



An
Bord
Pleanála

Inspector's Report ABP 319295-24

Compulsory Purchase Order

Application for confirmation of compulsory purchase order of land for the purposes of the Housing Act 1966, as amended.

Location of Lands:

Bishop Street/Island Road, Limerick City.

Local Authority

Limerick City and County Council

Local Authority Ref.

22001

Objectors

Irish Wheelchair Association

Mercy Trust SCP Company Limited

Date of Oral Hearing

15th May 2025

Date of Site Inspection

22nd April 2025

Inspector

Brendan Coyne

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1.0 Introduction

1.1. Overview

- 1.1.1. On the 1st March 2024, Limerick City and County Council made a Compulsory Purchase Order under Section 76 of the Housing Act, 1966 (as amended) for the compulsory acquisition of land at Bishop Street/Island Road, King's Island, Limerick City. On the 07th March 2024, Limerick City and County Council applied to An Bord Pleanála for confirmation of the above-mentioned Compulsory Purchase Order (CPO). If confirmed by the Board, the Order will authorise Limerick City and County Council to acquire the land compulsorily for the purpose of the Housing Act, 1966 (as amended).
- 1.1.2. An Bord Pleanála received two objections to the CPO. On the 3rd May 2024, An Bord Pleanála received a letter from the Irish Wheelchair Association, the owner of the subject land, objecting to the CPO. The Board also received a letter on the 27th March 2024 from Martin Tynan O'Donovan Solicitors on behalf of Mercy Trust SCP Company Limited, objecting to the CPO on the grounds of their having the right of way over the lands.
- 1.1.3. An Oral Hearing was held on the 15th May 2025. This report considers the issues raised in the objections submitted to the Board and, more generally, the application to acquire the site.

1.2. Purpose of the CPO

- 1.2.1. The stated purpose of the CPO is to:
 - a) Compulsorily acquire the land to which the Order relates, to provide housing and a new public street. The lands are described in Part II of the First Schedule attached to the CPO and are shown on the map marked Map No. AG/5206, and
 - b) Extinguish the private right of way described in Part II of the Second Schedule attached to the CPO.
- 1.2.2. The CPO is stated to be for the purpose of Section 76 and the Third Schedule of the Housing Act 1966, as amended by the Planning and Development Act 2000 (as amended).

2.0 Site Location and Description

- 2.1. The site (0.303 Ha) comprises a single plot extending from the eastern side of Bishop St. to the western side of Island Road in King's Island, c. 1km north of Limerick city centre. The site is irregular in shape, with an overall length of c. 52 metres and an overall width of c. 72 metres. The site is vacant, and its ground cover is mostly under grass.
- 2.2. Saint Mary's Convent of Mercy and Cemetery (Protected Structure Ref. 3006) adjoins the northern boundary, and a two-storey building adjoins the western boundary fronting Bishop Street. Saint Mary's National School (Protected Structure Ref. No. 3343) adjoins the southern boundary. Limerick City Wall, a Protected Structure (RPS No. 3002), is present at the northern end of the site. The eastern boundary is defined by an old stone wall covered in ivy and vegetation, and gated access flanked by two stone pillars. There are two Recorded Monuments on the subject lands. Along the northern boundary, the Recorded Monument (Ref No. LI005-017121) comprises a 'Burial ground' associated with the medieval St. Saviour's Dominican Priory. Towards the centre of the site, the Recorded Monument (Ref. No. LI005-017051) comprises a 'Barracks' dating from the reign of Charles II (1660-85).
- 2.3. A gated entrance along Bishop Street provides a tarmac-surfaced vehicular access through the site to the Sisters of Mercy car park to the rear of the convent. A public footpath and landscaped grass strip adjoin the site's roadside boundary along Island Road. Adjacent lands to the east and west of the site are characterised by residential development. St. John's Castle, a restored medieval castle and visitor attraction, is located c. 90m to the west. The Catherine McCauley House nursing home is located further north of the site, adjacent to Saint Mary's Convent of Mercy.

3.0 Application for Confirmation of CPO

- 3.1. This CPO of the subject land at Bishop Street / Island Road, Limerick, is made under Section 76 and the Third Schedule of the Housing Act 1966, as amended.
- 3.2. The stated purpose of the CPO is:

- c) to permanently acquire compulsorily, for the provision of housing and a new public street, the lands described in Part II of the First Schedule attached to the CPO, and as shown on the map marked Map No. AG/5206, and
- d) to extinguish the private rights of way described in Part II of the Second Schedule attached to the CPO.

3.3. The CPO states that land described in Part II of the First Schedule and coloured in grey and outlined in red on the deposited map, is land other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.

3.4. Part II of the First Schedule describes 0.309 hectares of land on Kings Island, Limerick, with the owner or reputed owner listed as the Irish Wheelchair Association. Lessees or reputed lessees and occupiers are listed as "None".

3.5. The official seal of the Housing Authority was affixed to the Order on 01st March 2025, signed by Limerick City and County Council's Chief Executive and authenticated by a Senior Executive Officer from Corporate Services. The Order was issued to the Irish Wheelchair Association on the 01st March 2025. The Order was also issued to Sean Reynolds and all other persons who may have right of way over the land on the 01st March 2025.

3.6. A copy of the Order and the map referred to in it were made available to be seen at the offices of Limerick City and County Council, at Corporate Headquarters, Merchant's Quay, Limerick and Council Offices, Dooradoyle, Limerick between the hours of 9.00 a.m. and 5.00 p.m. on working days between the 6th March 2024 and the 7th May 2024 and on the Council's website. The notice of the Compulsory Purchase Order, for the purposes of the Housing Act 1966, was published in the Limerick Leader on the 09th March 2024. Notice of the CPO was erected on the site on the same date.

3.7. **Accompanying Documents**

3.7.1. The following documents accompany the application.

- The Compulsory Purchase Order, signed and sealed by the Chief Executive and Senior Executive Officer, dated 01st March 2024.
- Chief Executive's Order dated 01st March 2024.

- Public Notice from the Limerick Leader, published on the 09th March 2024.
- Copies of the CPO Notices sent to the landowner and other persons who may have a right-of-way over the land.
- Certificate of service of CPO notices.
- Copies of Site Notices.
- Certificate from Joe Delaney, Director of Services, to the Chief Executive, dated 21st February 2024.
- Report from Ms. Clióna Corry, Senior Executive Architect, to Joe Delaney, Director of Services, dated 20th January 2024. This includes three appendices, including:
 - A. Copy of a presentation on the site to the Strategic Capital Management Team,
 - B. Residential site capacity analysis
 - C. Opinion of Value from Young Brokers, dated 03rd November 2022.
- OS Map showing the land being acquired outlined in red and the right of way to be extinguished hatched in yellow.

4.0 Planning History

4.1. Subject Site

- 4.1.1. **P.A. Ref. 08770082** Permission granted on 17/10/2008 to the Irish Wheelchair Association for the construction of a mixed-use development to include a Resource and Outreach Centre comprising retail, dining, recreational, therapy and administration facilities, 4 no. apartments, car parking, widening of entrance gate opening onto The Island Road for service and emergency use and erection of new gates to same, landscaping and all associated site works. The site is within the curtilage of a Protected Structure, and it is of archaeological interest.

4.2. Adjoining Sites

P.A. Ref. 13770055 Permission granted on 27/08/2013 to the Sisters of Mercy for the construction of a commemorative garden to enhance the existing private cemetery as well as the erection of a new railing along the boundary between the property and the adjoining site. The proposed works are within the curtilage of a Protected Structure (Ref. No. RPS006). The site is of archaeological interest.

P.A. Ref. 02770399 Permission granted on the 29/04/2003 to the Congregation of the Sisters of Mercy for the construction of a five-storey convent building, and external works consisting of enclosed yard, patio and meditation garden, car park, driveway, footpaths, walls, railings and landscaping and connections to existing public services. The site is of archaeological interest.

P.A. Ref. 201410 Permission Granted on 16/09/2021 to Sean Reynolds for the change of use from commercial unit to 2 no. studio apartments and 4 no. 2-bedroom apartments and all associated site works.

5.0 Policy Context

5.1. National Policy

5.1.1. Housing for All: A New Housing Plan for Ireland, 2021

5.1.2. The Housing for All Plan, published by the Irish Government on 2nd September 2021, replaces the 'Rebuilding Ireland Strategy' launched in 2016. The overall aim of the plan is that: Everyone in the State should have access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life. The plan sets a goal of 33,000 new homes per annum until 2030.

5.1.3. The Plan provides four pathways to achieving four overarching objectives:

- Supporting home ownership and increasing affordability.
- Eradicating homelessness, increasing social housing delivery and supporting social inclusion.
- Increasing new housing supply; and

- Addressing vacancy and efficient use of existing stock.

5.1.4. Each of the pathways contains a comprehensive suite of actions to achieve these Objectives. Pathway 4, *Pathway to addressing Vacancy and Efficient Use of Existing Stock*, seeks to ensure through a range of incentives and other measures that existing housing stock is utilised to the fullest extent possible. The key measures to be introduced to achieve this objective include:

- The implementation of a CPO Programme for vacant properties, the objective of which will see Local Authorities acquire at least 2,500 vacant units by 2026 and present them to the market for sale.
- Introduce a new Tax to activate Vacant Land for residential purposes, to replace the Vacant Site Levy.
- Launch a new Compulsory Purchase Order (CPO) Programme to tackle vacancy in towns and villages.
- Use CPOs to target up to 2,500 vacant properties for onward sale.
- Introduce a new programme for the CPO of vacant Q4 2021 DHLGH, LAs, Housing properties for resale on the open market.
- Support for Local Authorities to purchase and resell up to 2,500 of the identified vacant properties in their areas. Compulsory Purchase Order (CPO) powers will be used where necessary. Local Authorities will be supported by Housing Finance Agency funding.
- Incorporate activation of vacant properties as key criteria in the Urban Regeneration and Development Fund (URDF) and the Rural Regeneration and Development Fund (RRDF).

5.1.5. **National Planning Framework – Project Ireland 2040**

5.1.6. 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.

5.1.7. Key national policy objectives include:

NPO 33 Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

NPO 35 Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.1.8. **Climate Action Plan 2025**

5.1.9. The Climate Action Plan supports developments under the National Residential Retrofit Plan during 2024, including the Compulsory Purchase Orders Activation Programme for Local Authorities, launched in April 2023, which supports local authorities to take a proactive, systematic, and coordinated approach to identify and activate vacant and derelict properties.

5.2. **Regional Policy**

5.2.1. **Southern Regional Spatial and Economic Strategy (RSES)**

5.2.2. The Southern Regional Spatial and Economic Strategy emphasises the importance of using vacant land and property to enhance housing provision. Key objectives include:

RPO 10 a. Prioritise housing and employment development in locations within and contiguous to existing city footprints where it can be served by public transport, walking and cycling.

Identify strategic initiatives in Local Authority Core Strategies for the MASP areas, which will achieve the compact growth targets on brownfield and infill sites at a minimum and achieve the growth targets identified in each MASP. Such strategic initiatives shall comply with MASP Goals to evolve innovative approaches for all MASPs. Initiatives may include:

- The identification of public realm and site regeneration initiatives which combine, on an area wide basis, opportunities for regeneration of private owned underutilised sites, public owned underutilised sites, private and public buildings and upgrade of parks, streetscapes and public realm areas;

5.3. County Development Plan Policy

5.3.1. Limerick Development Plan 2022-2028

Zoning The site is zoned 'City Centre', which has the objective 'to protect, consolidate and facilitate the development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities'. (Chapter 12, Section 12.3).

Flood Zone: The site is located in Flood Zone A

Policy CAF P5 Managing Flood Risk It is a policy of the Council to protect Flood Zone A and Flood Zone B from inappropriate development and direct developments/land uses into the appropriate lands, in accordance with *The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009* (or any subsequent document) and the guidance contained in Development Management Standards and the Strategic Flood Risk Assessment (SFRA). Where a development/land use is proposed that is inappropriate within the Flood Zone, but that has passed the Plan Making Justification Test, then the development proposal will need to be accompanied by a Development Management Justification Test and Site-Specific Flood Risk Assessment in accordance with the criteria set out under *The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009* and Circular PL2/2014 (and any subsequent updates). This will need to demonstrate inclusion of measures to mitigate flood and climate change risk, including those recommended under Part 3 (Specific Flood Risk Assessment) of the Site Specific Plan Making Justification Tests detailed in the SFRA.

Strategic Objective 4 Protect the unique character of Limerick. Support and facilitate revitalisation and consolidation of the City, towns and villages, through public realm and place-making initiatives. Address vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest. Ensure the highest quality of public realm and urban design principles are applied to all new developments, including the construction of landmark buildings in appropriate locations.

Policy CGR P1 Compact Growth and Revitalisation It is a policy of the Council to achieve sustainable intensification and consolidation, in accordance with the Core Strategy, through an emphasis on revitalisation and the delivery of more compact and

consolidated growth, integrating land use and transport, with the use of higher densities and mixed-use developments at an appropriate scale on brownfield, infill, backland, state-lands and underutilised sites within the existing built footprint of Limerick's City, Towns and Villages.

Objective RA O1 Regeneration Opportunity Areas It is an objective of the Council to: a) Support the social, economic and physical regeneration of Moyross, St. Mary's Park/King's Island, Ballincurra Weston and Southill.

Objective MK O1 St. Mary's Park and King's Island

f) Develop a strategy to integrate King's Island into the City Centre core through selective site redevelopment and improved connections.

i) Examine options to improve connectivity at Island Road from St. Mary's Park to the Medieval Quarter by transforming from a route that is predominantly designed for the movement of vehicles, to a traffic calmed street where the needs of pedestrians, cyclists and public transport users are prioritised; whilst ensuring protection of the integrity of the environmentally designated sites.

Objective SCSi O40 Public Rights of Way It is an objective of the Council to examine the feasibility of identifying and mapping new public rights of way in the recreational and amenity areas in Limerick, in the context of emerging national guidance, within the lifetime of the Plan.

Specific objective UCA O2 - Surrounding Suburban Area (including Kings Island) c) Infill and brownfield development patterns to be favoured.

Section 4.2 Housing Strategy and Housing Need Demand Assessment

Policy HO P1 Implementation of the Housing Strategy, including the Housing Need Demands Assessment It is a policy of the Council to facilitate the implementation and delivery of the Housing Strategy and Housing Need Demand Assessment (HNDA) 2022 – 2028, to meet the increasing projected population, changing household size and housing needs, including social and affordable housing requirements of Limerick over the lifetime of the Plan.

Objective HO O1 Social Inclusion It is an objective of the Council to ensure that new developments are socially inclusive and provide for a wide variety of housing types, sizes and tenure, in suitable locations, throughout Limerick, to cater for the

demands established in the Housing Strategy and the Housing Need Demand Assessment.

Objective HO O2 Density of Residential Developments It is an objective of the Council to:

- a) Promote, where appropriate, increased residential density in the exercise of its development management function and in accordance with Table 2.6 Density Assumptions per Settlement Hierarchy in Chapter 2: Core Strategy and the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities and the accompanying Urban Design Manual, DEHLG, May 2009.
- b) Encourage increased densities that contribute to the enhancement of a town or village by reinforcing street patterns or assisting in redevelopment of backlands and centrally located brownfield sites.

Objective ECON O1 City Centre It is an objective of the Council to:

- c) Enhance the vitality of the City Centre through a mixture of uses, reuse of vacant units, increased residential population and revitalisation.

Objective CGR O3 Urban Lands and Compact Growth It is an objective of the Council to:

- a) Deliver 50% of new homes within the existing built-up footprint of Limerick City and Suburbs (in Limerick), Mungret and Annacotty and 30% of new homes within the existing built-up footprint of settlements, in a compact and sustainable manner in accordance with the Core and Housing Strategies of this Plan
- b) Encourage and facilitate sustainable revitalisation and intensification of brownfield, infill, underutilised and backland urban sites, subject to compliance with all quantitative and qualitative Development Management Standards set out under Chapter 11 of this Plan.
- c) Continue to work proactively with key state agencies, such as the LDA to bring forward, brownfield urban underutilised state land, which can contribute to the delivery of compact growth within an urban context, subject to Development Management Standards set out under Chapter 11 of this Plan.
- d) Encourage residential development in the City Centre zone by requiring at least 20% of new development to comprise residential use. Exceptions may be made on a

case-by-case basis, where residential use is not deemed compatible with the primary use of the site e.g. museums/tourist attractions etc.

Objective CGR O4 Active Land Management It is an objective of the Council to:

a) Promote an active land management approach through cooperation with relevant stakeholders and infrastructure providers to deliver enabling infrastructure to achieve compact growth.

b) Support and facilitate the reuse and revitalisation of derelict, vacant and underutilised sites and disused buildings throughout Limerick for residential, economic, community and leisure purposes.

5.4. Natural Heritage Designations

5.4.1. Natura 2000 European Sites within 15km of the site are as follows:

- Lower River Shannon SAC (Site Code: 002165), c. 166m to the west and c. 250m to the east of the site.
- River Shannon and River Fergus Estuaries SPA (Site Code: 004077), c. 1.2km to the southwest.

5.4.2. Proposed / Natural Heritage Areas within 15km of the site are as follows:

- Fergus Estuary and Inner Shannon, North Shore pNHA (Site Code: 002048), c. 166m to the west
- Knockalisheen Marsh pNHA (Site Code: 002001), c. 1.3km to the northwest of the site.

6.0 Objections

6.1.1. Two objections to the Compulsory Purchase Order (CPO) have been received from the following parties:

- Irish Wheelchair Association
- Mercy Trust SCP Company Limited

6.1.2. The issues raised in the objections are outlined below.

6.2. Objection by the Irish Wheelchair Association

6.2.1. The Irish Wheelchair Association (IWA), a registered charity and the legal owner of the land, has raised the following objections to the CPO:

- Limerick City and County Council states that the CPO is to provide housing and a new public street. However, the CPO does not give details of the purpose of the scheme or the need for the public street.
- The land was conveyed to the IWA under a Deed of Covenant dated the 16th February 2009. This was entered into with the Minister for Education and Science and the Minister for Finance (referred to hereafter by the IWA as the "State Party"). A Deed of Rectification was also executed on the 11th March 2010, collectively referred to as the Deed of Covenant.
- The land was transferred to the IWA from the Sisters of Mercy as part of a redress scheme and indemnity agreement dated the 5th June 2002, between the State and certain religious organisations, including the Sisters of Mercy.
- As the Sisters of Mercy formerly held the land before its transfer to the IWA, the land was the property of a religious denomination for the purposes of Article 44.2.6 of the Constitution.
- Restrictions under the transfer Deed of Covenant include the following:
 - A 21-year restriction (expiring on the 16th February 2030) on transferring, leasing, selling or mortgaging the land without the prior written consent of the State Party.
 - A 2-year restriction (from the 16th February 2009) on using the land for use or purposes other than benefiting people who have particular social or personal needs, without the prior written consent of the State Party.
 - The Deed of Covenant specifies that the IWA and any other person taking benefit of the proposal is bound by these restrictions.
 - If the IWA wishes to take any action that would breach the Deed of Covenant, it must obtain the written consent of the State Party. Any person benefiting from this action shall enter into a covenant with the State Party under the same terms.

- Since the date of the transfer of the land, the IWA has maintained, insured and protected the land at its own expense.
- Due to the restrictive nature of the covenant, the IWA has been unable to use the land.
- The IWA has entered into extensive negotiations to develop and/or sell the land for social housing and use the proceeds for its charitable work.
- Further to extensive correspondence with the State Party to sell the land, the State Party (Chief State Solicitor's Office) sought further details on the intended purpose and how the sale proceeds would benefit people who receive help from the IWA.
- Email correspondence from the Department of Education (dated 15th Nov. 2021) confirmed that any new owner of the land would be required to seek the consent of the State Party if they wished to dispose of the property before the Deed of Covenant period expires.
- Despite extensive correspondence, the State Party did not consent to the sale or disposal of the land by the IWA.
- No such consent has been granted to Limerick City and County Council or any other party.
- IWA submit that the decision of Limerick City and County Council to acquire the land compulsorily is *ultra vires* and contrary to the terms of the Deed of Covenant entered into by the IWA with the State Party.
- The CPO is in breach of Article 44.2.6 of the Constitution, which protects religious property against State interference.
- Article 44.2.6 of the Constitution provides that the property of a religious denomination or educational institution shall not be diverted except for necessary works of public utility and on payment of compensation.
- The restrictive Deed of Covenant ensured that the transfer of land to the IWA would not cause a breach of Article 44.2.6 of the Constitution.
- The Deed of Covenant specifies that the purpose of the restriction was to ensure the continued use of the lands for charitable purposes of social and public health and utility.

- Limerick City and County Council's unspecified plan to acquire the land for housing and a new public street does not constitute applying the land for works of public utility.
- Even if public social housing was provided on the land, it would only benefit the occupants of the housing and not the public at large or be for charitable purposes.
- The stated purpose of the land by Limerick City and County Council would directly contravene the Deed of Covenant and Article 44.2.6 of the Constitution.
- Any commercial use of the land, even at reduced rent or fees, would offend the restrictions of the Deed of Covenant.
- An email from the Chief State Solicitor's Office (CSSO) on the 03rd March 2020 reiterated that any monies from the sale of the land go towards helping people.
- There is no indication that the CPO will go towards helping people as required by the State Party.
- The Sisters of Mercy agreed to compensation for the transfer of the land, which included the restrictive terms of the covenant.
- The effect of the CPO by Limerick City and County Council would reduce the compensation agreed to by the Sisters of Mercy for the transfer of the land.
- The CPO represents an attempt to avoid the restrictive covenants entered into by the State Party and the IWA.
- The CPO attempts to unconstitutionally divert the land of a religious denomination for a purpose which is not a necessary work of public utility.
- The CPO does not provide sufficient details of the proposed housing scheme by Limerick City and County Council.
- It is unclear from the CPO if consideration has been given to the restrictive covenant, which Limerick City and County Council has been notified of, as confirmed in an email from the Department of Education dated the 15th November 2021.
- Limerick City and County Council cannot use the compulsory purchase scheme to avoid obligations and restrictions entered into by the State Party and the IWA concerning the land.

- Limerick City and County Council have not detailed how they intend to comply with the restrictions on the covenant, namely, to use the land "solely for uses and purposes to the advantage of people who have particular social or personal needs in Society".
- The CPO and related documents do not specify the party that will develop the land.
- Limerick City and County Council cannot make a compulsory acquisition and transfer of the land to a third-party developer who might make more productive use of the land than the IWA, which has been stymied by the restrictive covenants attached to the land.
- The effects of the CPO are unlawfully avoiding the restrictions in the Deed of Covenant, which is *ultra vires* the powers of the Council.
- The Deed of Covenant requires the IWA to obtain the consent of the State Party before the transfer, lease, sale or otherwise of the land.
- The effect of the CPO would be the sale of the land from the IWA to Limerick City and County Council. As written consent has not been obtained from the State Party, the proposed sale or transfer of the land is forbidden under the Deed of Covenant.
- The use of the CPO is an attempt by Limerick City and County Council to acquire land in which the State already has an interest.
- The CPO reflects the same legal principle established under *Murphy v Wicklow County Council [1999] IEHC 225*, where the High Court found that "any concept of state sovereignty in Ireland is inconsistent with the compulsory acquisition of its assets by a subordinate authority."
- The effect of the CPO is to unlawfully avoid the restrictions in the Deed of Covenant, which is *ultra vires* the powers of the Council.

6.2.2. Supporting Documentation

6.2.3. Documentation submitted with the submission from the IWA includes the following;

- Deed of Covenant, dated 16th February 2009,
- Deed of Rectification, dated 11th March 2010,

- Letter from the IWA's solicitor to the Chief State Solicitor's Office (CSSO), dated 19th October 2019.
- Email from the IWA's solicitor to the CSSO, dated 02nd March 2020.
- Email from the CSSO to the IWA's solicitor, dated 3rd March 2020.
- Email from the IWA's solicitor to the CSSO, dated 3rd July 2020.
- Email from CSSO to the IWA's solicitor, dated 7th July 2020.
- Email from the IWA's solicitor to the CSSO, dated 8th September 2020.
- Email from CSSO to the IWA's solicitor, dated 10th September 2020.
- Email from the IWA's solicitor to the CSSO, dated 10th September 2020.
- Email from CSSO to the IWA's solicitor, dated 10th September 2020.
- Email from CSSO to the IWA's solicitor, dated 23rd September 2020.
- Email from CSSO to the IWA's solicitor, 30th September 2020.
- Email from the IWA to the Department of Education, dated 3rd November 2021.
- Email from IWA to the Department of Education, dated 15th November 2021.
- Email from the Department of Education to Tony Cunningham, dated 15th November 2021.
- Email from IWA to the Department of Education, dated 6th January 2022.
- Email from IWA to the Department of Education, dated 20th January 2022.
- Email from IWA to the Department of Education, dated 1st February 2022.
- Email from IWA to the Department of Education, dated 14th February 2022.
- Email from IWA to the Department of Education, dated 8th March 2022.
- Email from IWA to the Department of Education, dated 11th April 2022.
- Email from IWA to Limerick City Council, dated 14th Sep 2022.
- Email from Limerick City Council to IWA, dated 16th September 2022.

6.3. Objection by Mercy Trust SCP Company Limited

6.3.1. A submission was received from Martin Tynan O'Donovan Solicitors on behalf of Mercy Trust SCP Company Limited, who have a right of way over the land. The submission objects to the CPO on the following grounds:

- Mercy Trust SCP Company Limited has serious concerns regarding its security and privacy should a development proceed on the site.
- The conveyance of the land to the IWA was subject to a restriction on transfers for 21 years from the 16th February 2009.
- The Local Authority does not have the power to extinguish private rights of way, as set out in their notice.

6.3.2. Supporting Documentation

6.3.3. Supporting documentation submitted includes the following:

- Deed of Covenant between the Sisters of Mercy and the IWA, dated 11th March 2010.

7.0 Oral Hearing

7.1.1. An Oral Hearing was held on Thursday, 15th May 2025. The objectors and Limerick City and County Council were represented at the oral hearing, and oral submissions were heard by or on behalf of all parties. Two written statements by Limerick City and Council were submitted to An Bord Pleanála before the oral hearing and have been taken into consideration in the assessment. The proceedings of the oral hearing are summarised in detail in Appendix 1 of this report. The proceedings were recorded and are available to the Board.

8.0 Assessment

8.1.1. The statutory powers of the Local Authority to acquire land are contained in Section 213(2)(a) of the Planning and Development Act 2000, as amended. Under its provisions, the Local Authority may, for the purposes of facilitating the implementation

of its development plan or its housing strategy, acquire land, permanently or temporarily, by agreement or compulsorily.

8.1.2. For the Board to confirm the subject CPO, it must be satisfied that, as set out in the judgement of Geoghegan J. in *Clinton v An Bord Pleanála* (No. 2) (2007) 4 IR 701, at §52: "...that the acquisition of the property is clearly justified by the exigencies of the common good." Previous Board decisions and case law, as documented in "Compulsory Purchase and Compensation in Ireland: Law and Practice" (2nd Edition, 2013) by James Macken, Eamon Galligan, and Michael McGrath, have established that there are four criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property. These criteria are as follows;

- There is a community need that is to be met by the acquisition of the property in question;
- The particular property is suitable to meet that community need;
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate).
- The works to be carried out are in accordance with, or at least not in material contravention of, the provisions of the statutory Development Plan.

8.1.3. In addition to these criteria, it is now established in Irish Case Law and previous Board decisions that the powers of compulsory purchase to acquire land or property must also satisfy the proportionality test. This principle arose in Irish court cases, including *Colgan v. IRTC* [2000] 2 I.R. 490 and *Clinton v An Bord Pleanála* [2007] 4 IR 701. Therefore, I will address the criteria outlined above, as well as other issues arising from the objections submitted and the oral hearing.

8.2. Community Need

8.2.1. Limerick City and County Council's case for the CPO, as noted in the Order itself, is for the purposes of the Housing Act 1966, as amended by the Planning and Development Act 2000 (as amended). As received by the Board, the Chief Executive's Order (No. CE/2024/039) confirms that the CPO is necessary and that the land which is the subject of the CPO is required for the provision of housing and a new public

street. The CPO would also extinguish the private rights of way over the land. The Chief Executive's Order recommended that the property be acquired by Compulsory Purchase Order for that purpose.

- 8.2.2. The Chief Executive's Order makes reference to a Certificate from Ms Maria Woods, Senior Planner, Limerick City and County Council, dated the 22nd February 2024, which states that the proposed acquisition of the said land conforms with the proper planning and sustainable development of the area and the provisions of the Limerick Development Plan 2022-2028 and gives effect to and facilitates the implementation of the Limerick Development Plan 2022-2028. The Chief Executive's Order also refers to a Certificate from Mr Joe Delaney, Director of Services, dated the 21st February 2024, which states that the said property is suitable and necessary for the provision of housing and a new public street, and that the CPO be submitted to An Bord Pleanála for confirmation. Furthermore, the Chief Executive's Order refers to a Memo from Ms Clíona Corry, Senior Executive Architect, Regeneration Sport and Recreation Directorate, dated the 20th of January 2024, recommending that Limerick City and County Council acquire all the property by CPO.
- 8.2.3. The Local Authority submitted in the written statements of evidence for the Oral Hearing that the site has been vacant since the demolition of St. Mary's Convent in the late 1990s, is considered a strategic piece of land within the area and can deliver additional housing and provide a new street to link Convent Street/Bishop Street with Island Road.
- 8.2.4. The Local Authority's written statement of evidence details how Limerick is facing significant and growing demand for housing, driven by population growth, urban regeneration, and increasing pressures on the private rental market. The Local Authority notes that, as one of Ireland's key regional cities identified in the National Planning Framework, Limerick plays a central role in supporting compact urban growth and balanced regional development. However, the current supply of new homes falls short of meeting the identified housing need, particularly in the city centre and surrounding urban areas. To address this, the Local Authority submit that it is essential that housing delivery aligns with the targets set out under Housing for All - a New Housing Plan for Ireland (2021) and the Limerick Development Plan 2022–2028, with an emphasis on activating zoned, serviced land and streamlining delivery mechanisms. The Local Authority states that the provision of housing supports social

equity and inclusion and underpins broader regeneration efforts and economic development across the City and region.

- 8.2.5. The Local Authority, in the written statement of evidence, details how Limerick City and Suburbs, including Mungret and Annacotty, are classified as a Level 1 Settlement within the Limerick Development Plan 2022–2028 Settlement Hierarchy, reflecting its role as the primary urban centre in the county. The Local Authority submit that the projected population for the settlement by 2028 is 127,570, representing a 37% increase on the 2016 Census population of 92,878 as recorded by the Central Statistics Office (CSO). Based on standard household formation rates, this projected growth is expected to generate a demand for approximately 11,442 additional residential units over the plan period (2022–2028).
- 8.2.6. The Local Authority details relevant policies and objectives in the Limerick Development Plan, including, inter alia, Policy CGR P1, Objective CGR O3 and Objective HO O2, and how the proposed residential development would deliver housing on an underutilised site within the existing built-up area of Limerick City, supporting the delivery of much-needed housing. The Local Authority reference the Limerick City and County Housing Strategy and Housing Needs and Demand Assessment (HNDA) 2022-2028, which indicates a requirement for c. 1,909 new households per annum and 11,454 new homes over the plan period for Limerick City and suburbs.
- 8.2.7. The Local Authority submits that the acquisition of the site would allow the Council to advance plans for developing a new street and housing. The Local Authority states that an indicative Master Plan for new housing and a new street was prepared for the site in 2022. The Local Authority assert that the acquisition of the site for development in the future for housing and a new street would be consistent with the goals of the National Planning Framework, Housing for All, the Southern Regional Spatial and Economic Strategy and the Limerick Development Plan 2022-2028. The Local Authority submits that the development of housing on the site would allow Limerick City and County Council to address the City's housing needs, which aligns with the Housing for All strategy, which aims to deliver 300,000 new homes across Ireland by 2030. It is submitted that the development of housing on the site would also support Limerick's housing delivery goals outlined in the Limerick Development Plan 2022–2028, highlighting the need for sustainable growth and housing that meets both

present and future demands. The Local Authority states that by contributing to the housing supply, the project would support the City's broader vision for urban consolidation and compact growth, a core objective of the National Planning Framework (NPF).

- 8.2.8. Regarding the proposed new street, the Local Authority details how a new street would improve connectivity, permeability and accessibility between Convent Street/Bishop Street and Island Road, facilitating improved integration between existing residential neighbourhoods. It is submitted that such linkage would support a modal shift towards sustainable and active transportation, including walking and cycling, in alignment with national and local policy objectives promoting active travel and contributing to an enhanced sense of place.
- 8.2.9. At the oral hearing, the Local Authority confirmed that the new housing would benefit from an adjacent school, community centre, leisure centre, and various city centre services. They also stated that introducing a new street would bring immense benefits by opening up the urban block and increasing legibility, permeability, and accessibility within the urban fabric of Limerick City. At the oral hearing, the Local Authority confirmed that a development appraisal undertaken identified that the site had a capacity of 30-35 units. When asked what type of housing tenure would be provided on the site, the Local Authority confirmed that general housing would be provided on the site, and that no specific tenure had been applied to the proposed housing for the site.
- 8.2.10. I acknowledge the concerns of the Mercy Trust SCP Company Ltd. regarding the privacy and security of the neighbouring Sisters of Mercy convent and cemetery in the absence of a detailed design proposal for the site. However, Mr. Oscar Lyons, BL, representing the Sisters of Mercy at the oral hearing, acknowledged that these concerns would be addressed at the site's planning stage, if advanced.
- 8.2.11. Having regard to Section 3.0 of the Limerick Housing Delivery Action Plan 2022-2026, I note that the Local Authority has an overall social housing delivery target for Limerick of 2,693 new homes from 2022-2026. Furthermore, I note from the Action Plan that King's Island is located within Limerick Metropolitan Sub-Area Metro E, which is identified as an area representing the greatest housing pressure, with 43% of the overall Housing Waiting List seeking housing at this location. The Council's build target

for this area from 2022 to 2026 is 1,155 homes. However, at the time of the Action Plan's publication, only 510 homes (44%) were approved for delivery, leaving 645 housing units (56% of the target) to be delivered, as per Section 4.1 of the Plan. Furthermore, Table 4 of the Limerick Housing Delivery Action Plan identified 426 households listed as 'Homelessness' within the Metropolitan District, as of November 2021. Having regard to the Monthly Homelessness Report – March 2024, published by the Department of Housing, Local Government and Heritage, I note that 515 adults were accessing emergency accommodation in Limerick during the week 24-30 March 2025, an increase of 117 adults (c. 29%) in Limerick for the same week 25-31 March in 2024. I also note that the Summary of Social Housing Assessments 2023, published by the Department of Housing, states that Limerick City and County reported 2,232 households qualified for social housing support.

- 8.2.12. Having reviewed the documentation submitted, the evidence presented at the oral hearing, and the relevant housing data available, I am satisfied that the Local Authority has adequately demonstrated that the subject CPO would serve a community need by assisting in the provision of housing units and that the provision of a new public street would improve connectivity and permeability at this location in Limerick City. The subject lands represent a long-standing vacant site in a strategic location on Kings Island in Limerick City, with the potential to deliver in excess of 30 housing units. The various housing and demographic data sources detailed above demonstrate how Limerick City and suburbs' population is projected to grow to 127,570 by 2028, representing a 37% increase on the 2016 Census population, generating a demand for approximately 11,442 additional residential units over the Development Plan period (2022–2028). However, the current pace of delivery is falling short of this target, with only 44% of the housing target being achieved for the Limerick Metropolitan Sub-Area Metro E for the period 2022-2026, in which the subject site is located. The community's need for housing is compounded by the homeless figures, the significant year-on-year increase in adults accessing emergency accommodation in Limerick City, and the number of households qualified for social housing support, as detailed above. I am satisfied that the subject vacant site, by reason of its location and suitability, presents a realistic opportunity to address unmet housing needs at this strategic location near the city centre. Furthermore, I consider that the delivery of a new public street

connecting Island Road with Bishop Street and Convent Street would benefit the local community in terms of connectivity, permeability, and accessibility.

- 8.2.13. Having regard to the need for housing in Limerick City, the policy context, the strategic location and the vacant nature of the site, I conclude that there is a clear and established community need for housing, which the acquisition of the subject lands would help meet. Furthermore, I consider that a new public street would benefit the local community and align with public realm best practices, as detailed in the Design Manual for Urban Roads and Streets (DMURS) 2019, particularly regarding pedestrian and cyclist connectivity, permeability, and legibility.

8.3. Suitability of the Land to Serve the Community Need

- 8.3.1. The second criterion to consider is whether the site is suitable to meet the community's need for housing and a new street.
- 8.3.2. A description of the site is provided in Section 2.0 above. In summary, the site has a stated area of 0.303 Ha and is vacant, extending from the eastern side of Bishop St. to the western side of Island Road in King's Island, c. 1km north of Limerick city centre. The site is zoned 'City Centre' in the Limerick Development Plan 2022-2028, which has the objective 'to protect, consolidate and facilitate the development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities'. (Chapter 12, Section 12.3). Residential use is classified as a 'generally permitted' use on such zoned lands. There are no special designations affecting the site.
- 8.3.3. Regarding built heritage, Saint Mary's Convent of Mercy and Cemetery (Protected Structure Ref. 3006) adjoins the northern boundary, and Saint Mary's National School (Protected Structure Ref. No. 3343) adjoins the southern boundary. Both Protected Structures are recorded on the NIAH database as being of 'Regional Importance'. There are also two Recorded Monuments on the subject lands. Along the northern boundary, the Recorded Monument (Ref No. LI005-017121)) comprises a 'Burial ground' associated with the medieval St. Saviour's Dominican Priory, and the foundations of a wall of a medieval church. Towards the centre of the site, the Recorded Monument (Ref. No. LI005-017051) comprises a 'Barracks' dating from the reign of Charles II (1660-85).

8.3.4. The Local Authority's written statements of evidence for the Oral Hearing provide further details on the site and its suitability to meet the community's need for social housing and a new street. The Statement of Mr James Griffin, Executive Planner, states the following;

- The site has been vacant since the demolition of St. Mary's Convent in the late 1990s.
- The site is a strategic piece of land within the area and has the ability to deliver additional housing and provide a new street to link Convent Street/Bishop Street with Island Road.
- The redevelopment of this underutilised urban site for residential use represents a strategic and efficient use of land within the existing built footprint of Limerick, contributing positively to the compact growth objectives of the Development Plan.
- The site's location facilitates the integration of land use and transport, and the proposed density and built form are considered appropriate to its urban setting.
- In line with Development Plan Objective CGR O3: Urban Lands and Compact Growth, the proposed residential development would deliver housing within the existing built-up area of Limerick City and Suburbs, supporting the sustainable regeneration of brownfield and underutilised lands.
- The acquisition of the site would allow the Council to progress plans for the development of a new street and housing and, in the course of such development, to safeguard any remains of the walls of Limerick located at the site. The report notes how the eastern boundary of the site follows the historical alignment of the City's medieval walls and is identified as the indicative location of two former gate towers.
- This intervention would enhance connectivity within King's Island, facilitating improved integration between existing residential neighbourhoods.
- The proposed linkage would significantly improve urban permeability, supporting a modal shift towards sustainable and active transportation, including walking and cycling, in alignment with national and local policy objectives promoting active travel and contributing to an enhanced sense of place.

8.3.5. The Statement from Ms Clíona Corry, A/Senior Executive Architect, Limerick City & County Council states the following;

- The site has the potential to provide much-needed inner-city housing. Such development would optimise current social infrastructure and resources, including the adjacent national school, the school of music, the Kings Island Community Centre and the Grove Island Leisure Centre, providing compact growth.
- The opening up of this urban block with a new street would provide an opportunity to create relief with increased legibility and permeability within the urban fabric, improving the urban form and public accessibility.
- Currently, the site detracts from the visual amenity of both Bishop Street and Island Road. The opening up and development of this site would improve the visual, social and residential amenities of this part of Limerick City.
- The site is located in a strategic position within the city centre. The redevelopment of the site has immense potential to positively impact the medieval core of the centre of Limerick.
- The opening up of the site to the inhabitants of Limerick City and visitors to the city would provide the opportunity for an important section of Limerick City Walls (a Protected Structure with legal protection under the National Monuments Acts 1930-2004 and with archaeological testing confirming the presence of the city wall at the northern end of the site) to become accessible.

8.3.6. At the oral hearing, the Local Authority submitted that the site has become a scar on the city, which the Council intends to address and that the constraints of the site, including the Limerick city walls and Dominican priory wall, would be positively incorporated to enhance the city's historic character. The Local Authority submitted that introducing a new street would bring immense benefits to the community by opening up the urban block and increasing legibility, permeability, and accessibility within the urban fabric of Limerick City.

8.3.7. Having inspected the site and given a) the zoning objective of the site, b) the strategic location of the site and its proximity to community facilities, c) the vacant use of the site, which has been in situ for over 25 years, d) the size and development potential of the site to deliver over 30 dwelling units and e) the absence of evidence from the

landowner of intention and timeline there-of to develop the site, it is my view that the subject site is suitable for the provision of housing and a new public street, which would serve the community.

8.4. Consideration of Alternatives

- 8.4.1. Given the protection afforded to private property ownership in Ireland, the compulsory acquisition of any property should generally be seen as a last resort. Therefore, the Local Authority should be required to show how it has considered other alternatives before initiating the CPO process. In this regard, the onus is on the Local Authority to demonstrate that alternative methods are unavailable. This was addressed at the Oral Hearing.
- 8.4.2. At the Oral Hearing, the Local Authority confirmed that the Council had pursued the site since at least 2013 when it first raised the possibility of its purchase and obtained valuations. Email correspondence from the IWA and evidence presented at the Oral Hearing show that the Local Authority formally offered to purchase the site from the IWA, aiming to develop the site and provide several wheelchair-accessible houses to the IWA. The Board of the IWA decided not to sell the site to the Council at that time and instead indicated their intention to lease it to a third party. At the Oral hearing, Mr. Martin-Smith, BL, representing the IWA, explained that this decision was based on the restrictions of the Deed of Covenant requiring Ministerial Consent and the absence thereof for the sale of the lands by the IWA.
- 8.4.3. At the Oral Hearing, the Local Authority submitted that the Council had waited patiently for the site's development by the IWA, but it had not materialised due to barriers, including the restrictions of the Deed of Covenant requiring Ministerial Consent. The Local Authority confirmed that a vacant site levy had not been imposed on the site. It noted that the planning permission granted to the current owner in 2008 has since expired without the site being developed. The Local Authority submitted that, given that the site has remained vacant since the late 1990s and given priority in delivering housing under the Development Plan, the Council considers it appropriate to acquire and develop the site and that this is the best alternative.
- 8.4.4. I acknowledge the points made by Mr William Martin-Smith on behalf of the IWA that the issue is not a lack of will on the part of the IWA but rather a restriction on their legal

rights arising from the Ministerial consent condition imposed when the land was transferred. Furthermore, I acknowledge Mr Tony Cunningham's (IWA National Director) submission at the Oral Hearing that the IWA has persistently sought consent to sell the land through its legal team with ongoing correspondence with the Department and the Chief State Solicitor's Office. However, consent was not given. At the oral hearing, Mr Martin-Smith pointed out that the Ministerial consent restriction only applies for 21 years and is due to expire in February 2030, less than five years from now. With that, Mr Martin-Smith submitted that the IWA is now approaching a point where it could realistically move forward with the development or sale of the site once the restriction lapses. Mr. Martin-Smith also pointed out that the Council has not yet submitted a planning application and that it is unlikely the entire CPO process, including development, would be completed before the restriction expires.

8.4.5. Having regard to the various discussions and submissions made in the written submissions and at the Oral Hearing, as detailed in Appendix 1, in relation to the legal constraints and covenant affecting the land and the lack of any firm progress or timeframe for developing the site, it is my view that the uncertainty and delays experienced to date show no immediate signs of resolution. Under these circumstances, I accept that the proposed acquisition of the subject property is the most reasonable route to progress the delivery of housing and a new public street that would benefit the community.

8.4.6. In consideration of the above, I am satisfied that the Local Authority has considered alternative means of meeting the community needs (i.e. the provision of housing and a new street) and that these alternatives are not demonstrably preferable. I am satisfied that the acquisition of the subject lands would facilitate the provision of housing in an area of high demand and improve connectivity for the common good. On this basis, I conclude that there is no other viable alternative method available in the next five years which would help meet the pressing need for housing and a new street in this case.

8.5. Accordance with Housing and Planning Policy

8.5.1. I refer the Board to Section 5 above, which outlines the housing and planning policy context for the subject property. Various national, regional, and county-level policies

promote the acquisition, where necessary, of vacant properties to meet housing needs.

- 8.5.2. Having regard to the residential zoning of the site and its stated objective, I am satisfied that the acquisition of the subject vacant site for housing and a new public street would accord with the city centre zoning objective of the site by protecting, consolidating and facilitating the development of residential, social, and community uses and facilities. As confirmed by the Local Authority at the Oral Hearing, the acquisition of the property would allow for the development of more than 30 housing units on land which has been vacant and unused for many years. The acquisition of the site for the delivery of housing and a new public street would accord with 'Policy CGR P1' of the Limerick Development Plan by achieving sustainable intensification and consolidation, in accordance with the Core Strategy, through the revitalisation and delivery of compact and consolidated growth, integrating land use and transport on an infill, underutilised site within the existing built footprint of Limerick's City. Furthermore, the development of housing and a new public street at this location would accord with Objectives RA O1 and MK O1 by supporting the physical regeneration of King's Island through the redevelopment of an underutilised vacant site and improving connectivity from Island Road to the Medieval Quarter for pedestrians and cyclists.
- 8.5.3. On this basis, I conclude that the compulsory acquisition of the subject property would be in accordance with the housing and planning policy set out in the Limerick Development Plan 2022-2028 in relation to the consolidation and intensification of the built environment, the redevelopment of infill sites and improving connectivity for the area. Furthermore, the provision of housing at this location would contribute to the targets set out under Housing for All - a New Housing Plan for Ireland (2021).

8.6. Proportionality and Necessity for the Level of Acquisition Proposed

- 8.7. One of the criteria required to be satisfied is whether the measures proposed under a Compulsory Purchase Order will have an excessive or disproportionate effect on the interests of the affected person(s).
- 8.8. I consider that the delivery of housing and a new street at the subject site would benefit the public, including contributing to the housing targets in the Limerick Housing

Delivery Action Plan 2022-2026, addressing housing need and improving connectivity between Island Road and Bishop Street.

- 8.9. I acknowledge that the acquisition of these lands by CPO would have an undeniable negative effect on the third parties due to the loss of land and disturbance. However, I consider its overall impact proportionate to the objective being pursued.
- 8.10. In this case, the subject lands have been vacant and underutilised for many years, are strategically located in Limerick city centre, and are identified for regeneration, housing delivery, and connectivity in the Limerick Development Plan 2022-2028. The acquisition of the subject lands would enable the Local Authority to unlock its development potential and secure the delivery of much-needed housing and street infrastructure.
- 8.11. In conclusion, I am satisfied that the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that Limerick City and County Council has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to facilitate the provision of housing and a new public street, along with the extinguishment of an existing right of way over the lands. On this matter, I note that at the Oral Hearing, the Local Authority has committed to providing a right of way to allow hearse access to the graveyard and to install gated access as requested. The Council has also committed to providing a functioning right-of-way from the new street to the graveyard.
- 8.12. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of land and the extinguishment of an existing right of way over the land, as set out in the compulsory purchase order and on the deposited maps, pursues, and is rationally connected to, a legitimate objective in the public interest, namely the provision of housing and a new public street. I am also satisfied that Limerick City and County Council 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 Council has established that none of the alternatives is such as to render the means chosen and the CPO made by the Council unreasonable or disproportionate.

8.13. I consider that 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 and the extinguishment of the existing rights of way would be consistent with the policies and objectives of the Limerick Development Plan 2022-2028, where the Development Plan provides for the scheme for which the CPO is proposed. Accordingly, I am satisfied that the exigencies of the common good clearly justify the confirmation of the CPO.

8.14. Legal Issues Raised by the Objectors

8.15. As detailed in Section 6.2 above, the Irish Wheelchair Association (IWA), as the legal owner of the land, objects to the CPO. The IWA submit that the Local Authority have not provided details of the purpose of the scheme or the need for the public street. Furthermore, the IWA submit that the land is subject to a Deed of Covenant with the State, restricting the transfer, lease, sale or mortgage of the land without the prior written consent of the State Party. The IWA states that any action that would breach the Deed of Covenant requires the written consent of the State Party. No such consent has been granted to the IWA, Limerick City and County Council or any other party. The IWA contend that the decision of Limerick City and County Council to acquire the land compulsorily is *ultra vires* and contrary to the terms of the Deed of Covenant entered into by the IWA with the State Party. Furthermore, the IWA asserts that the CPO is in breach of Article 44.2.6 of the Constitution, which protects religious property against State interference, whereby the CPO attempts to unconstitutionally divert the land of a religious denomination for a purpose which is not a necessary work of public utility. The IWA states that the Local Authority has not detailed how they intend to comply with the restrictions on the covenant, namely, to use the land "solely for uses and purposes to the advantage of people who have particular social or personal needs in Society".

8.15.1. The IWA submit that the CPO is an attempt by Limerick City and County Council to acquire land in which the State already has an interest. The IWA contends that the CPO reflects the same legal principle established under *Murphy v Wicklow County Council [1999] IEHC 225*, where the High Court found that "any concept of state sovereignty in Ireland is inconsistent with the compulsory acquisition of its assets by a subordinate authority."

- 8.15.2. At the Oral Hearing, the Mercy Trust SCP Company Ltd, represented by Mr Oscar Lyons, BL, concurred with the submission made by the IWA and their representative, Mr Martin-Smith's submission, that a legal covenant exists that restricts the transfer or sale of the land until 2030. Mr Lyons submitted that the covenant requires Ministerial consent and, in its absence, precludes compulsory purchase because such purchase constitutes a transfer. Mr. Lyons argued that unless and until the Minister's consent is obtained, the covenant remains a legal barrier to the CPO proceeding.
- 8.15.3. At the Oral Hearing, Limerick City and County Council responded to the legal constraints asserted by the IWA and the Mercy Trust SCP Company Ltd., where their legal representative, Mr Cormac Mac Namara, BL, put forward that the subject land is not state property, and therefore the *Murphy v. Wicklow County Council* judgement does not apply to the acquisition of the subject CPO lands. The Council acknowledge the restrictions of the Deed of Conveyance (February 2009) and the amending Deed of Rectification (March 2010), which requires Ministerial consent for the transfer, lease, sale or otherwise of the land. However, the Council submitted that this does not confer any legal interest on the Minister or make the site a State property. Furthermore, the Council submit that the Deed of Conveyance does not create a freehold restrictive covenant, which binds successors in title. Mr MacNamara submitted that under established legal principles, a freehold covenant can only arise from one piece of land (the servient tenement) in favour of another (the dominant tenement) and must benefit the dominant land. Mr MacNamara asserted that since no dominant land exists in this case, and the Minister has no interest in a benefiting property, the restriction does not meet the legal test for a freehold covenant. As such, Mr. MacNamara contends that the consent clause does not obstruct the Council from compulsorily acquiring the land.
- 8.15.4. The Council also rejected the assertion by the IWA that the CPO breached Article 44.2.6 of the Constitution, which protects religious property against State interference. Mr MacNamara pointed out that the language of Article 44.2.6 of the Constitution is not used anywhere in the Deed of Conveyance or the amending Deed of Rectification. Mr. MacNamara explained that the only stated consideration for the transfer is the Sisters of Mercy (vendor) indemnity for historical child sexual abuse claims. The transaction was a property transfer in exchange for indemnity, not a constitutional protection mechanism. Mr MacNamara also emphasised that the conveyance is not a tripartite agreement. The parties to the Deed are solely the Sisters of Mercy (vendor)

and the IWA (purchaser). The Minister for Finance is not a covenantor or party, and the reference to Ministerial consent does not give the Minister a legal interest in the land. Accordingly, the Council submitted that there is no legal impediment to the Board confirming the CPO.

8.15.5. Having considered the written submissions and evidence presented at the Oral Hearing, I consider it necessary to determine whether the Deed of Conveyance, as amended by the Deed of Rectification, creates a legal impediment to the Board for the confirmation of the CPO. The key issues for consideration are:

- (i) Whether the Deed of Conveyance clause requiring Ministerial consent for the transfer, conveyance or alienation of the land constitutes a binding restrictive covenant,
- (ii) Whether the CPO lands are State property,
- (iii) Whether the CPO breaches Article 44.2.6 of the Constitution, which states that the property of any religious denomination shall not be diverted save for necessary works of public utility and on payment of compensation.

8.15.6. Having regard to the Deed of Conveyance executed on the 16th February 2009, I note under paragraph (1) that the land is conveyed “subject to the restriction on transfer, conveyance and alienation for a period of 25 years from the 5th of June 1992 without the prior consent in writing of the Minister for Finance”. This restriction was amended by paragraph 3 of the Deed of Rectification (dated 11th March 2010), which updated the restriction to apply “for a period of 21 years from the 16th February 2009”, expiring in 2030.

8.15.7. Having considered the evidence presented by Mr. MacNamara at the Oral Hearing, I accept the Council's submission that this restriction does not constitute a freehold restrictive covenant. As clarified in the case of *Jackson Way Properties Ltd v Smith & Ors* [2023] IECA 185, the Court of Appeal stated that the core requirements for a restrictive covenant to bind successors in title, include;

- There must be two identifiable plots of land, one that bears the burden (a servient tenement) and one that receives the benefit (a dominant tenement), as stated - “two plots of land were concerned: one bearing the burden and the other receiving the benefit” (para. 82(2));

- The covenant in question should “*touch and concern*” the lands of the covenantee (para.50).

8.15.8. In the subject case, there is no identifiable dominant tenement. While the Minister for Finance is referenced in the Deeds as the party to whom written consent must be obtained, the Minister is not the owner of the land and would not benefit from the restriction requiring consent.

8.15.9. The Sisters of Mercy own the land adjoining the site, including the convent and graveyard. However, there is no reference in the Deeds that the Sisters of Mercy would benefit from the restriction on the transfer, conveyance or alienation of the subject land. Therefore, it is my view that while the subject lands may be seen as a servient tenement, the legal test for a binding restrictive covenant is not satisfied in this instance.

8.15.10. Regarding Article 44.2.6 of the Constitution, the IWA submits that the CPO is precluded by Article 44.2.6 of the Constitution, which requires that ‘*the property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation*’. With this regard, I note that the deed of Conveyance and the Deed of Rectification show that the land was transferred to the IWA in ‘fee simple’. The only consideration is Para. 1 of the Deed of Rectification, which states that the conveyance was made in consideration of the indemnities provided to the Sisters of Mercy under the Indemnity Agreement dated the 5th June 2002, which formed part of the Redress Scheme for institutional abuse survivors.

8.15.11. There is no reference in Deeds of Conveyance or Rectification to Article 44.2.6 of the Constitution, and the subject lands do not serve a religious function. The lands have been held by the IWA and have remained vacant since their conveyance. On this basis, I am satisfied that there would be no diversion of religious property within the meaning of Article 44.2.6 of the Constitution.

8.15.12. Having regard to the statutory powers available to Limerick City and County Council under Section 213 of the Planning and Development Act 2000, and the absence of any enforceable restrictive covenant or legal interest held by the Minister in the subject lands, I am satisfied that there is no legal impediment to the confirmation of the CPO arising from the terms of the Deed of Conveyance, the associated

restriction clause, or Article 44.2.6 of the Constitution. The consent clause does not bind the acquiring local authority, the state does not own the land, and no constitutional breach arises on the facts presented. Accordingly, it is my view that the objections raised by the IWA and Mercy Trust in relation to the Deeds of Conveyance and Rectification and their legal implications should not prevent the confirmation of the compulsory purchase order.

9.0 Recommendation

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

- the acquisition of the lands under the CPO would serve a community need that advances the common good,
- the particular land is suitable to meet that need,
- the proposal does not materially contravene the Limerick Development Plan 2022-2028,
- alternatives have been considered, and there is no alternative which is demonstrably preferable, and
- the proposed acquisition is proportionate and necessary.

9.2. I recommend that the Board CONFIRM the Compulsory Purchase Order based on the reasons and considerations set out below.

10.0 Draft Board Order

The Board Order should include the following Reasons and Considerations:

Having considered the objections made to the compulsory purchase order, the written submissions and observations made at the Oral Hearing held on the 15th May 2025, the report of the Inspector (who also conducted the Oral Hearing), the purposes for which the lands are to be acquired, as set out in the Compulsory Purchase Order, 'Limerick City and County Council Compulsory Purchase Order 2024', dated 1st March 2024', and also having regard to the following:

- (i) the constitutional and Convention protection afforded to property rights,
- (ii) the current undeveloped and underutilised use of the lands at Bishop St./Island Road,
- (iii) the community's need for housing and a new public street, the public interest served by the provision of housing and a new public street, and overall benefits, including the activation of a longstanding vacant site for the provision of housing and improved connectivity, and permeability between Island Road and Bishop Street.
- (iv) the suitability of the lands and the necessity of their acquisition to facilitate the provision of housing and a new public street.
- (v) the provisions of the Limerick Development Plan 2022-2028, where the Development Plan provides for the scheme for which the CPO is proposed.

it is considered that the acquisition of the lands at Bishop St. / Island Road in Limerick City, by Limerick City and County Council, 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.

Professional Declaration

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.

Brendan Coyne
Planning Inspector

08th July 2025

11.0 Appendix 1: Proceedings of the Oral Hearing

Given the legal complexity of the CPO, the following is a detailed summary of the proceedings of the Oral Hearing and the persons in attendance. It is not a verbatim transcript, but it provides a detailed account of the submissions and exchanges by all parties in attendance. It should be read in conjunction with the main body of the report above.

11.1. Background

An Oral Hearing was held on Thursday, 15th May 2025 in relation to the proposed compulsory acquisition sought by Limerick City and County Council (LCCC) for the compulsory acquisition of land for housing and a new public street at Bishop Street/Island Road, King's Island, Limerick City. The following is a summary of the parties in attendance who made submissions at the oral hearing:

1. Submissions on behalf of Limerick City and County Council

- Cormac Mac Namara, BL, Barrister representing Limerick City and County Council.
- Clíona Corry - Acting Senior Executive Architect, Regeneration Sport and Recreation Directorate, LCCC.
- James Griffin, Executive Planner, Planning and Place-making Directorate, LCCC.

2. Submissions by the Irish Wheelchair Association (Objector)

- William Martin-Smith, BL, Junior Counsel, Barrister representing the Irish Wheelchair Association.
- Mr Tony Cunningham, National Director of Services, Irish Wheelchair Association (IWA)

3. Submissions by the Mercy Trust SCP Company Ltd. (Objector)

- Oscar Lyons, BL, Junior Counsel, Barrister representing the Mercy Trust SCP Company Ltd.

11.2. Opening of the Oral Hearing

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

11.3. Submissions by Limerick City and County Council

11.3.1. Submission by Cormac Mac Namara, BL.

- Mr MacNamara, BL, acting on behalf of Limerick City and County Council, opened the Council's submission regarding the compulsory purchase order (CPO) for the site for housing and a new street.
- The Council identified the site in May 2022, and the Council is proceeding with the CPO in reliance on Section 213(3)(a) of the Planning and Development Act 2000 (as amended).
- Section 213(3)(a) provides that acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority, the land will be required for that purpose in the future.
- The Council submits that it is entitled to proceed with the CPO based on that statutory provision, notwithstanding the absence of detailed plans.
- Section 213(2) is also relevant as it addresses the basis upon which a local authority is entitled to acquire land.
- Section 213(2)(a) provides that a local authority may acquire land to further any of its functions under that or any other Act.
- The functions that Limerick City and County Council seeks to advance in this instance are those connected with pursuing and realising the objectives of its Development Plan, which it is obliged to do under Section 15(1) of the Planning and Development Act 2000.
- Mr MacNamara stated that this forms the statutory framework within which the CPO proceeds.

- Mr MacNamara then identified the general principles that the Board must apply when deciding whether it is appropriate to confirm the CPO, and the fourfold test outlined in "Compulsory Purchase and Compensation in Ireland: Law and Practice" (2nd Edition, 2013) by James Macken, Eamon Galligan, and Michael McGrath.
- The Council acknowledges that, as the party bringing forward the CPO, it is responsible for demonstrating that these four criteria are met.
- Mr MacNamara stated that evidence provided by Ms Clíona Corry and Mr James Griffin showed that the site has remained vacant for a considerable period.
- Mr MacNamara noted that planning permission was granted to the current owner in 2008 but expired without the site being developed.
- The site has remained vacant since the late 1990s and is located in a very historic part of Limerick City.
- Given the priority of delivering housing under the Development Plan and the fact that this is a brownfield site in the heart of the city, the Council considers it appropriate to acquire and develop the site.
- The Council considers this the best alternative because the site has remained vacant for a long time.
- In relation to objections received, Mr. MacNamara stated that there are two substantive objections.
- The Sisters of Mercy lodged the first objection, which comprises three elements: (1) there is no statutory power to extinguish their right of way over the site; (2) security concerns, and (3) concerns regarding privacy.
- Ms Corry would address security and privacy issues, as well as the offer to preserve the right-of-way.
- Mr MacNamara stated it was appropriate to reference the Council's statutory powers in relation to extinguishing rights of way.
- First, Section 213(2)(a)(ii) of the Planning and Development Act 2000, cited in the CPO, authorises the Council to acquire, either permanently or temporarily, by

agreement or compulsory, any easement, wayleave, water right, or other interest in land or water.

- Second, Section 83(2) of the Housing Act 1966 states that upon completion of land acquisition by a housing authority (other than by vesting order), all private rights of way and all rights related to infrastructure (e.g. pipes, sewers, cables) shall vest in the authority unless otherwise agreed.
- This section also provides that compensation shall be payable to any person who suffers loss due to the extinguishment of such rights in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.
- Mr. MacNamara explained that once the CPO is confirmed, rights of way are extinguished, but compensation is payable.
- He further stated that the Council is willing to preserve a right-of-way for the Sisters of Mercy, and therefore, the objection should fall.
- The second set of objections was submitted by Mr. Tony Cunningham on behalf of the Irish Wheelchair Association (IWA).
- The IWA's objections include the following: (1) the CPO is precluded by Article 44.2.6 of the Constitution; (2) the CPO does not comply with a restrictive covenant limiting the use of the land to purposes benefiting persons with social or personal needs; (3) the CPO is proceeding without Ministerial consent; and (4) the Council is attempting to acquire state lands, which it is not entitled to do.
- Mr MacNamara stated that the Council would respond to all of this legal argument after the full submissions from the Irish Wheelchair Association, rather than pre-empting how their arguments are presented.

11.3.2. Submission by Clíona Corry, Senior Executive Architect

- Ms Corry explained how the site has the potential to provide much-needed inner-city housing, and the site would activate underutilised backlands, optimising existing social infrastructure and resources.

- The new housing would benefit from an adjacent school, community centre, leisure centre, and various city centre services.
- Ms Corry stated that introducing a new street would bring immense benefits by opening up the urban block and increasing legibility, permeability, and accessibility within the urban fabric of Limerick City.
- Ms Corry explained that the block, in its current form, is c.230 metres in length. Creating a new street would result in two smaller blocks of approximately 115m each. This would align with guidance in the Design Manual for Urban Roads and Streets (DMURS)
- Ms Corry identified the site's strategic location within the eyeline of King John's Castle and c. 200–300 metres from Limerick city centre.
- Ms Corry noted that the development could positively impact the city's medieval core and bring heritage benefits, enhancing access to Limerick's city walls and other historic features.
- Ms Corry noted the Dominican Abbey, a recorded monument nearby, which has limited visibility and accessibility, and that a "fosse", a ditch or mound near the wall, has the potential to become part of a micro greenway through the city, including public spaces and sustainable urban drainage elements.
- Ms Corry states that although there are no detailed plans or permissions yet, the Council carried out a feasibility study in May 2022 to balance stakeholder needs and generate citywide benefits, including a new street and housing.
- Ms. Corry confirmed that the Council met with the Irish Wheelchair Association (IWA) in 2022 to discuss the feasibility study. She also referenced Appendix 3 of her submission, which contains follow-up email correspondence summarising the meeting.
- Following valuations, the Council formally offered to purchase the site on November 3rd, 2022. However, in May 2023, the IWA formally replied by email, stating that the IWA Board decided not to sell the site and instead leased it to a third party.

- The Council noted the decision and expressed disappointment that the IWA did not engage further in a valuation process or indicate future development plans.
- The Council advised that it would proceed with the CPO process but remained open to further engagement with the IWA.
- Ms Corry read from page 12 of her statement, outlining why the Council believes the site should be brought into public ownership rather than remain in private ownership, including;
 - The site has remained vacant for a long time.
 - There is a pressing need for housing and a new street in the area.
 - The site requires regeneration.
 - There is no valid planning permission in place that would allow the IWA or any successor to develop the site.
 - Public ownership would help protect and serve the remains of the Limerick city walls for the common good.
- Regarding the concerns of the Sisters of Mercy, Ms Corry stated that she and an executive architect met the Sisters and their engineer on-site to fully understand their concerns.
- Ms. Corry said the Council proposed solutions to address their three key concerns: privacy, security, and access.
- The Council proposed a 2.1 metre-high boundary treatment along the southern boundary of the convent for privacy and security.
- The Council committed to providing a right of way to allow hearse access to the graveyard and to install gated access as requested.
- Ms Corry confirmed that while the Council is committed to providing a functioning right of way from the new street to the graveyard, the existing right of way is currently non-functional.
- Ms. Corry explained that the current route requires descending a steep slope through a field, which is unsuitable for a hearse and is not used by the Sisters of Mercy, who currently access the graveyard via the Catherine McAuley House to the north.

11.3.3. Submission by James Griffin, Executive Planner

- Mr Griffin outlined the significant and growing demand for housing in Limerick, driven by population growth, urban regeneration, and increasing pressures on the private rental market.
- Mr Griffin noted how the current supply of new homes in Limerick falls short of meeting the identified housing needs and targets, particularly in the city centre and surrounding urban areas.
- Mr Griffin detailed how the projected population for Limerick City and suburbs in 2028 is 127,570 - a 37% increase from the 2016 census population of 92,878, as recorded by the CSO.
- Mr Griffin identified several relevant planning policy objectives within the Limerick Development Plan that support the proposed acquisition and development of the site, including Policy CGR P1, Policy CGR O3 and Policy Objective EO1.
- Mr. Griffin confirmed that this proposal aligns with national and local housing strategies and the Southern Regional Spatial and Economic Strategy.
- Mr Griffin stated that the existing street network in King's Island suffers from insufficient east-west connectivity, leading to fragmentation and limited movement between Bishop Street, Island Road, and the Lee Estate.
- Mr Griffin noted that Island Road is a major thoroughfare with high traffic volumes, posing a barrier to movement between residential areas and historic areas like the Old English Town.
- Mr Griffin stated that the lack of permeability restricts movement, divides neighbourhoods, and increases reliance on private cars.
- Mr Griffin stated that a new strategic street connection is essential to overcome these limitations, support active travel such as walking and cycling, and meet national and local transport policy objectives.
- Mr Griffin confirmed that the site lies within the boundaries of the historic walls of Limerick, with its northern boundary along Island Road.
- Mr. Griffin stated that, given the site's location in a designated area of historical and archaeological significance, it holds potential archaeological value.

- Mr Griffin states that the acquisition of the site would allow for controlled archaeological investigation of potential subsurface remains associated with the walls, as indicated in historic maps and prior assessments.
- Mr Griffin stated that the development would support the site's integration into the public realm, enabling access and interpretation of Limerick's medieval heritage in line with local conservation and regeneration goals.
- Mr Griffin stated that the acquisition of the site would enable the Council to develop a new street and housing while safeguarding any remaining sections of the walls of Limerick.
- Mr. Griffin noted that although a master plan was prepared in 2022, the final development proposal has not yet been submitted and remains indicative.

11.4. Submissions by Mr. William Martin-Smith, BL on behalf of the Irish Wheelchair Association (Objector)

- Mr Martin-Smith stated that the IWA's objection is fundamentally legal in nature and relates to issues of title and restrictions on the use of the land since it was acquired by the IWA in 2009.
- Mr Martin-Smith asserted that this legal issue is a threshold matter, arising before any discussion about the proposed use of the site, such as housing or a new street.
- Mr. Martin-Smith acknowledged that there had been significant discussion about permeability, archaeological protection, and housing need, but reiterated that the core issue is whether development can take place under the existing legal constraints.
- Mr Martin-Smith stressed that compulsory purchase is not the only route to achieve the objectives outlined by the Council.
- Mr Martin-Smith explained that the IWA had previously obtained planning permission for the site and actively sought to develop it, but the primary obstacle has consistently been the requirement for Ministerial consent to transfer or alienate the site.

- Mr Martin-Smith emphasised that the issue is not a lack of will on the part of the IWA but rather a restriction on their legal rights arising from the consent condition imposed when the land was transferred.
- Mr Martin-Smith then outlined three key points in support of the IWA's objection, noting that he would not repeat the full legal submissions already made in writing.
- Point One - Mr Martin-Smith referenced Section 143 of the Planning and Development Act, which requires An Bord Pleanála to have regard to government policy, including the policies of the Minister and public bodies, in the performance of its functions.
- Mr Martin-Smith noted that the Minister has imposed a requirement for consent for any transfer of the IWA site.
- Mr. Martin-Smith explained that this requirement is absolute and not limited in any way. Any transfer must be approved by the Minister.
- Mr Martin-Smith cited correspondence from the Chief State Solicitor's Office dating back to October 2019, included in the IWA's written submission, which demonstrates that the IWA had made multiple efforts to obtain that consent but were unsuccessful.
- Mr Martin-Smith asserted that An Bord Pleanála must take into account the fact that a government department has placed this restriction on the property and has not exercised its discretion to lift it.
- Mr Martin-Smith argued that Limerick City and County Council, in seeking to confirm the CPO, is effectively attempting to circumvent a clear legal restriction created by the Minister.
- Point Two - Mr Martin-Smith stated that it is for the Council to prove that the CPO is clearly justified for the public good, citing the Supreme Court decision in *Clinton v. An Bord Pleanála*.
- Mr Martin-Smith described the IWA as a charity that has made sustained efforts to develop the site in the public interest, including obtaining valuations, undertaking appraisals, and negotiating with third-party developers and the Council.

- Mr Martin-Smith stressed that all of these efforts were stymied by the lack of Ministerial consent, not by any failure or reluctance on the part of the IWA.
- Mr Martin-Smith references the 14 September 2022 email from Tony Cunningham (IWA) to Mr Joe Delaney and Ms Clíona Corry of the Council, in which the state's veto was raised as a central issue. He noted that the Council has not demonstrated that it engaged directly with the Minister or pursued consent.
- Mr Martin-Smith questioned whether the Council had adequately considered the consequences of this ongoing legal restriction and whether it was prudent to expend public resources on a process that might ultimately fail due to lack of consent.
- Mr Martin-Smith emphasised that the site is a valuable asset for the IWA, both financially and socially, and is crucial for supporting its service users.
- Mr. Martin-Smith argued that the CPO process, if confirmed, would eliminate other viable options for the IWA, such as a sale or partnership, and would reduce the transaction to a compensation payment, thereby limiting the benefits for the charity and its users.
- Point Three - Mr Martin-Smith noted that the Ministerial consent restriction only applies for 21 years and is due to expire in February 2030, less than five years from now.
- Mr Martin-Smith argued that the IWA is now approaching a point where it could realistically move forward with the development or sale of the site once the restriction lapses.
- Mr. Martin-Smith pointed out that no planning application has yet been submitted by the Council and that it is unlikely the entire CPO process, including development, will be completed before the restriction expires.
- Mr Martin-Smith suggested that claims that the IWA had not engaged with the Council were unfair, as the Ministerial veto effectively blocked any meaningful progress.

- Mr Martin-Smith asserted that the IWA has demonstrated its intention to use the land and should be allowed to continue its efforts to obtain Ministerial consent and pursue development or other beneficial uses of the site.
- Mr Martin-Smith concluded that the affirmation of the CPO would not serve the public good and would unduly limit the IWA's flexibility in using its own property for the benefit of its users.

11.5. Submissions by Mr Oscar Lyons, BL, on behalf of the Mercy Trust SCP Company Ltd. (Objector)

- Mr. Lyons explained that the objection on behalf of the Sisters of Mercy consists of four key concerns, including (i) privacy and security concerns, (ii) issues concerning the right of way, (iii) questions regarding the power to extinguish a right of way and (iv) the existence of a covenant on the land.
- Mr. Lyons stated that the site proposed for compulsory purchase is adjacent to St. Mary's Convent in Limerick and a graveyard maintained by the Sisters of Mercy.
- Mr. Lyons stated that the Sisters of Mercy are concerned about what kind of development is proposed. They are uncertain about the scale, height, volume, and specific purpose of the housing.
- It is unclear what type of road is intended, whether it would be pedestrian-only, a single-carriageway, or a two-lane road.
- Mr Lyons emphasised that the Sisters of Mercy feel they are operating at an informational deficit and that in the absence of specific proposals, they cannot fully assess how their privacy and security will be affected.
- Regarding the right-of-way, Mr Lyons recognised that both Mr MacNamara and Ms Corry had referred to a proposed preservation of a right-of-way for the Sisters of Mercy.

- Mr. Lyons welcomed the Council's offers and willingness to engage, which were made in consultation with the Sisters. However, he reiterated that uncertainty remains, as the overall plans for the site are not clear.
- While the gesture is appreciated, the Sisters cannot assess whether the offer is adequate, especially in the absence of clarity around the nature of the road and the type and scale of the development.
- Regarding the power to extinguish a right-of-way, Mr Lyons stated that in the material submitted for the CPO, there appeared to be no clear recognition of the Sisters of Mercy's existing right of way.
- Mr Lyons suggested that another individual was referenced as holding a right of way, but the Sisters' specific legal interest was not clearly addressed at that stage.
- Regarding the Covenant, Mr Lyons confirmed that the Sisters of Mercy agree with Mr. Martin-Smith's submissions that a legal covenant exists, which restricts the transfer or sale of the land. This covenant remains in force until 2030.
- Mr Lyons stated that it is not clear whether any contact has been made with the Minister for Finance, who would need to consent to any transfer under the covenant.
- Mr Lyons emphasised that the validity of the covenant has not been challenged and that, on its face, it precludes compulsory purchase because such a purchase would constitute a transfer.
- Mr Lyons argued that unless and until the Minister's consent is obtained, the covenant remains a legal barrier to the CPO proceeding.
- Mr Lyons concluded that the covenant must be addressed in order for the CPO to proceed.

11.6. Response by Mr. Cormac MacNamara, BL in response to Objectors Submissions

- In response to the submission by the Sisters of Mercy, Mr MacNamara reiterated that statutory powers exist to extinguish rights of way, and the Council considers it appropriate to use them in this case.
- However, Mr MacNamara emphasised that the Council had given an assurance that a functioning right of way, better than the current non-functional one, would be provided to the Sisters of Mercy after development is complete.
- Mr. MacNamara stated that the Council is offering an improvement, not just a replacement, and this, along with proposed fencing for security, should reasonably address the Sisters' concerns.
- Mr MacNamara confirmed that the Council does not currently have planning permission or have submitted a detailed plan. This is intentional.
- Mr MacNamara explained that the Council is relying on Section 213(3)(a) of the Planning and Development Act 2000, which permits a local authority to acquire land in anticipation of future need, even where detailed plans are not yet available.
- In response to the issue of Ministerial Consent, Mr MacNamara noted Mr Martin-Smith's reference to the High Court decision in *Murphy v. Wicklow County Council* (March 1999), in which Mr Justice Kearns held that local authorities cannot compulsorily acquire state property due to the principle of sovereign immunity.
- Mr MacNamara confirmed that the Council does not dispute that legal principle but argued it does not apply here because the land is not state property.
- To support this, Mr MacNamara referred to the original conveyance documents annexed to Mr Cunningham's submission where the Indenture of Conveyance dated 16 February 2009 (from the Sisters of Mercy to the IWA), the property was conveyed for €1, subject to a restriction on transfer, conveyance, or alienation for 25 years from 5 June 1992 without the written consent of the Minister for Finance.

- Mr MacNamara explained that this document does not confer any legal interest on the Minister or make the site state property.
- Mr MacNamara noted that the Deed of Rectification, dated 11 March 2010, corrected the starting date of the 21-year restriction to 16 February 2009, expiring in 2030.
- The Deed of Rectification confirms that the Sisters of Mercy transferred the land to the IWA as consideration for indemnities provided by the state in the context of the 2002 redress agreement.
- However, Mr MacNamara maintains that the Minister never took ownership, so the land was never state property.
- Mr. MacNamara addressed the argument that the restriction in the conveyance constituted a freehold covenant.
- Mr MacNamara explained that under established legal principles, a freehold covenant can only arise from one piece of land (the servient tenement) in favour of another (the dominant tenement) and must benefit the dominant land.
- Since no dominant land exists in this case, and the Minister has no interest in a benefiting property, the restriction does not meet the legal test for a freehold covenant.
- Mr. MacNamara cited Paul Coughlan's Property Law (2nd edition, 1998), stating that only covenants which "touch and concern" land, i.e. benefit another property, can bind successors in title.
- Mr MacNamara emphasised that the Ministerial consent restriction is not a covenant that binds future owners, such as a local authority, through a CPO.
- Mr MacNamara stated that although the IWA is bound by the consent requirement as a party to the deed, this does not extend to an acquiring authority such as the Council.
- Mr MacNamara submitted that the static situation of the site, as described even by Mr Martin-Smith, demonstrates why public acquisition is appropriate.

- Mr MacNamara described the site as vacant and derelict, located in an area of significant heritage and archaeological value, and said its current state is a scar on the city.
- In conclusion, Mr. MacNamara reiterated that;
 - The land is not state property.
 - The Minister does not hold a legal interest in the land.
 - The restriction does not constitute a binding freehold covenant that could obstruct the CPO.
 - The use of legal terms like "restrictive covenant" does not create such a covenant if the legal conditions are not met (i.e. calling a two-storey house a bungalow doesn't make it one).
 - Therefore, there is no legal impediment to the Board confirming the CPO.

11.7. Response by Mr. William Martin-Smith, BL (on behalf of the IWA) to Submissions

- Mr Martin-Smith began by replying directly to Mr MacNamara's argument regarding dominant and servient tenements in the context of the alleged restrictive covenant.
- Mr Martin-Smith referred the Inspector back to the original indenture, noting that the document granted the land to the Irish Wheelchair Association (IWA) in fee simple, subject to a restriction on transfer, conveyance, or alienation for 25 years from 5 June 1992 (later corrected to expire in February 2030), without the prior written consent of the Minister for Finance.
- Mr Martin-Smith pointed out that the indenture does not specify the terms or criteria under which consent might be granted or withheld, nor does it imply that consent would necessarily be granted at all.
- Mr Martin-Smith stressed that the document simply imposes a requirement on the IWA to obtain the Minister's written consent before alienating the land.
- Mr Martin-Smith argued that to characterise this consent requirement as a restrictive covenant within the framework of dominant and servient tenements is a misdescription of what the indenture actually does.

- Mr Martin-Smith reiterated that the indenture does grant the fee simple interest to the IWA, which is clear and undisputed.
- However, Mr Martin-Smith emphasised that the restriction on alienation is a condition attached to that grant and not a conventional freehold covenant in the sense understood under property law rules concerning neighbouring land parcels.
- Mr Martin-Smith stated that the purpose of the restriction is not to benefit an adjoining landowner but to reflect the constitutional and public interest context in which the transfer occurred.
- Mr Martin-Smith reminded the Inspector that this context stems from the redress scheme involving religious orders and the State and involves constitutional protections relating to religious land.
- Mr. Martin-Smith concluded that this issue must be evaluated through that lens, namely, its constitutional and public policy implications, rather than through narrow property law principles.
- On that basis, Mr Martin-Smith argued that the restriction in the indenture constitutes a serious legal issue that must be dealt with fully before any CPO is confirmed.
- Mr. Martin-Smith stated that, in his view, the Council has not yet done so, and that this failure should weigh against confirmation of the compulsory purchase order.

11.8. Response by Mr. Oscar Lyons, BL (on behalf of the Mercy Trust SCP Company Ltd.) to Submissions.

- Mr Lyons submitted that the original and amended indenture constitute an enforceable restrictive covenant and haven't been addressed appropriately. On this basis, the objection still stands.

11.9. Questioning between Parties

- Mr William Martin-Smith confirmed no further questions.

11.9.1. Questioning by Oscar Lyons, BL

- Mr Oscar Lyons asked a general and brief question, seeking clarification on aspects of the proposed development while acknowledging that the hearing pertained solely to the compulsory purchase aspect and not planning.
- Mr. Oscar Lyons inquired about the intended nature and purpose of the proposed road, specifically whether it would be a pedestrian route, a road for vehicular traffic, a single carriageway, or a dual carriageway.
- Mr. Oscar Lyons also inquired about the form of the proposed housing, whether the Council envisaged individual houses, a multi-unit development, or some other configuration.
- In response, Ms Clíona Corry, acting SEO on behalf of LCCC, clarified that the proposal would provide a 'street'.
- Ms Corry explained that the site includes numerous constraints, notably the line of the historic Limerick city walls.
- Ms Corry said that the Council's Archaeologist had made it very clear that a proposal involving continuous traffic over the line of the city walls would not be acceptable.
- Regarding housing, Ms Corry explained that it is impossible to progress a Part 8 planning application or develop detailed architectural drawings until ownership of the site is clarified and there is certainty as to who will lead the development.

11.9.2. Questioning by Mr Cormac Mac Namara, BL.

- Mr MacNamara addressed Mr Tony Cunningham of the IWA (present online at the oral hearing) and asked Mr Cunningham to confirm whether his position of frustration was due to being unable to secure the Minister's consent to alienate (i.e. transfer or sell) the property.
- Mr. Cunningham replied, "Correct. Yes."

- Mr. Cunningham provided a detailed history of the IWA's efforts to develop or lease the site. However, proposals could not progress due to the lack of consent.
- Mr Cunningham said the IWA has persistently sought consent to sell through its legal team and has been in ongoing correspondence with the Department and the Chief State Solicitor's Office. However, consent has not been given.
- Mr. Cunningham concluded by stating that many viable ideas have emerged, but the covenant has made meaningful engagement and investment in plans very difficult.

11.9.3. Questioning by the Inspector

- The Planning Inspector asked whether the IWA currently had any proposals for the development of the lands. Mr Tony Cunningham (IWA) confirmed that the IWA had no concrete plans at present and emphasised that this was due to the need for Ministerial consent, which limited their options.
- The Planning Inspector asked for clarification from the Sisters of Mercy's legal representative regarding the nature of the security and privacy issues raised in their objection. Mr Lyons, BL responded, stating that the site includes both a convent and a graveyard, both of which are sensitive areas.
- Mr Lyons explained that the core concern is the lack of clarity about the proposed development, including the form and scale of the housing, the purpose and design of the proposed road, the potential overlooking of the convent and graveyard, and potential security concerns.
- The Planning Inspector asked the Council if the site had been subject to a vacant site levy. The Council confirmed that it had not been subject to a vacant site levy.
- The Planning Inspector sought clarity from the Council on the type and/or tenure of housing that would be provided on the site. Ms Corry confirmed that housing (general) would be provided on the site, and that no specific tenure had been applied to the proposed housing.

- When asked what the housing capacity of the site is, Ms Corry confirmed that a development appraisal undertaken identified that the site had a capacity of 30-35 housing units, subject to final design.
- The Planning Inspector sought clarification from the Council regarding the location of the Limerick City Wall and the Dominican Abbey Wall on the site. Ms Corry explained their location by referring to Figs. 4 and 5 in her submission.

11.10. Closing Comments

11.11. Both Mr. Martin-Smith, BL, representing the Irish Wheelchair Association, and Mr. Lyons, BL, representing the Mercy Trust SCP Company Ltd, chose not to make a closing statement.

11.12. Mr. Mac Namara, BL, representing Limerick City and County Council, made a closing statement. Addressing the four CPO criteria from Macken, Galligan and McGrath, Mr MacNamara put forward the following;

- There is an unquestionable need for housing in Limerick's inner city.
- The site has been underutilised and vacant since the late 1990s, with potential for housing and a new street.
- The site has become a scar on the city, which the Council intends to address.
- The site's constraints, including the Limerick city walls and Dominican priory wall, can be positively incorporated to enhance the city's historic character.
- The proposal would improve permeability by linking disconnected streets and replacing an unattractive, impermeable stretch of road.
- The Council had pursued the site since at least 2013 when it first raised the possibility of purchasing and obtaining valuations.
- The Council has been patient in awaiting development by the IWA, but it has not materialised due to persistent barriers.
- Unlike the IWA, the Council is not hindered by the Ministerial consent requirement and is, therefore, better placed to deliver development.
- The proposed CPO is consistent with the Limerick Development Plan.

- The land is not state property, and therefore, the *Murphy v. Wicklow County Council* decision does not apply.
- The Deed of Conveyance (February 2009) and Deed of Rectification (March 2010) confirm the site was transferred in fee simple to the IWA.
- While a restriction on alienation is included, requiring Ministerial consent, this does not constitute a restrictive covenant in the legal sense.
- Mr. Mac Namara explained that a freehold restrictive covenant must involve a dominant tenement benefiting from a restriction placed on a servient tenement. There is no such relationship in this case, and therefore, no restrictive covenant arises in law despite assertions otherwise.
- Mr MacNamara addressed Mr Martin-Smith's reliance on Section 49(2) of the Land and Conveyancing Law Reform Act 2009. He argued that this section only applies to freehold covenants, and the current restriction does not qualify as such. Moreover, the section only came into force on the 1st December 2009, whereas the operative deed is from February 2009.
- Mr. MacNamara cited the Court of Appeal decision [2023] IECA 185, which reaffirmed the concept of dominant and servient tenements as essential to a restrictive covenant. The judgment supports this position that no enforceable covenant exists without a dominant land benefiting from the restriction.
- Mr. MacNamara rejected the IWA's claim (raised by Mr. Martin-Smith) that the restriction was intended to protect the constitutional rights of the Sisters of Mercy. He pointed out that the language of Article 44.2.6 of the Constitution is not used anywhere in the Deed of Conveyance or the Deed of Rectification. The only stated consideration for the transfer is the Sisters of Mercy indemnity for historical child sexual abuse claims. The transaction was a property transfer in exchange for indemnity, not a constitutional protection mechanism.
- Mr MacNamara emphasised that the conveyance is not a tripartite agreement. The parties to the deed are solely the Sisters of Mercy (vendor) and the IWA (purchaser), and the Minister for Finance is not a covenantor or party. The

reference to Ministerial consent does not give the Minister a legal interest in the land.

- Mr. MacNamara concluded by stating that the Council has met all four criteria required to justify a CPO in the public interest. Furthermore, there is no legal obstacle to the confirmation of the CPO. The land is not state property, and the Minister's consent clause does not bind the acquiring authority. The restriction is not a freehold covenant and has no effect under law to impede the Council's acquisition. The CPO should, therefore, be confirmed by An Bord Pleanála.

11.13. **Closing**

11.14. The Inspector closed the meeting at 12.57 p.m.