has demonstrated that the route as sought under the CPO achieves the public good while achieving the limits on the acquisition of lands by way of CPO and limiting interference with property rights.

9.5.6. Accordingly, I consider that in the course of the hearing including the questioning at the hearing that the matter of alternatives has been fully explored and that there are no other suitable alternatives.

9.5.7. 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.

## **9.6. Additional Issues Raised by Objectors and Kerry County Council**

9.6.1. A number of additional issues have been raised by the objectors concerning the design of the road in terms of road safety and potential implications for the access to the service yard operated by Dunnes Stores. Access and parking and the operation of the Killarney Enterprise Centre was also raised by objectors.

9.6.2. The objection from Dunnes Stores as detailed on file states that there is no objection in principle to the provision of the link road. Stephen Little, Charter Town Planner for Dunnes Stores outlined that the primary concern relates to the matter of safety. It specifically refers to the Dunnes Stores delivery yard which exits on to Bohereen-na-Goun. Mr. Little provided details of the vehicular access arrangements to the Dunnes Stores premises. Trucks exit the service yard and turn right. At present cars come to this junction and yield. Initially this was to be a 50kph road now it is to be a 30kph road. Traffic will come around the corner without yielding as trucks from the service yard will be pulling out exiting from the service yard. Therefore, concern was raised in relation to the safety traffic regarding the existing situation and the proposed road layout. Mr. Little noted that while the existing wall is being taken down as part of the CPO that it will be replaced. The issue of sightlines and safety of vehicles coming around the corner and the trucks driving in to the service yard need to be taken into account as part of this particular consideration.

9.6.3. Eoin Reynolds, Board Director of NRB Consulting Engineers for Dunnes Stores outlined to the hearing that safety issue relates to two matters. At a major minor junction there should be adequate forward stopping distance for a vehicle travelling around the bend so that they can see a truck coming out of the exit of the service

yard and also that adequate sightlines are available for the driver exiting the service yard. Mr. Reynolds detailed that within the Design Manual for Urban Roads and Streets (DMURS) for a 30kph road forward stopping is 23m from 1.05m off the kerb for someone coming around the bend exiting to see a truck exiting. In relation to sightline requirements with 2.4m setback it is 23m to the near side running kerb in both directions. Mr. Reynolds stated that for a 30kph road there is no allowance for departures to sightlines.

- 9.6.4. Brian O'Connor, Senior Engineer with Kerry County Council responded to the matters raised by Mr. Little and Mr. Reynolds on behalf of Dunnes Stores. Firstly, in relation to the yield sign he stated that a yield sign has a very specific meaning in the traffic design manual. It would not be for a public road to yield for vehicles exiting a private entrance. Secondly, in relation to the exit of the Dunnes Stores service yard it was described as a major minor junction. However, it is more correctly described as a direct access onto the road. Thirdly, in relation to DMURS allowing for departures in the caseload of regional and local roads the Local Authority is the Road Authority and therefore that it is the responsibility of Kerry County Council to determine whether a departure is warranted in any particular location. It is Kerry County Council who are the official authority to make a departure or relaxation on a design standard in a regional local road which this is. In terms of safety particularly the design of the junction it does accord with the Design Manual for Urban Roads and Streets.
- 9.6.5. The matter of the design of the road and safety concerns was further discussed during the questioning at the hearing. Mr. Little for Dunnes Stores raised the matter that as the Road Scheme was designed in 2005, can the Council explain how a 2005 Scheme can be compliant with a 2013 document called DMURS. Mr. O'Connor for the Council responded that the alignment which was set out in 2005 was in line with the design standards in place in 2005. He further explained that design standards get updated and that as projects are developed that they are complying with standards as they get updated. He highlighted that the standards in place in 2005 and 2013 don't change the design of the project.
- 9.6.6. The matter of a Road Safety Audit was raised by Mr. Reynolds he queried that as the scheme was 19 years old, in preparing the CPO has there been a road safety audit. Mr. O'Connor for the Council confirmed that yes there had been a Road Safety Audit. He clarified that that it was carried out in 2019. Mr. Little queried did the Road

Safety Audit include a DMURS audit. In response Mr. O'Connor confirmed that the Road Safety Audit was completed but the remainder of the quality audit was not completed.

- 9.6.7. Mr. Little questioned the Council in relation to the statement that the Council can decide to reduce or relax the design standards under DMURS and stated that in the event that standards are relaxed how does it address the safety concerns regarding conflicting traffic movements which would arise when articulated vehicles exit the service yard. In response to the matter Mr. O'Connor for the Council stated that Malachy Walsh & Partners are the Consultants that designed the project and they advised that the sightlines at the junction would be 14m which is a one step reduction on the specified 23m in the design standards. Mr. O'Connor confirmed to the hearing that would be an acceptable relaxation. He highlighted that the road design included ramps along the section at Bohereen Na Goun and this would reinforce the slow speed on that section of the road. Mr. Reynolds questioned the suitability of relying on ramps to reduce speed and stated that 14m stopping sight distance is the length of an articulated lorry. In response Mr. O'Connor for the Council stated that he agreed that ramps should not be used to enforce the speed limit. He highlighted that the ramps would be used to maintain the speed limit in an area which will have a low speed limit.
- 9.6.8. In relation to the access to the Dunnes Stores service yard, in the questioning the matter of changing the access to entrance only was raised by Mr. Keane, SC for the Council. Mr. Keane highlighted that the existing design of the service yard includes a full access from the service yard out into the Dunnes car park. Mr. Reynolds responded that the access is one direction into the service yard and there is an exit out from another that it from the same road but a different part. He noted that there is signage which states entrance and exit only at the two locations, and this is internal to Dunnes.
- 9.6.9. The matter of an existing yield sign at the top of St. Mary's Road was discussed during the questioning. Mr. Keane for the Council highlighted that the yield sign relates to traffic already on Bohereen Na Goun. As St. Mary's Road to the north is one way there is no traffic travelling from the right to that yield sign. He stated that there is no entitlement for a truck from the Dunnes Service yard to pull out and rely on the fact that there is a yield sign a junction right beside it.

- 9.6.10. In relation to the operation of the Dunnes Service yard Mr. Keane for the Council questioned whether the movement of traffic could be reversed, and trucks could enter the yard from the existing exit at Bohereen Na Goun and then exit into the Dunnes car park and then access the link road. In response Mr. Reynolds stated that Dunnes would have to change their entire operational requirements. Mr. Little for Dunnes stated that Dunnes Stores engaged with the Council on the matter but that he did not consider that any alternative scheme was provided to them to review. Mr. Reynolds stated that such options suggested by the Council would need thorough examination. Mr. Keane for the Council stated that such matters are internal to the Dunnes Stores service yard and that it is not for the Council to tell Dunnes Stores how to manage the internal layout of their property. Mr. Little in the closing comments for Dunnes Stores maintained that he did not consider that the evidence provided by the Council addressed their safety concerns. Mr. Keane SC, for the Council in the closing comments for the Council submitted that the design of the new road achieves a significant improvement in relation to sight distance to and from the Dunnes Stores service yard and that internal revisions of rights of direction in the service yard should not be used to hold up or prevent the public interest of the area being fulfilled.
- 9.6.11. On the basis of the evidence on file and presented at the hearing I am satisfied that the Council have demonstrated that the road design has been fully considered in the context of traffic safety considerations.
- 9.6.12. Objections to the CPO raised the matters of access and parking and operation of the Killarney Enterprise Centre. Firstly, in relation to the issue of access to the Killarney Enterprise Centre the matter of a one-way system was raised. The questioning of Gavin Culloty on behalf of Pat and Mark Culloty requested that Kerry County Council elaborate on what they mean by the one-way system in the context of Killarney Enterprise Centre and would the one-way system be provided by the Council or the landowners. In response to the matter Mr. Keane SC, for the Council stated that the new road will have a new entrance into the Enterprise Centre at the eastern end of same. He advised that the Council's scheme does facilitate the creation of a one-way system which will avoid the necessity for vehicles having to turn within the Enterprise Centre and drive back out. However, it is an option for the owners and managers of the Enterprise centre rather than for the Council to dictate to them in

relation to the internal road layout. Mr. Keane submitted that it provides a significant opportunity for better traffic management within the centre than what is there at present.

- 9.6.13. The matter of impact on the parking within the Enterprise centre in terms of reduction in car parking was also raised in a number of the objections. Specifically in relation to the operation of businesses including the car valeting business operated by Mr. Dabrowski. The matter was addressed by Mr. O'Connor for the Council. He stated that it appears that in relation to the Enterprise centre that car parking for all the businesses is contained within the centre. Mr. O'Connor highlighted that there will be no impact on car parking in front units within the Enterprise centre and that parking in front of individual units is currently underutilised. He acknowledged that there will be an impact on the car parking spaces to the east of the Enterprise centre and that some additional spaces will be taken during construction of the boundary wall. Therefore, that those spaces will be unavailable for a limited period of time. Mr. O'Connor reiterated that the proposal would improve access to and through the Enterprise Centre and that there will be approved access from the Enterprise Centre the existing access from St. Marys Road which is one-way street will be pedestrian only. In relation to the use of a one-way system within Killarney Enterprise Centre, he highlighted that this would facilitate the provision of additional parking. Regarding potential impact to business, the nature of the car washing and valeting business is that it could be relocated should there be any significant disruption. Mr. O'Connor noted that the issue of a compensation claim is a separate process.
- 9.6.14. Accordingly, having regard to the evidence presented at the hearing, I am satisfied that the Council addressed the matters of access and car parking at Killarney Enterprise Centre.
- 9.6.15. In relation to the objector Dunnes Stores the Council provided amendments to the CPO to include the Dunnes Stores Group which is not itself a company and which has lodged an objection through Dunnes Stores Unlimited Company. In their submission to the hearing during the questioning Mr. Little on behalf of Dunnes Stores confirmed that the relevant company who is in ownership of the lands which are subject to the CPO is Better Valu unlimited Company. He also confirmed that Better Valu unlimited Company are the occupier of the lands.



- 9.6.16. Mr. Keane, SC for the Council stated that while the Council has included Better Valu unlimited Company within the listed owners and occupiers as set out in the CPO schedule he would request that in case there is any error within communications within Dunnes, that they would still look for all the other bodies to be joined. Mr. Keane highlighted that the various company names and entities in respect of Dunnes Stores are all owners or reputed owners, lessees or occupiers. Mr. Keane submitted to the hearing that the Board does not have to be categorically satisfied that each and everyone of them has an ownership interest. However, the essential thing is that the Council include the right owner and that if somebody is included that isn't in fact an owner or occupier no harm comes of that. Accordingly, Mr. Keane requests that the Board include the other bodies just in case. Having regard to the case set out by Mr. Keane I would consider that it would be appropriate to include the various company names and entities in respect of Dunnes Stores which are listed as owners or reputed owners under the schedule as detailed in the modified Compulsory Purchase Order - Miscellaneous Order No. M/2024/. However, should the Board not concur with this then they can require the further amendment of the CPO to address this matter.
- 9.6.17. The amended Compulsory Purchase Order - Miscellaneous Order No. M/2024/ in respect of the Acquisition of Land referring to Killarney Inner Link Road which is dated 24th of June 2024 as submitted by Kerry County Council to the Oral Hearing on the 25th of June 2024 also has included the objectors Jaroslaw Dabrowski and Pawel Komosa as lessees or reputed lessees and occupiers in respect of plots 1101a and 1101b. Having regard to the evidence provided at the hearing by Geraldine Kearney Solicitor at Harrison O'Dwyer Solicitors representing Jaroslaw Dabrowski and Pawel Komosa, I am satisfied that it is appropriate that both objectors are included on the amended order as lessees or reputed lessees and occupiers in respect of plots 1101a and 1101b.
- 9.6.18. Finally, in relation to an objector to the CPO John Quill, he is a named objector on file and was stated as proprietor of Killarney Enterprise Centre. John Quill was represented at the hearing by Elizabeth Murphy, Barrister attending for Terence F Casey Solicitors. During the course of the hearing, it was established that John Quill is the co-owner of Killarney Enterprise Centre. Elizabeth Murphy, Barrister confirmed that she was instructed by Dan O'Connor Solicitor from Terence F Casey Solicitors

and that they were acting on behalf of Mr. John Quill and also Mr. Patrick Diggins who is the other co-owner of Killarney Enterprise Centre.

- 9.6.19. Mr. Keane, SC for the Council sought that the address of Mr. Patrick Diggins be provided in order that he would apply to join him as a co-owner of the Enterprise Centre in light of the representations made on his behalf. Accordingly, Mr. Keane requested that the Board make the amendments on the CPO schedule as has been proposed and with the addition then of Mr. Patrick Diggins of the address of Leagh, Ballyduff, Co. Kerry as furnished by his solicitor in relation to the matter. Having regard to the evidence provided at the hearing by Elizabeth Murphy, Barrister and Dan O'Connor, Solicitor I am satisfied that it would be appropriate to include Mr. Patrick Diggins as the co-owner of the following parcels 1101a, 1101b, 1101c and 1108a which related to lands at the Killarney Enterprise Centre.

## **10.0 Conclusion**

- 10.1.1. 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.
- 10.1.2. I am satisfied that the process and procedures undertaken by Kerry County Council have been fair and reasonable, that Kerry 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 Killarney Inner Link road scheme (Bohereen-Na-Goun to Monsignor O'Flaherty Road).
- 10.1.3. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of lands 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.

- 10.1.4. 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.
- 10.1.5. 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, and lands on a temporary basis, and extinguishment of rights of way would be consistent with the policies and objectives of the Kerry County Development Plan 2022-2028 and Killarney Town Development Plan 2009-2015 (as extended & varied) which is incorporated into the Kerry County Development Plan, which includes Objective KCDP 14 - which seeks to deliver sustainable transport infrastructure investment as identified for the road network, public/rural transport, and walking/cycling infrastructure to facilitate and realise the 10-minute town concept, Objective KA 76 – which seeks to develop and promote a more cycle and pedestrian friendly network and ancillary infrastructure throughout Killarney, having regard to environmental designations in the area and Objective KA 81 which specifically refers to the subject road scheme and states that it is an objective to provide an inner relief road linking Bohereen Na Goun and Monsignor O’Flaherty road. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.

## 11.0 Recommendation

I recommend that the Board **CONFIRM** the Compulsory Purchase Order, with the modifications detailed in Miscellaneous Order No. M/2024 in respect of the Acquisition of Land referring to Killarney Inner Link Road dated 24th of June 2024 as submitted by Kerry County Council to the Oral Hearing on the 25th of June 2024, based on the reasons and considerations set out below.

## 12.0 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 Killarney Inner Link Road (Bohereen-Na-Goun to Monsignor O'Flaherty Road 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,
- (d) the design of the proposed Killarney Inner Link Road (Bohereen-Na-Goun to Monsignor O'Flaherty Road) 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 and the policies and objectives of the Kerry County Development Plan 2022 – 2028 and Killarney Town Development Plan 2009-2015 (as extended & varied) which is incorporated into the Kerry County Development Plan, 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 Kerry 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.

## 13.0 Schedule

The Compulsory Purchase Order shall be modified in accordance with the details provided in Miscellaneous Order No. M/2024/ in respect of the Acquisition of Land referring to Killarney Inner Link Road dated 24th of June 2024 as submitted by Kerry County Council to the Oral Hearing on the 25th of June 2024 and further modified as follows;

1. In relation to Plots no. 1101a, 1101b, 1101c and 1108a which refers to lands at Killarney Enterprise Centre, Mr. Patrick Diggins shall be added as the owner or reputed owner in conjunction with Mr. John Quill.

**Reason:** As confirmed at the oral hearing Mr. Patrick Diggins is the co-owner of Killarney Enterprise Centre with Mr. John Quill.

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

12<sup>th</sup> August 2024

## **14.0 Appendix A Summary of Oral Hearing**

14.1.1. An oral hearing was held on 25th of June 2024, commencing at approximately 10.00 am. It was held remotely at the offices of the Board using Microsoft Teams. The following were in attendance and made submissions:

### **14.2. Kerry County Council**

(1) Esmonde Keane Senior Counsel, representing Kerry County Council.

(2) Damien Ginty, Senior Planner and Civil Engineer.

(3) Brian O'Connor, Senior Engineer.

14.3. Geraldine Kearney Solicitor at Harrison O'Dwyer Solicitors representing two objections (1) Pawel Komosa (2) Jaroslaw Dabrowski.

14.4. Gavin Culloty representing Pat and Mark Culloty

14.5. Stephen Little, Planning Consultant with Stephen Little & Associates and accompanied by Eoin Reynolds, NRB Transport Consultants representing – Dunnes Stores (Better Value Unlimited Company). In the room Mark Clifford, property director with Dunnes Stores and Patrick O'Neill Project Manager.

14.6. Dan O'Connor, Solicitor and Elizabeth Murphy Counsel for acting for Terence F Casey Solicitors for Killarney Enterprise Centre representing John Quill.

## **15.0 Opening of Hearing by Inspector**

15.1.1. This module included an opening statement by the Inspector and facilitated introductions, setting out of the case file before the oral hearing, taking of attendance, queries on and changes to the agenda and the setting out of process rules, conduct and general housekeeping issues for the oral hearing.

### **15.2. Submission by Kerry County Council**

15.2.1. Esmonde Keane, SC set out the subject application is made by Kerry County Council to An Bord Pleanála for confirmation of the Killarney Inner Link road (Bohereen-Na-Goun to Monsignor O'Flaherty Road) Compulsory Purchase Order of

2022. It is to run between Monsignor O'Flaherty Road and Bohereen-Na-Goun in the townland of Inch and Coolegrean, Killarney, Co. Kerry. It is intended to meet the public need to improve connectivity through Killarney by linking Bohereen-Na-Goun to Monsignor O'Flaherty Road and minimising the impact to effect land owners and thus it is proportionate. The CPO has been made by Kerry County Council on the 1st of February 2022 pursuant to Section 10 of the Local Government Act and no. 2 Act 1960 as substituted by Section 86 of the Housing Act of 1966 as amended and as amended in turn by Section 6 of the Second Schedule to the Roads Act 1993 to 2015 and by the Planning and Development Acts 2000-2023 including part 14 Section 213 subsection 2 and section 2,2,2 thereon. And the Local Government Act of 2001 as it was amended and in exercise of the powers conferred on it by the above mentioned legislation.

15.2.2. Kerry County Council has sought to effect the acquisition of the lands under the Housing Act of 1966 as amended and substituted. The purpose of the CPO is to provide for a road development to give effect to and implementation of the County Development Plan 2022-2028 consisting of the construction of the Killarney Inner Link Road comprising of approximately 120m of new and of graded road to form a vehicular and pedestrian link between New Street and Monsignor O'Flaherty Road and all ancillary and essential works. The lands described in part two of the schedule to the CPO therein the lands as shown on Map A of which the CPO to be acquired and the lands to be permanently acquired are coloured grey thereon and those to be temporarily acquired are coloured blue on the map in question.

15.2.3. It is also proposed to extinguish the existing right of way between line A1 to line A2 over the section of Bohereen-Na-Goun in the townland of Inch for a distance of approximately 55m as shown on drawing A of the deposited map. Which will essentially be replaced by the new road. The development has been approved pursuant to Part 11 of the Planning and Development Act 2000 (as amended) and Part 8 of the Planning and Development Regulations 2001 (as amended). Having passed before the members of Killarney Town Council and been considered by them on the 4th of July of 2005. Amendments are proposed to the schedule of the CPO to take into assertions made by certain objectors to the CPO. Same to include various amendments to the CPO to include the Dunnes Stores Group which is not itself a company and which has lodged an objection through Dunnes Stores Unlimited

Company but which has now confirmed that it is in fact Better Value Unlimited Company that is the owner and occupier of the Dunnes Stores lands to be acquired herein. It is proposed to include the other amendments also in case there would be an error in relation to the registration of those lands which are of themselves unregistered. The evidence to be introduced then on behalf of the Council will be that of Brian O'Connor, Senior Executive Engineer, Kerry County Council who is also the project manager for the Killarney Inner Link Road and Damien Ginty, Senior Planner of Kerry County Council.

- 15.2.4. Brian O'Connor, Senior Executive Engineer – The project description is set out. has been through many stages. Killarney is designated as a key town in the Regional Spatial Economic Strategy National Planning Framework. The existing roads to be connected by the proposed development are currently cul-de-sacs. The catchment of the town centre is limited due to the cul-de-sacs.
- 15.2.5. This proposed development provides sections of new and upgraded road to form a vehicular and pedestrian link between Monsignor O'Flaherty Road and Bohereen-Na-Goun. It will provide a strategic link which will divert traffic away from the town centre streets. It will improve the public realm and will open land areas for development. Both link and proposed road are approximately 120m. The scope of the works includes construction of new sections of road, construction of new footpaths, creation of new culvert, new boundary walls, storm and foul drainage, new and replace public lighting, provision of electrical and telecommunication services, road marking and signs and associated works. The proposed road development has been designed in accordance with the TII standards in accordance Design Manual for Urban Roads and Streets. The project would be considered at grade.
- 15.2.6. The Department of Transportation and the matter of speed limit, they carried out a review of the speed limits in 2023 that has culminated in a set of new proposed speed limits. The new law will set new speed limits with the introduction of 30kph in urban areas such as the proposed road here. It is anticipated that the speed limit of the subject road would be this and Kerry County Council would not propose to increase this.
- 15.2.7. The proposed project includes the following junctions and accesses the junction with St. Mary's Road which is a one-way street with traffic going away from the project.



Access to the Dunnes Stores delivery yard, access to the Dunnes Stores car park, access to the Eircom compound. Access with a proposed new entrance to the Killarney Enterprise Centre and access to the proposed new northern entrance to the Eircom compound. The strategy for the above access is that there will be a priority stop road junction with priority for the Killarney link road in all instances. The area of these junctions is not a greenfield site. The key design drainage features are as follows small stream traverses north to south which will be culverted. The drainage proposal also involves relocation of road gullies. The proposed culvert crossing will consist of a reinforced concrete box culvert.

15.2.8. Identification of community need for the Project providing sustainability by encouraging compact growth in Killarney town centre, improving transport making it a more attractive place to live and participate in recreational activities. Providing connectivity between residential, education, employment and retail and uses. It would improve permeability and enhances active travel opportunities. Would provide for more efficient travel. Killarney is integral to tourism within Ireland and tourism contributes significantly to the local economy. Many local businesses are dependent on the influx of visitors most notably during the summer season which generates both high levels of vehicular and pedestrian activity. The proposal would provide improvements to the road, cycle and pedestrian network. If existing transport problems are not addressed, it would affect the town as a holiday destination. The development of a subject route is necessary to ease congestion and it would enable reduction in traffic on New Street and will enable opportunities for the public realm and streetscape and for pedestrians and cyclists within the town centre and make it safer and more attractive.

15.2.9. Traffic modelling was carried out by consultants on behalf of the Council to assess the impact of the proposal on the operation of the road network in Killarney. The scenario and models for 2022 and 2030 The following scenarios were modelled.

15.2.10. Do nothing which is the road network as it is presently and do something that is to build the Killarney Inner Link Road. The results show that the overall travel time before and post project. Catchment analysis was carried out and it contributed to the proposed routing. The proposed link road will connect schools within the area by providing a direct vehicular, pedestrian and cycle link. It will provide increase

catchment connectivity to the town centre and in the area to the west of Bohereen-Na-Goun.

- 15.2.11. In an independent assessment the value of tourism to Killarney commissioned by Killarney Chamber of Commerce in 2018 advised that additional investment in infrastructure was required to increase the carrying capacity and the ability to manage and increase traffic flow.
- 15.2.12. Outline of alternatives considered – Due to the constraints of the urban environment there are limited options to link Bohereen Na Goun to Monsignor O’Flaherty Road. Route selection therefore involved the investigation of two options. The do nothing and the do something. In the do nothing option the two existing cul de sacs remain as they currently are without connection. The do something option is the Killarney Inner Link Road which seeks to connect the town roads. Alternative alignments linking the two cul-de-sacs were investigated and not progressed further. Alternative proposals linking Monsignor O’Flaherty Road to St. Mary’s Road through Killarney Enterprise Centre also was not pursued as it would not meet design standards. This access would emerge onto St. Mary’s Road on a one-way street and existing buildings would also be impacted.
- 15.2.13. The only viable option to join the two cul de sacs is through the proposed option which is the best option and the one which achieves the best balance meeting community need on the one hand and minimising impact on property rights on the other.
- 15.2.14. Project benefits – Multi factor analysis was carried out. A qualitative analysis was carried out to assess the impact on all users. The Killarney Inner Link Road will have a number of positive effects. It will improve overall efficiency in the road network in Killarney. It will reduce travel times and provide for efficiencies in journeys. Will improve both cycling and walking through the town centre. Implementation of this link road and the permeability it will deliver will enhance attractiveness of walking and cycling in the area. It will enhance the attractiveness of walking and cycling to schools located to the western side of the road which is a key demographic when increasing active travel. The provision of circularity town centre route will provide an alternative route than through High Street and will provide opportunities for improved public realms and streetscapes. Lower levels of traffic in

the public realm will benefit pedestrians and cyclists and will lead to a more attractive and vibrant town. A reduction in car traffic and a modal shift towards active travel modes will have benefits in terms of reducing emissions and leading to improved air quality, reduce noise and improve the health of the active road users.

15.2.15. In addition the improved access will increase the opportunity to open up backlands to development and lead to the consolidation of the town centre in line with national strategic outcomes and of the National planning. There is minimal land needed to be taken at St. Mary's/Bohereen-Na-Goun and Monsignor O'Flaherty Road.

15.2.16. In order to construct the scheme Kerry County Council require to compulsorily acquire just over 0.5 acres comprising approximately 0.3 acres of land and approximately 0.2 acres of existing roads and footpaths. Since publication of the Compulsory Purchase Order and following information received in submissions Kerry County Council amended schedule Part 2 includes Jaroslaw Dabrowski of DJ Car wash and valeting, Killarney Enterprise Centre, St. Mary's Road Killarney and occupier of plots 101a and 101b. Pavel Kamosa D&P Motor Sports Services, Killarney Enterprise Centre, St. Mary's Road Killarney under the headings lessee and occupier 110a and 110b. Dunnes Store Unlimited retail company 46-50 South Georges Street, Dublin 2. Under the headings owner, reputed owner plots 1103a and owner and owner occupier of plots 1103b and 1103c. Dunnes Stores unlimited company of the same address. Under the headings owner, reputed owner plots 1103a and owner and reputed owner occupier of plots 1103b and 1103c. Better Valu unlimited company also of the same address under the headings of owner, reputed owner plots 1103a and owner and reputed owner occupier of plots 1103b and 1103c. Dunnes Stores Killarney limited also of same address under the headings of owner, reputed owner plots 1103a and owner and reputed owner occupier of plots 1103b and 1103c. Dunnes Stores Georges Street Company under the headings of owner, reputed owner of 1103a owner and reputed owner occupier of plots 1103b and 1103c.

15.2.17. Reasons for the amendments proposed set out above and set out in the schedule and CPO are as follows. In relation to Jaroslaw Dabrowski and the submission of Mr. Dabrowski and the suggestion that he is the lessee and occupier comprising of lands 1101a and/or 1101b while the Council has not seen any such

lease in relation to the claim in this regard it is considered appropriate that he be included under the heading lessee and occupier of these plots. In relation to Pawel Komosa the submission of Mr Komosa suggests that he is the lessee and or occupies part of the lands comprising 1101a and or 1101b. While the Council has not seen any such lease in light of the claim regard in the submission and the objection made on behalf of Mr. Komosa it is considered appropriate to be included under the headings or lessee and occupier of the plots. In relation to the plots 1103a and 1103b and 1103c An Bord Pleanála will note the submission by the body corporate of Dunnes Stores Unlimited Company which asserts it is the actual owner of these plots. Dunnes Stores have identified that the Better Valu Dunnes Stores is the title on these plots and is the explanation of the changes made.

- 15.2.18. In order to construction the project it will be necessary to extinguish the public right of way as detailed in the CPO schedule part 3.
- 15.2.19. The need has been established for the Killarney Inner Link Road. It has also been established that the project is consistent with National, Regional and Local Planning policy documents. The lands which are subject to this compulsory purchase order are necessary suitable for the purposes of constructing the Killarney Inner Link Road. The acquisition of the lands subject of the CPO are proportionate and achieve the public good in the construction of the Killarney Inner Link Road while minimising so far as is reasonably possible the compulsory purchase of lands from third parties. Consequently, it is recommended to An Bord Pleanála that the Killarney Inner Link Road project Bohereen-Na-Goun to Monsignor O’Flaherty Road Compulsory Purchase Order 2022 be confirmed subject to the amendments on the schedule of the CPO as proposed by the Council.
- 15.2.20. Kerry County Council response to objections submitted to An Bord Pleanála. There have been five written objections received by the Board in respect of the CPO within the prescribed period of objections. Dunnes Stores Unlimited Company, Jaroslaw Dabrowski DJ Car wash, John Quill, Killarney Enterprise Centre, Pat and Mark Culloty Motor Shop and Pavel Komosa DP Motor Sports Services.
- 15.2.21. Submission 1 from Dunnes Stores, there is no objection to the link road in principle. They submit that the CPO comprises a proportionate impact on Dunnes Stores property rights and raises issues of the identity of the owner and occupier. In

response to the submission the town development plan objective KA 81 seeks to provide Inner Relief Road Bohereen-Na-Goun to Monsignor O'Flaherty Road. With respect to the design of the project it has been designed in accordance with all appropriate design standards. With regard to the notice lands referred to are unregistered and giving reasons to establish title. Dunnes Stores group has engaged in the CPO in the past as owners and the objection herein and thus the individual company within the group is clearly aware of the CPO submission being made on its behalf but refusing to actually confirm the legal owner. The Council is thus seeking to include the bodies and owners and reputed owners and occupiers as per Appendix C in light of the conduct and representation. Following the submission to Kerry County Council it amended Schedule 2 and seeks to include the following companies as reputed owners of plots 1103a, 1103b and 1103c, Dunnes Store Retailing Unlimited Company, Dunnes Stores Unlimited Company, Better Value Unlimited Company, Dunnes Stores Killarney Unlimited, Dunnes Stores (Georges Street) Unlimited Company. The area of plot 1103b Kerry County Council has checked the area and established that the area be included in the schedule of 1103b. In relation to proportionality and property rights, Kerry County Council view the CPO as presented as proportionate the area of the acquisition has been curtailed to limited lands required for the project.

15.2.22. Regarding the speed on the proposed road, it is noted that the Department of Transport carried out a review of speed in 2023 that has culminated in a set of new proposed speed limits for the roads in Ireland signed into law in 2024. The new law will introduce a number of changes for all speed limits on roads including the introduction of 30kph as an urban default speed limit and in such as areas where this new road is proposed. It is anticipated that the urban limits will be activated in 2025. The road herein would be constructed and opened after the introduction of the speed limit, and it is not anticipated that Kerry County Council will increase this limit.

15.2.23. For a 30kph road the sight distance required 23m. Sight distance to the left from the new entrance of the storage yard would be 23m and the sight distance to the right would be 14m and not 8m as suggested in the submission. The single step down from the standards is a relaxation of same and likely to be granted and the sight distance at the entrance will also be an improvement on the existing.

- 15.2.24. Temporary land take is required to provide for construction of boundary walls. Kerry County Council will require the working contractor to construct walls in a sufficient manner on the plots of land subject to the acquisition be occupied for a minimum period necessary.
- 15.2.25. Submission two Harrison O'Dwyer Solicitors on behalf of Jaroslaw Dabrowski of DJ Car wash and valeting. With regard to the business premises therein in the area of the CPO the building from which DJ Car wash and valeting operate is unaffected by the CPO and will remain entirely unaffected by the project. The area where DJ Car wash and valeting operates car washing will be impacted during the construction phase of the project. The Council will endeavour to minimise disruption by relocating of the car washing by 2m and the Council will endeavour to ensure that the lands at plot 1101b are occupied for the shortest practical period. With regard to consultation in the submission where the objector claims that they lease, the Council has included them as a lessee of plots 1101a and 1101b and has submitted an updated schedule to the Board.
- 15.2.26. Regard to impact on parking on his business. There is no evidence of any specific area of car parking for Mr. Dabrowski's business being provided within the area subject to the CPO. It appears that the entire Killarney Enterprise site car parking for all enterprises contained in same. There will be no impact on car parking in front units within the Enterprise centre. Parking in front of individual units is currently underutilised. Therefore, there will be no impact on parking. There will be an impact on the car parking spaces to the east of the Enterprise centre. Some additional spaces will be taken during construction of the boundary wall, and they will be unavailable for a limited period of time. The proposal will improve access to and through the Enterprise Centre. There will be approved access from the Enterprise Centre the existing access from St. Marys Road which is one-way street will be pedestrian only. A one-way system at the Killarney Enterprise Centre will facilitate the provision of additional parking. In relation to impact to business, the nature of the car washing and valeting business is that it could be relocated should there be any significant disruption. The issue of a compensation claim is a separate process. It is Kerry County Council's view that the CPO is proportionate.
- 15.2.27. Submission from Damien Ginty, Senior Planner, Kerry County Council. Mr Ginty set the context of Killarney. The existing roads to be connected by the

proposed development are existing cul-de-sacs. The cul-de-sac off Bohereen-Na-Goun serves as an access for retail outlets and utility providers. The cul-de-sac off Monsignor O'Flatherty Road serves as access to a mix of residential, commercial and government offices. Killarney town has experienced significant growth in recent decades including an expansion of lower density residential area in the urban environment. Unchecked such development can be detrimental to the creation of sustainable settlements that results in car dependency, habitat degradation, inefficient public transport services and increased emissions through private car use.

15.2.28. The town centre as well as the Inch and Coolgrean areas of Killarney have undergone a dramatic transformation in recent decades. With several large residential developments substantially increasing the areas population. The supporting infrastructure particularly the roadways have not necessarily kept pace with the residential development. Bohereen-Na-Goun and St. Mary's Road act as key transport corridors connecting the south and west of the town to the north of the town. Monsignor Hugh O'Flaherty Road provides limited connectivity from the town centre to the north of the town. Significant sections of the existing road are characterised by narrow lanes, a lack of suitable footpath provision and a complete absence of cycle lane. Given the existing and increased population of the area, the lanes do not provide safe and accessible routes for locals particularly the most vulnerable road users such as pedestrians and cyclists. Furthermore, due to the various existing constraints public transport in the areas is inefficient and as such does not offer residents an attractive alternative to private car use.

15.2.29. In order to meet the existing and future demands of local residents and to promote a modal shift away from private car usage it will be essential to upgrade the road infrastructure in this area.

15.2.30. The proposed scope of the works and the necessary junctions and accesses are outlined in the brief and outlined by Mr. Brian O'Connor.

15.2.31. The proposed objectives of the scheme are as follows to achieve sustainable development by encourage compact growth. To promote Killarney town centre as the core of activity and improve its transport system making it therefore a more attractive place to live, work, visit and engage in recreation. To provide connectivity to provide links between educational, residential, retail and employment areas as

well as the town centre. To enhance active travel opportunities in the wider town centre area. To provide social, economic, tourism and school access benefits for the community. To enable more efficient traffic management, more pedestrian friendly elements within the core area and to improve the overall efficiency of the road network in the area. To enhance the permeability of the town and the creation of this link road is considered a priority as it is a catalyst for other improvements in the town centre area. Particularly in the area of public realm.

- 15.2.32. The development of the Killarney Inner Link Road underlying and requiring the compulsory purchase of the lands herein achieves the following specific objectives set out in the Killarney Town Development Plan as contained in Volume 2 of the County Development Plan 2022-2028. Objective KA 76, Objective KA 78 and Objective KA 79 are particularly relevant.
- 15.2.33. Objective KA 81 – It states It is an objective of the Council to: Provide an inner relief road linking Bohereen Na Goun and Monsignor O’Flahery Road.
- 15.2.34. The scheme improves road safety in the vicinity of Bohereen Na Goun and St. Mary’s Road and the surrounding roads the link road will serve. It improves the level of service of users of Bohereen Na Goun and St. Mary’s Road between New Street and Bohereen Na Goun junction and the cul-de-sac of Bohereen Na Goun. It will also enhance the public realm along the route and improve the overall environment. The scheme also enhances pedestrian, cyclist and public transport connectivity and would promote the use of sustainable modes of transportation in the southern and south-western town centre areas.
- 15.2.35. Relevant national, regional policy relevant to the scheme are outline in the brief of evidence on pages 5,6 and 7.
- 15.2.36. Local policy supporting the scheme is outlined on pages 7,8 and 9. Chapter 14 of the County Development Plan is highlighted. Which deals with connectivity and in particular Objectives 14-13 and 14-15.
- 15.2.37. Objective 14-13 – It is an objective of the Council to develop in accordance with the National Cycle Manual and the NTA, an integrated network of cycle ways in our larger urban centres, to ensure permeability within and between residential areas, linking to town centres, schools and places of work informed by Transport Mobility Plans for Tralee, Killarney and Listowel.



- 15.2.38. Objective 14-15 – It is an objective of the Council to promote the sustainable development of the public footpath network, the walking and cycling routes and associated infrastructure in the County, including where possible the retrofitting of cycle and pedestrian routes into the existing urban road network and in the design of new roads.
- 15.2.39. Chapter 4 of the County Development Plan relates to towns and villages. Objective 4-18 – It is an objective to the Council to prioritise walking routes and to deliver a high level of priority and permeability for walking, cycling and public transport modes, in accordance with the principles of movements, place and permeability as laid out in the Design Manual for Urban Roads and Streets 2019, to ensure the creation of accessibility, permeability links to places of work, retail, services, educational and community facilities.
- 15.2.40. In relation to overall planning policy compliance as set out in the preceding paragraphs the scheme is seen to align with relevant national, regional and local planning policy and strategies. The scheme is specifically addressed in the County Development Plan and the Killarney Town Development Plan and the schemes' role in improving pedestrian and cycle infrastructure is consistent with several objectives of the County Development Plan and the Killarney Town Development Plan. The proposed project comprises an array of interventions designed to improve road infrastructure and promote sustainable transport and active travel in the area of Killarney. The delivery of these improvements to the local road infrastructure will enable connectivity between existing and future residential areas and will contribute to achieving climate action targets through the provision of segregated cycle lanes and pedestrian footpaths.
- 15.2.41. The proposed road development underwent the approval process as provided for under Part XI and Part 8 of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) by being put before what was then Killarney Town Council on July 4<sup>th</sup> 2005 and not having been subject of any decision by the members to vary or modify same or not to proceed with same. The objectives of the proposed road development and the construction and operation of same are consistent with the objectives identified and will help to deliver compact sustainable growth envisaged in the National Planning

Framework and are consistent with and will achieve the objectives of the County Development Plan and the Killarney Town Development plan 2022-2028.

15.2.42. Active travel is a key component of a sustainable town. The National Planning Framework, Regional Spatial and Economic Strategy, Kerry County Development Plan and Killarney Town Development Plan and the Climate Action Plan 2024 all identify the need for active travel and sustainable transport as part of the approach to deliver sustainable and compact growth. The County Development Plan has been based on the principle of integrated land use and transport planning and sustainable active travel it is a fundamental component of this integrated approach. The central development plan concept of the walkable or 10-minute town is based on a network of neighbourhoods underpinned by public transport walking and cycling networks and enhance permeability between neighbourhoods and communities. In order to achieve a sustainable future growth of the area it is essential that a modern safe road network can be provided, and on which includes safe and accessible routes for more vulnerable road users. As such the proposed scheme is integral to the achieving these aims.

15.2.43. The planning history of relevance on the site and surrounding site is outlined on the brief of evidence on page 11.

15.2.44. Killarney town area and its immediate surrounds have undergone significant levels of development in recent decades. While the local road network has not developed at the same pace. Given the increased demand placed upon the local road network and lack of suitable alternatives to private car use the area experienced significant congestion at peak hours. Furthermore, the lack of appropriate cycle and pedestrian facilities and public transport has resulted in high levels of car dependency. The County Development Plan and Killarney Town Development Plan support the 10-minute town approach and encourages increased public transport and active travel opportunities. It recognises the local road network challenges in Killarney and identifies targeted movements to sustainable active transport infrastructure through the increased provision of pedestrian and cycle routes. In order to ensure accessibility and safety in the town centre it is essential that a viable cycle and pedestrian infrastructure is delivered in a coordinated manner. In this regard the subject Compulsory Purchase Order acquisition is a key enable to support the sustainable development of the town of Killarney. The

proposed works will provide significant improvements to the existing area in terms of connectivity and includes the provision of high-quality continuous walking and cycling facilities which will provide benefits in relation to the promotion of active travel for communities in this area.

- 15.2.45. In considering the merits of the scheme, having regard to compliance with the National Planning Framework, the Regional Spatial and Economic Strategy, and the County Development Plan and the Killarney Town Development Plan 2022-2028 and other documents considered herein. I certify that the scheme accords with the strategy and development plans and that it complies with the proper planning and sustainable development of the area. The acquisition of the lands which are the subject matter of this Compulsory Purchase Order acquisition herein is reasonable for the necessary implementation of the scheme in question which has received the relevant approval under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) under same.

### **15.3. Inspector clarifies the participation of Killarney Enterprise Centre**

- 15.3.1. John Quill is the objector on file who is stated as the proprietor of Killarney Enterprise Centre. Those attending the hearing stating that you are representing Killarney Enterprise Centre can you clarify that you are acting on John Quill's behalf and that he has given his agreement for you to do so.
- 15.3.2. Ms. Murphy representing Killarney Enterprise Centre confirmed that yes, they had the consent of John Quill who is the co-owner of the property.
- 15.3.3. Inspector stated that she would afford to Killarney Enterprise Centre that they can make a submission to the hearing following the other objectors.
- 15.3.4. Mr. Keane representing Kerry County Council requested that Ms. Murphy provide the name of the other co-owner of Killarney Enterprise Centre. Ms. Murphy responded that the other co-owner is Patrick Diggins.

**15.4. Submission by Harrison O'Dwyer Solicitors representing two objectors (1)  
Pawel Komosa (2) Jaroslaw Dabrowski**

- 15.4.1. Geraldine Kearney, Solicitor acting on behalf of Jaroslaw Dabrowski. Ms. Kearney refers to the submissions on file that have already been lodged on his behalf and dated the 15<sup>th</sup> of March and asks that they be taken into account. The CPO in their client's opinion is unnecessary and unwarranted and it will create a bottle neck and further congestion at Bahrein-Na-Goun. It will lead to excessive congestion in the area and their client would say that no road safety audit or traffic management plan was made available to him. The CPO will have a significant detrimental on the function of this Enterprise Centre. It operates from 8am to beyond 6pm, six days a week. There are currently six tenants which utilise the centre. In relation to car parking, they would utilise at least 12 no. car parking spaces on a daily basis and most days there would be upwards of 30 cars parked there. Many of the businesses there are interdependent on each other and without one the other will not succeed as well.
- 15.4.2. Their client vehemently objects to the Council's submission that his valeting and car wash is unaffected by the CPO and will be unaffected by the project. This is incorrect. He contends that the proposal is substandard in terms of its design and to allow permission would be contrary to proper planning in the area. They urge An Bord Pleanála to refuse the CPO.
- 15.4.3. In relation to Mr. Komosa, Ms. Kearney asks the Board to take into account the submissions which were submitted on his behalf on the 15<sup>th</sup> of March 2022. Again, it is his view that the CPO is unnecessary and unwarranted. That it will lead to excessive congestion in the area. He was not provided with Road Safety Audit or Traffic Management Plans. The proposal would have a significant detrimental effect on the functioning of the Enterprise Centre and in particular his business as a mechanic and carrying out his mechanical business. Many of the businesses and particularly his are interdependent on other businesses in the area. The parking issue, the businesses in their use of in excess of 12 no. spaces and at any given day there would in in excess of 30 no. cars parked in the area. He objects to the Council's submission which indicate that his building is unaffected by the CPO. That is incorrect. He would submit that the proposal is substandard in terms of its design

and to allow it would be contrary to the proper planning and development of the area. He would urge the Board to refuse the CPO.

**15.5. Submission by Stephen Little on behalf of Dunnes Stores (better Valu Unlimited Company)**

- 15.5.1. Stephen Little, Charter Town Planner outlined his professional qualifications and experience. Mr Little refers to the submission on file. The reason that Dunnes Stores are present at the hearing is arising from one particular concern which is that of safety. Dunnes Stores have an existing delivery yard which exits on to Bohereen-na-Goun which throughout the responses to date from the Council have not discussed safety. There is a genuine concern that there is an issue that needs to be resolved and at this point our client's concerns have not been addressed. Dunnes Stores have been in Killarney since 1993. They have been there considerably longer than the scheme design was approved. Dunnes Stores have no objections in principle to the scheme and they wish to work with Kerry County Council to arrive at an acceptable solution.
- 15.5.2. Mr. Little provides details of the vehicular access arrangements to the Dunnes Stores premises. Trucks exit the service yard and turn right. At present cars come to this junction and yield. Initially this was to be a 50kph road now it is to be a 30kph road. Traffic will come around the corner without yielding as trucks from the service yard will be pulling out exiting from the service yard. That doesn't portray a safe manoeuvre.
- 15.5.3. While the wall is being taken down as part of the CPO and will be replaced it is to be replaced. The issue of sightlines and safety of vehicles coming around the corner and the truck drivers driving in to the service yard need to be taken into account as part of this particular consideration.
- 15.5.4. Submission from Eoin Reynolds, Board Director of NRB Consulting Engineers. Mr. Reynolds outlined his professional qualifications and experience. In this case the safety issue relates to two matters. Two matters relate to safety at a major minor junction should as this forward stopping distance of a car coming around the bend so that they can see a truck coming out and sightline for the driver exiting. Within DMURS for a 30kph road forward stopping is 23m from 1.05m off the kerb for

someone coming around the bend exiting to see a truck exiting. Similarly, the sightline requirements are x distance x y distance with 2.4m setback x 23m to the near side running kerb. For 30kph road there is no allowance for departures. Under the old DMURB system there was an allowance for departures. If you want to reduce the stopping sight distance or the sightline then it becomes a lower design speed road and not 30kph. There is no allowance for departures. In circumstances such as this the safety issue normally arises at off peak times and possibly during winter months when a car or a motor bike is coming around the bend and a service truck which are slow and large they can't accelerate quickly out of the way. If a truck is pulling out of the service yard and somebody comes around the bend that doesn't have advanced warning of the vehicle being in the middle of the road that if happen off peak.

15.5.5. Ordinarily such issues would be picked up straight away in a road safety audit. You cannot under DMURS decide to alter the sightline and forward stopping distance.

15.5.6. Dunnes Stores have grave concerns regarding the safety consequences of this scheme on the safe operation of their existing delivery yard.

**15.6. Submission by Elizabeth Murphy, Barrister attending for Terence F Casey Solicitors for Killarney Enterprise Centre representing John Quill**

15.6.1. Elizabeth Murphy, Barrister instructed by Dan O'Connor Solicitor and acting on behalf of John Quill and Patrick Diggins. Details will be submitted in relation to ownership will be submitted at the conclusion of the hearing.

15.6.2. The first point to be raised is that in 2006/2007 Kerry County Council entered into discussions with their clients for a land exchange to address further access to the town centre. That would have obviated the need for the CPO and would have copper fastening their clients interests in his property. That matter is finished.

15.6.3. The second point to be raised is in relation to prematurity. Kerry County Council has responded to the submission. They made a point regarding the permanent loss of car parking that stating that the communal areas will only be 9 spaces from a current total of 22. There are two difficulties with that the loss of 9 spaces would be 40% of the available car parking spaces. In reality it will be more extensive than that because the nature of the site at the moment is that the clients are in a position to store cars

for protracted periods of time having control of them. But given that this is going to be free access parking that there would be a greater impact than 9 of the total 22.

- 15.6.4. In relation to the issue of prematurity, we do see that there was a traffic modelling system carried out By Kerry County Council and that appears in their submission to the Board. The difficulty is that there is no traffic assessment, and they would tie in with Dunnes submission in that regard. There is no evidence based need. What Kerry County Council have established a need for this development they would disagree that there is no qualitative or evidence based need/requirement for this particular CPO. Finally, with regard to prematurity and in particular the parking this is a matter of commercial sensitivity and also needed for the continued commercial success of the estate as it will be left. It is asked that the submission of the 21<sup>st</sup> of March 2022. They don't agree with Kerry County Council particularly in regard to the parking or demonstrating a need for this CPO have fulfilled their duty.

#### **15.7. Submission by Gavin Culloty on behalf of Pat and Mark Culloty**

- 15.7.1. The business operated by the Cullotys is there over 30 years. No consultation occurred. Very little information was available. Reference has been made to a one-way system within the Enterprise Centre. He will ask Kerry County Council to elaborate on this. That would be within the Enterprise Centre and not within the area that they are seeking to CPO.
- 15.7.2. How do pedestrians cross the road from Dunnes Stores to St. Marys Terrace or the Enterprise Centre. He does not see any evidence of a zebra crossing or warnings of crossings. There is on the other side on the drawings but not on the nothing on the Dunnes Stores side to get across.

#### **15.8. Kerry County Council reply to issues raised in the submissions**

- 15.8.1. Mr. O'Connor commented on issues raised by Dunnes Stores. Regarding the yield on the road. A yield sign has a very specific meaning in the traffic design manual. It would not be for public road to yield for vehicles exiting a private entrance. The entrance was described as a major minor junction. It is more correctly described as a direct access onto the road. With regard to DMURS allowing for departures in the caseload of regional and local roads the Local Authority is the Road Authority. It is

correct to say that there is no formal mechanism from the Department of Transport to determine whether a departure is warranted. It is the responsibility of Kerry County Council to determine whether a departure is warranted in any particular location. It is Kerry County Council who are the official authority to make a departure or relaxation on a design standard in a regional local road which this is. In terms of safety particularly the design of the junction it does accord with the Design Manual for Urban Roads and Streets.

## **16.0 Questioning between Parties**

16.1. Objectors [Harrison O'Dwyer Solicitors representing (1) Pawel Komosa (2) Jaroslaw Dabrowski] to Kerry County Council.

16.1.1. One question from Geraldine Kearney to Kerry County Council – In relation to their submission for Jaroslaw Dabrowski. They refer in paragraph two the Council will endeavour to ensure that the lands in plot 1101b are occupied for the shortest practicable period. They required some elaboration on that. What is that period of time as it is fundamental to their client's business. Any occupation of the premises will have a detrimental effect.

16.1.2. In response Brian O'Connor, Senior Engineer, Kerry County Council stated that land is being temporarily acquired for the construction of the wall. Any contractor doing this work will be conditioned as to where they can access the sites, various areas of the site and for how long. We will work with Mr. Dabrowski and including in the contracts with the Contractor in order to establish any restrictions to the site and for how long they might be occupying the site. That area will be constructed in as quick a manner as possible and to minimise the impact to Mr. Dabrowski.

16.1.3. Geraldine Kearney queried are you talking about weeks, months, days?

16.1.4. Mr. O'Connor confirmed that it would be about a week.

16.2. Kerry County Council to Objectors [Harrison O'Dwyer Solicitors representing (1) Pawel Komosa (2) Jaroslaw Dabrowski].

16.2.1. Kerry County Council have no questions for Mr. Dabrowski and Mr. Komosa.

16.3. Objector Pat and Mark Culloty to Kerry County Council



- 16.3.1. Can Kerry County Council elaborate on what they mean by the one-way system. Is it being done by Kerry County Council or the landowners?
- 16.3.2. Second question refers to the crossing of the proposed road when pedestrians are travelling north.
- 16.3.3. Have Damien Ginty and Brian O'Connor from Kerry Co. Council visited the Enterprise Centre?
- 16.3.4. In response Mr. Keane stated that at the moment the Enterprise Centre is a cul-de-sac of St. Mary's Terrace which is a one-way street. The new road will have a new entrance into the Enterprise Centre at the eastern end of same. The Council can only do works on the lands temporarily or permanently acquired by it other than with the doing accommodation works if landowners want them to enter into retained lands. It will be a matter for the owners and managers of the Enterprise Centre to determine the best and most efficient use of the lands within the Enterprise Centre. What the Council's scheme does is that it facilitates the creation of a one-way system which will avoid the necessity for vehicles having to turn within the Enterprise Centre and drive back out. It is an option to the owners and managers of the centre rather than which the Council is dictating to them. It provides a significant opportunity for a better traffic management within the centre than what is there at present.
- 16.3.5. In response to the second and third matters Mr. O'Connor addressed those matters. With regard to the pedestrian crossing, this will be a 30kph road with a footpath on both sides. There isn't a controlled pedestrian crossing put at every location in an urban area where pedestrians are meant to cross the road. It is presumed that Mr. Culloty is referring to the lack of a dropped kerb being shown on the drawing. Kerry County Council will facilitate the provision of dropped kerbs at this location to provide for vulnerable road users. With regard to the other point Mr. O'Connor stated that he had visited Killarney Enterprise Centre on numerous occasions, during the development of the project and recently. Mr. McGinty also confirmed that he visited the Enterprise Centre and the site and adjacent lands which are the subject of the proposed scheme.
- 16.4. Kerry County Council to Pat and Mark Culloty
- 16.4.1. Kerry County Council have no questions for them.
- 16.5. Objector Dunnes Stores to Kerry County Council

- 16.5.1. Stephen Little raised questions. The Scheme was approved in 2005, the first question is his clients are unable to find on the Council's website the Part VIII drawings. In terms of the designer's brief, on figure 2.2 there is a scheme design can it be confirmed that it is the 2005 Part VIII Scheme as approved.
- 16.5.2. In response Mr. O'Connor stated that yes that it the design of the Part VIII approved in 2005.
- 16.5.3. Mr. Little raises another question. In light of the fact that the Scheme was designed in 2005, can you explain how a 2005 Scheme can be compliant with a 2013 document called DMURS.
- 16.5.4. In response Mr. O'Connor stated that alignment was set out in 2005 was in align with the design standards in place in 2005. Design standards get updated as we develop projects the standards which we are complying with get updated accordingly. It is not to say that what was in place in 2005 and 2013 are different from each other as the standards in 2013 were an update of the previous standards. The standards in place in 2005 and 2013 don't change the design of the project.
- 16.5.5. Mr. Little asks given the scheme is a 19 year old scheme, in preparing the CPO has there been a Road Safety Audit on the scheme. Mr. O'Connor responded that there has been a Road Safety Audit. Mr. Little queries whether the requirement for a revised scheme would not arise from a Road Safety Audit. Mr. Little states the general practice with Road Safety Audits is that the designers don't do them, it would normally be an independent assessor or an independent audit firm. He requested that Mr. O'Connor confirm that was the case.
- 16.5.6. In response Mr. O'Connor confirmed that yes that was the case. Mr. Little asks are Kerry County Council able to furnish his client with that Road Safety Audit. Mr. O'Connor stated that they are happy to provide the Road Safety Audit. Mr. Little asks when was that Road Safety Audit undertaken. He notes that Kerry County Council engaged with his clients around 2018 and the CPO was issued in 2022.
- 16.5.7. In response Mr. O'Connor stated that it was carried out in 2019. Mr. Little asks in terms of that Road Safety Audit did that include a DMURS audit. In response Mr. O'Connor stated that by DMURS audit he presumes he is referring to Quality Audit as per the 2019 DMURS which the Road Safety Audit is the main document. Mr. O'Connor confirmed that the Road Safety Audit was completed but the remainder of

the Quality audit was not completed but most of the items in the Quality audit are covered in the Council's design report.

16.5.8. Question from Mr. Little, you have indicated as a Road Authority that the Council can decide to reduce or relax standards under DMURS. In the event that you relax those standards, how does that address the significant safety concern for conflicting traffic movements arising from the articulated vehicles exiting their clients current operational delivery yard and those cars or bikes or motorbikes coming around at 30kph unsighted.

16.5.9. In response Mr. O'Connor stated that he would disagree with the word unsighted. The sightlines are advised by Malachy Walsh who designed this project. The sightlines at that junction would be 14m which is a one step relaxation on the specified 23m in the design standards. That would be an acceptable relaxation. For the Part VIII drawings that did include ramps along this section of Bohereen Na Goun and on the link road and they will reinforce the slow speed on this road and this part of the project.

16.5.10. Questions from Mr. Reynolds, a new design of this nature for a link road should not be reliant upon speed reduction measures such as ramps to offset safety issue. A 14m stopping sight distance is the length of an articulated lorry which is 16.5m. So travelling around that bend on a winter's morning and you have less than an articulated lorries length of forward stopping distance of an articulated lorry coming out of that entrance. These things are fundamental safety issues. Second point, the Road Safety Audit is one aspect of the audit process which is now applied. There is also a quality audit, a DMURS audit. A quality audit is particularly important because it addresses accessibility for pedestrians and vulnerable road users, cyclists and mobility impaired. So those are key aspects which Mr. O'Connor states have not been done.

16.5.11. In response Mr. O'Connor states that he fully agrees that ramps should not be used to enforce the speed limit they are used to maintain the speed limit in an area which will already have a low-speed limit. One thing not mentioned that the overall operations and internal workings of the yard that this was going to become an entrance only as part of this project. Mr. O'Connor stated that if Dunnes don't agree and this does not become an entrance only that they have designed a safe access

for Dunnes, but that did form part of their discussions at the time that it would become an entrance only into the yard. There is a second exit on the opposite side of the yard which so vehicles will not turn in the yard and exit out as before.

Regarding the second point, the quality audit, the road safety audit does also address pedestrian and cyclist issue. The Road Safety audit is the substantial document in a Quality audit. The other issues in the quality audit are addressed in the design report.

16.5.12. Mr. Reynolds, to address this issue of entrance only which he understands hasn't been agreed. With entrance only you still have an issue with forward stopping distance. With an articulated lorry turning in you still have its tail end overhanging the nearside and if someone comes around the bend. So, an entrance only is irrelevant in terms of stopping sight distance.

16.5.13. Response from Mr. O'Connor the entrance that is proposed would represent a significant improvement on what is there at present. Dunnes Stores car park is a heavily trafficked car park it is a private road at present. From that point of view are issues that are there at present will be addressed with the provision of a new entrance in terms of sightlines and poor visibility.

16.5.14. Mr. Little, Dunnes Stores have engaged with Kerry County Council a number of times to try to resolve with them this particular issue and the Council are well aware of Dunnes's issues. A number of possible solutions were muted and tabled. Nothing was agreed. Dunnes have their delivery yard located at this particular junction, where there is an exit onto Bohereen na Goun by HGV's on a 30kph road where the CPO will remove the junction and make it easier for cars to come around the corner at that speed and will light upon these vehicles exiting that establishment. Dunnes Stores are seriously concerned that it is going to give rise to safety issues for both road users and their own delivery personnel. They are disappointed that another design solution has not been brought forward by Kerry County Council in this particular case. It is not for Dunnes Stores to resolve the design. It is for the designers themselves to do so.

16.6. Kerry County Council to Dunnes Stores

16.6.1. Mr. Keane, can you confirm that there is in fact a full access from the service yard out into the car park from the rear.

- 16.6.2. Mr. Little responds, the access in is in one direction and there is an exit out from another. From the same road but a different part.
- 16.6.3. Mr. Keane states from the service yard there is a full entrance into the car park, which is at the rear of Dunnes Stores, isn't that correct.
- 16.6.4. Mr. Little in response stated that there is signage relating to what Mr. Keane is referring to on site. But directly, to the question there is a means of access but currently it is restricted through that signage.
- 16.6.5. Mr. Keane responds that the signage is a green sign put up by Dunnes saying exit only at the front entrance on the wall. But that is internal to Dunnes Stores. Mr. Keane states that there is a full width entrance for vehicles to travel from the service yard to and from the car park at the rear of the Dunnes Stores premises.
- 16.6.6. Mr. Little replies there is that road, but it does have signage which restricts access.
- 16.6.7. Mr. Keane states that there is also a full size entrance into and out of the service yard from the large car park to the rear of the Dunnes Stores. Mr. Keane states that he takes that as given.
- 16.6.8. Mr. Keane states that the only yield sign at the top of St. Mary's Road is relates to traffic already on Bohereen Na Goun and St. Mary's Terrace to the north is one-way travelling north. There is no traffic from the right coming to that yield sign. No traffic approach from the right onto this bend because the spur of St. Mary's Road is one-way. The yield sign painted on the road is gone. There is no entitlement for a truck from Dunnes to pull out in reliance on the fact that there is a yield sign at a junction right beside it, isn't that correct.
- 16.6.9. Mr. Little replies that he is not a traffic expert but on the point of view on how the delivery yard functions that yes that yield sign is of assistance during its safe operation.
- 16.6.10. Mr. Keane states lets have your traffic expert Mr. Reynolds deal with the question. Under article 26 of the Roads Traffic Signs Regulations of 2024 a yield sign RUS 26 is erectable in a situation whereby you have traffic on a minor road meeting a junction with a major road. Those are the circumstances where a yield sign is applicable isn't that right.

- 16.6.11. Mr. Reynolds, states that he takes it Mr. Keane is correct as he is the legal expert.
- 16.6.12. Mr. Keane states as matters stand if you come out of that storage yard, you have extremely small visibility to your right-hand side. Is that fair to say.
- 16.6.13. Mr. Reynolds replies yes that when there are no customers because most of the service vehicles are going in at 8am when there is no customer traffic on that road leading to the Dunnes Stores car park. At the moment there is a low risk. The sightline requirements are that you can get 2.4m setback or 2m with reduced visibility all you are required to do is to be able to see the car yielding at the stop line. When this becomes a through road for public road traffic at 7am when there is no customers going in and out to Dunnes through traffic comes around that corner and a truck is exiting the requirement is 23m forward stopping distance to see that coming around the corner.
- 16.6.14. Mr. Keane states that he understood that Mr. Reynolds is an independent engineer and queries if he is working for Dunnes.
- 16.6.15. Mr. Reynolds replies that he is working for Dunnes but that he is an independent engineer. He is a Consulting Engineer who is employed to represent Dunnes in this case.
- 16.6.16. Mr. Keane states that Mr. Reynolds gave details in relation to limitations on deliveries in the Dunnes Stores storage yard, where did he get them from. Were they issued to Mr. Reynolds in writing, has he seen a copy of them and can he share of copy.
- 16.6.17. Mr. Reynolds replies that there are no limitations that he simply knows the operations and the store opening times are not until 8am. Mr. Reynolds states that he has no instructions in relation to delivery times.
- 16.6.18. Mr. Keane states that in relation to delivery times was that a guess on the part of Mr. Reynolds or did he receive instruction in writing from Dunnes Stores or has he seen any such direction to its suppliers. Mr. Reynolds replies no to the questions asked. He received no instruction in relation to limitations on deliveries.
- 16.6.19. Mr. Keane states that if you look at what Mr. Little has shown on the screen that there is no yield sign painted onto the road as matters stand is there.

- 16.6.20. Mr. Little states that it is a google map when can be blurred and that one wouldn't be relying on that.
- 16.6.21. Mr. Keane states that if you visit the location today there is no yield sign painted on the road. When the new road is put in there is going to be a significant improvement in sight distances and you will have a position which is far better where there will be a footpath as opposed to no footpath on the other side of the road. There will be speed limitations which don't exist at the moment for the significant amount of vehicles coming in and out of the Dunnes Stores car park and indeed the Eircom premises at the end of the road also.
- 16.6.22. Mr. Little states that Mr. Keane has provided a lot of traffic evidence. Mr Reynolds states he has worked as an Engineer working in the industry for 34 years and no that it does it resolve the safety issues. Just because something is substandard now doesn't mean that you replace it with something which is substandard in the future. The proposal by Kerry County Council, in Mr. Reynolds professional opinion does not resolve the safety issues and represents a serious safety issue.
- 16.6.23. Mr. Keane asks is there any reason why traffic cannot be simply reversed where you enter the from this entrance and you exit on the far side where you have a safe and adequate and large entrance into the car park.
- 16.6.24. Mr. Reynolds replies that you still have the forward stopping distance of an entering truck into that point. Dunnes would have to change their entire operational requirements and the tracks of those HGV's exiting at the far end would need to be doubly checked. So, it will remain a safety issue in those circumstances.
- 16.6.25. Mr. Keane asks traffic entering the site if somebody is coming from the new road, the rear of that truck will be visible exactly the same way as any vehicle stopping etc as motorists are required to maintain a safe distance between them and the vehicle in front. Traffic turning right will be starting from a point well out from the verge and accordingly, will have a far better sight distance and similarly vehicles approaching will have a far better sight distance of that truck. In terms of the vehicle movements at the far end, he takes it that if there had been any difficulty then Mr. Reynolds would have been in a position to ascertain that. Therefore, Mr. Keane is suggesting that there is no difficulty in at the far end in terms of requiring vehicles to

travel one-way through the system as it is at the moment but simply reversing direction.

16.6.26. In response Mr. Little answers, Dunnes Stores has been engaged with Kerry County Council for quite some time their concerns have been raised. He doesn't believe that any alternative scheme has been provided to them to review, that depict what Mr. Keane is talking about. It is an extant functioning service yard and extant functioning Dunnes Stores since 1993. What may happen in the future is not in the gift the hearing. Kerry County Council have had more than enough opportunity to come up with viable possible alternatives to solve this issue before now. It is not really helping this hearing asking Dunnes Stores to agree those alternatives are possible. That would require quite detailed analysis, safety audits, consideration in relation to business operational issues. A wide range of issues therefore they are not going to engage in that point. They are raising genuine concerns as a business around the safety and operation of that delivery yard today were the scheme permitted through the Part VIII being proceeded with.

16.6.27. Mr. Reynolds stated that any option such as is being suggested by Kerry County Council would need thorough examination, which hasn't been done.

16.6.28. Mr. Keane states that these are matters which are internal to the Dunnes Stores service yard and it is not the case that the Council can tell Dunnes what to do internal to their property. It is a simple step to reverse traffic flow through a yard from one direction to the other direction. It is not a major reorganization would you agree or disagree.

16.6.29. Mr. Little states that Dunnes Stores has engaged fully with Kerry County Council over a number of years. Yes, there have been discussions about a number of solutions none of which were formally approved. None of which were agreed. As things stand Kerry County Council have brought a CPO based on an existing current position and this is what is being discussed with the delivery yard exiting onto the road currently. Kerry County Council are suggesting that they will develop a road on that extant scenario. Mr. Little would disagree with the question raised by Mr. Keane.

16.7. Objector [Elizabeth Murphy, Barrister attending for Terence F Casey Solicitors for Killarney Enterprise Centre] representing John Quill to Kerry County Council.



- 16.8. Kerry County Council to [Elizabeth Murphy, Barrister attending for Terence F Casey Solicitors for Killarney Enterprise Centre] representing John Quill to Kerry County Council.
- 16.8.1. Dan O'Connor, solicitor. They have two questions. First question, they want to ask whether or not the representatives of Kerry County Council can confirm whether they are aware of the discussions which took place in 2006 regarding the exchange of lands. Secondly, if the representatives of Kerry County Council can confirm that in the reply to their submission that they received where they refer to the setting up of a one-way system which would facilitate the introduction of more formal parking on both sides of the access road. Could they give a little bit more information on that and can they confirm that is internal to the enterprise centre and that there has been no specifics no designs etc that has been furnished regarding same.
- 16.8.2. In response Mr. Keane stated that another objector raised the issue in relation to the first party of your question. The one-way system would be entirely internal to the Enterprise Centre. The only thing that the Council are doing are giving them a second entrance/exit onto the new road. What they do on the lands that they retain is a matter entirely for them. As to the question about negotiations back in 2006, Mr. O'Connor stated that he did meet Mr. John Quill on site and that he did mention those previous discussions. Mr. O'Connor states that he wasn't part of them or had any further awareness of the details that formed part of those discussions. He understands that they concluded a number of years ago.
- 16.9. Kerry County Council to [Killarney Enterprise Centre] representing John Quill
- 16.9.1. Mr. Keane asks can he take it that there is no lease of car parking spaces specifically.
- 16.9.2. Dan O'Connor in response stated that while there may be no specific lease in respect of car parking that you have a scenario where tenants have been in occupancy for a considerable period. That have been utilising car parking ancillary to their premises.
- 16.9.3. Mr. Keane clarifies can he take it that there is no written or formal lease as to car parking spaces. Dan O'Connor states, certainly not that they are aware of. Mr. Keane asks what the period of the leases are of Mr. Dabrowski and Mr. Komosa.

16.9.4. Dan O'Connor states that it appears that the periods may not actually be defined. It appears that the tenants are in situ for a considerable period. On a formal unwritten basis. Elizabeth Murphy clarifies that there was a written lease put in place for Mr. Komosa in December 2009. That lease has been in place since. It wasn't updated but there was a written lease in place. For Mr. Dabrowski there is a lease in place since March 2010 and there was a written lease in place.

16.9.5. Mr. Keane asks were the periods of those leases the four years nine months or what were the duration of those leases. Elizabeth Murphy states an initial period of two years. Both tenants have been in situ since without break. Mr. Keane asks how frequently the rent is paid. Elizabeth Murphy replied that the rent is paid monthly. Mr. Keane clarifies that they are there on a monthly periodic tenancy since the expiry of those leases in or abouts 2011/2012. Elizabeth Murphy confirms yes to that question.

16.10. Inspector to Kerry County Council.

16.10.1. Question for Kerry County Council, can you please clarify the status of the Part VIII for the construction of a road linking Bohereen Na Goun to Monsignor O'Flaherty Road. Can you confirm the legal status of that.

16.10.2. In response Mr. Keane stated that the legal status is that the Part XI of the Planning and Development Act, Part VIII of the Planning and Development Regulations went before the members of Killarney Town Council which was then the Local Authority for the area in question in 2005. Under Section 179 subsection 4 of the Planning and Development Act of 2000 the members considered the report of what would have been then the Manager and is now the Chief Executive and it is then up to the members to resolve not to proceed with the project or to vary or amend same otherwise then in accordance with what is now the Chief Executive's recommendation. If they do neither of those actions, the matter then is approved under section 179. So, it doesn't require a positive as it were, it is simply the absence of a negative. Members did consider the report and determined not to either vary other than in accordance with the Manager's recommendations and did not resolve not to proceed. Accordingly, it stood approved. Thereafter Killarney Town Council was dissolved under the provisions of the Local Government Reform Act of 2014. Pursuant to Section 25 of that Act all actions, decisions made by the Town

Council remained and continued in full force and effect. So, while the functions got transferred to the County Council the validity of the Part VIII/Part XI remained entirely valid and remained effective.

16.10.3. Inspector – Question: In terms of the exploration of alternatives to the subject route can you elaborate upon at what stage this was carried out. Was it when the Part VIII was originally put forward and approved or when the Killarney Town traffic model/Traffic management study was carried out.

16.10.4. In response Mr. O'Connor stated that in terms of this current proposal this CPO before us now to ensure that everything was in accordance with best practice the consideration of alternatives was reviewed. It is as outlined in the design report in the brief of evidence. Trying to join the two cul-de-sacs Bohereen Na Goun and Monsignor O'Flaherty Road it was to provide a design that complies with the design standards and has as little impact on existing buildings. When you have a look at that on the maps it is a very constrained site. With limited alternatives to be considered. The route that is as presented here is the only viable option for connecting those two current cul-de-sacs.

16.10.5. Inspector, the route that you are proposing was decided at the Part VIII stage is that correct. Mr. O'Connor states that he is not sure what alternatives were considered at the Part VIII stage but in advance of us submitting the CPO we did a review of the alternatives, and they concluded that the road as proposed in the Part VIII was the only viable alternative for linking the two routes.

16.10.6. Inspector, returning to the consideration of alternatives, going back to the CPO stage can you elaborate a little bit more in terms of the considerations of alternative within the confines of the Part VIII route. Mr. O'Connor, the route as chose for this wasn't on the basis that we had the Part VIII it was reviewed fully. In terms of linking the two cul-de-sacs. What is shown is the route with existing buildings in place which shows how limited and constrained the site are. Mr O'Connor highlighted the location of the surrounding existing buildings the garage and car wash of Mr. Dabrowski and Mr. Komosa, the Dunnes Stores service yard and the Eir building which is the exchange for Killarney. It has a lot of buried fixtures. They were left with very limited consideration of alternatives. The route as proposed in the Part VIII was deemed to be the only viable option given those constraints.

- 16.10.7. Inspector, question to Kerry County Council, can you confirm that the proposed acquisition of the subject lands is proportionate and that there is a clear rationale basis for the permanent and temporary acquisition of the subject lands.
- 16.10.8. In response Mr. O'Connor addressed the matter. He confirms as provided in the brief of evidence and as presented to the Board that the lands to be acquired are proportionate and are needed for the construction of the scheme. In terms of the temporary acquisition of land, what was in the Part VIII was reconstruction of boundary walls, similar in nature to walls that are there. The proposed walls are quite high and in the construction of the foundations and walls themselves the temporary acquisition of lands is to facilitate the safe construction of those walls against the adjoining landowners.
- 16.10.9. Inspector – question for Dunnes Stores: Referring back to this issue of ownership. Can you please clarify the name of the relevant company who is in ownership of the lands which are subject to the CPO.
- 16.10.10. In response to the matter, the entity is Better Valu unlimited Company.
- 16.10.11. Inspector – To clarify in the amendment that Kerry County Council has submitted they have named four different company names. So, you are clarifying that this one name is the correct company name in the ownership of the lands.
- 16.10.12. In response, Mr. Little states, that as you have said that Kerry County Council have included quite a number of entity names. But they confirm that the correct entity is Better Valu unlimited Company.
- 16.10.13. Mr. Keane asks can they confirm that Better Valu unlimited Company is not only the owner of the lands but also the occupier.
- 16.10.14. In response, Mr. Little states Dunnes Stores are in occupation. Mr. Keane states that there are three columns in the CPO. One is owner, one is occupier, and one is lessee. Dunnes Stores while a trading name is not a legal person.
- 16.10.15. In response, Mr. Little confirms that Better Valu unlimited Company are the owner and occupier of the lands.
- 16.10.16. Mr. Keane, states that on that basis to deal with that neat point. The Council has included Better Valu unlimited Company as you will see in the schedule. Just in case there is any error within communications within Dunnes. They would still look

for all the other bodies to joined. They are all owners or reputed owners, lessees or occupiers as it were. That is not to say categorically that the Board have to be satisfied that each and everyone of them has an ownership interest. The essential thing is that the Council include the right owner. If somebody is included that isn't in fact an owner or occupier no harm comes of that. Mr. Keane asks that the Board include the other bodies just in case, but they are in the Boards hands in that regard.

16.10.17. Mr. Keane requested that the address of Mr. Diggins be provided. Mr Keane stated that Ms. Murphy stated that she represented not only Mr. John Quill but also Mr. Patrick Diggins. Mr. Keane sought the address of Mr. Diggins, and he would apply to join him as a co-owner of the Enterprise Centre in light of the representations made on his behalf. If the address can be provided, if not then he could be joined at the address of the Enterprise Centre Killarney.

16.10.18. Mr. Dan O'Connor provided the address; Leagh, Ballyduff Co. Kerry.

## **17.0 Closing Comments**

17.1. Harrison O'Dwyer Solicitors representing two objections (1) Pawel Komosa (2) Jaroslaw Dabrowski.

17.1.1. Geraldine Kearney Solicitor – Ask the Board to confirm that both of their clients have been included in the CPO schedule as lessees and occupiers.

17.2. Gavin Culloty representing Pat and Mark Culloty

17.2.1. Have Pat and Mark Culloty been included as lessees on the CPO. Mr. Keane stated that no they haven't been as they claimed any lessees of that area nor have, they claimed occupation of the area.

17.3. Dunnes Stores –

17.3.1. They reiterate the very real concerns of their client and that has been heard from evidence from Mr. Reynolds in relation to safety concerns around and associated with the exit from the existing delivery yard on the road in question. You have seen evidence from Kerry County Council that the scheme that was designed in 2005 and the scheme that was revaluated through the alternatives around 2019 will all have been on the basis of the exiting movement from that delivery yard. Dunnes Stores have engaged and wish to continue to engage with Kerry County Council to resolve

this safety issue. They consider it would be appropriate to adjourn the hearing to allow Dunnes Stores and the Council to arrive at an acceptable design solution within this CPO process. They considered that is the appropriate approach to take. They don't believe that the evidence provided by or on behalf of Kerry County Council has in any way addressed the safety concerns that have been raised.

17.4. Killarney Enterprise Centre on behalf of John Quill

17.4.1. No closing comments.

17.5. Kerry County Council

17.5.1. The position from the Council's point of view is that the development of the scheme underlying the CPO herein has been shown to be required in the public interest and will meet a significant community need. The CPO and the scheme underlying same have been shown to be proportionate. Balancing on the one hand the public interest to be achieved as against the interference with the property rights of affected landowners on the other. There are no viable alternatives as Mr. O'Connor's evidence has demonstrated that achieve the same public good while achieving the limits on the acquisition of lands by way of CPO and limiting interference with property rights. The design of the new road achieves a significant improvement in relation to sight distances to and from the Dunnes Stores yard owned by Better Value unlimited company or one of the associated companies the subject of the proposed amendments to the CPO schedule herein.

17.5.2. One comment that was made earlier is that in a sense the County Council are faced with a status quo on the part of Dunnes Stores that is set in amber. That is not correct. The adjoining landowners may well be affected by the CPO herein and that is acknowledged, and it will be subject to compensation claims in due course. That may well require internal revisions of layouts. Internal revisions of rights of direction etc in the storage yard which as matters stand is fairly long and narrow and has a one-way system going through it. It is not to say that the proper planning and sustainable development of the area can be held up by a landowner who has two potential entrances and exits saying that they wish to continue to use this one way not reversing that direction. So that is simply not correct that if there any damages from that then that is not a matter for this hearing to consider. No landowner can hold the entire public interest of the area to ransom by saying until I am happy you must

either continuously adjourn the hearing, or you must give way to whatever direction I decide by virtue of some reason. They note that they had asked was there any particular reason. The Board will have on the transcript the response.

17.5.3. Here you have a new road which is being proposed which will in fact improve accessibility to and from the car park to Dunnes Stores. So, people may now approach from the other direction and not have to pass this entrance to the storage yard at all and simply access the main car park. It is an extremely large car park holding a large number of cars and within that there is a very safe and very large entrance into the storage yard itself in relation to the matter. So, this road and it is noted that Dunnes Stores do not object to the road in principle in relation to it. This road does however have to act within the confines within the area and clearly there are lands being taken from the Killarney Enterprise Centre and indeed from Dunnes. Those lands are required for the scheme. They have been minimised to the extent necessary and the temporary acquisitions are matters which will be dealt with as a matter of expediency and urgency by the contractors. Mr. O'Connor has outlined that. It will provide greater and safer accessibility and greater sight distances for the entrances in relation to that matter. It will also improve accessibility for the Enterprise Centre itself. Whereas matters stand some of the car parking is somewhat disorganised. They will now be able to use a one-way system if they choose to do so. That is a matter which is entirely up to the landowners to determine and by doing so will be able to increase some of the traffic and better use the area of retained lands while acknowledging that there are lands being taken from that landowner. Claims that are properly the subject matter of compensation are a matter for another day.

17.5.4. The Council's view is that given the minimisation of the lands required for the CPO, given the public benefits of the scheme and the improved connectivity and accessibility within the town of Killarney and given that the interference with property rights has been minimised to an extent where only some 0.3 acres of actual private lands are being taken a further 0.2 acres of public road are being taken for the scheme that the Council have absolutely achieved only the best outcome for the area in question. They have achieved a very proportionate response in terms of the CPO and alternatives have all been considered and considered at various stages and most recently in relation to the matter. Obviously if there was any better

alternative the Council would have returned and could have gone back to the members in relation to it of what is now the Council. But this is an alternative which Mr. O'Connor has demonstrated is limited by the confines of the premises and buildings and houses to the north, some of which are protected structures and the Council have achieved what is undoubtedly a fine line in terms of balancing community interest with minimising the interference and they contend to the Board that they have achieved a very good result on the matter. There is no need for an adjournment of the hearing. The parties have all been heard in relation to the matter. This is a confirmation of a CPO, it is not an environmental impact assessment nor is it an appropriate assessment in relation to the matter. The Board are well aware of its functions in that regard. Accordingly, it is commended to the Board the scheme and the CPO. It is requested that the Board make the amendments on the CPO schedule as has been proposed and with the addition then of Mr. Patrick Diggins of the address of Leagh as furnished by his solicitor in relation to the matter. Mr. Keane thanked the Inspector the members of the Bord Pleanála staff and the witnesses from Kerry County Council in relation to the matter and to thank all of the objectors who have made it a very meaningful hearing and who's participation is acknowledged. The sacrifice in terms of having land CPO'd is certainly acknowledged also in aid of the common good.

## **18.0 Closing of Hearing by Inspector**

18.1. The Inspector made a closing statement and thanked everyone for their participation.

18.2. The hearing was closed.