



An  
Coimisiún  
Pleanála

## Inspector's Report

### ABP-319906-24

#### Development

The SEED Project (Phase 1)  
Compulsory Purchase Order 2024

#### Location

Chestnut Road, Ballybofey,  
County Donegal

#### Planning Authority

Donegal County Council

#### Applicant(s)

Donegal County Council

#### Type of Application

Compulsory Purchase Order

#### Objector(s)

Seamus McMenamin  
Michael McMenamin  
Mary Lafferty

#### Date of Site Inspection(s)

11<sup>th</sup> April 2025  
14<sup>th</sup> October 2025

#### Date of Oral Hearing

14<sup>th</sup> October 2025

#### Inspector

Philip Maguire

# Contents

1.0 Introduction .....	4
1.1. Overview .....	4
1.2. Purpose of CPO .....	4
1.3. Part 8 Scheme .....	5
1.4. The SEED Project and the CPO .....	6
1.5. Accompanying Documentation .....	6
2.0 Site Location and Description .....	6
3.0 Planning History .....	7
4.0 Policy Context .....	9
4.1. Local Planning Policy .....	9
4.2. Regional Planning Policy .....	11
4.3. National Planning Policy and Guidelines .....	11
4.4. Other National Policy and Guidance .....	13
4.5. Other Guidance .....	14
4.6. Natural Heritage Designations .....	15
5.0 Grounds of Objection .....	15
6.0 Response to Objections .....	19
7.0 Oral Hearing .....	25
8.0 Assessment of Case .....	25
8.1. Preliminary Points .....	25
8.2. Procedural Matters .....	28
8.3. Community Need .....	33
8.4. Suitability of the Land .....	37

8.5. Provisions of the Development Plan .....	42
8.6. Consideration of Alternative Methods .....	44
8.7. Other Issues Raised by Objectors .....	46
8.8. Proportionality and Necessity.....	49
9.0 Recommendation.....	51
10.0 Reasons and Considerations.....	51
Appendix A (Part 8 Conditions) .....	53
Appendix B (Summary of Proceedings at Oral Hearing) .....	56

## 1.0 Introduction

### 1.1. Overview

- 1.1.1. Donegal County Council ('the Council') submitted for confirmation a Compulsory Purchase Order (CPO) under Section 76 of, and the Third Schedule to, the Housing Act, 1966, as extended by Section 10 of the Local Government (No. 2) Act, 1960, and amended by Section 6 and the Second Schedule to the Roads Act, 1993, and the Planning and Development Act, 2000, as amended. The CPO was submitted to An Bord Pleanála, now An Coimisiún Pleanála ('the Commission') since 18<sup>th</sup> June 2025.
- 1.1.2. The CPO is sought for the SEED Project<sup>1</sup>, relating to town centre regeneration works.
- 1.1.3. One objection was received in respect of the CPO from the individuals detailed in Section 5 below. This Inspector's Report considers the issues raised in the objections submitted and, more generally, the application to acquire lands for its stated purpose.

### 1.2. Purpose of CPO

- 1.2.1. The Council are seeking to acquire compulsorily the lands necessary to implement the SEED Project. The project can be broadly identified as three separate but linked elements, namely the reuse and repurposing of the former Ritz Cinema and the creation of public space on the car park opposite, with replacement parking in a new building on lands to the rear. This requires the permanent acquisition of subject lands.
- 1.2.2. The Deposited Map accompanying the CPO Schedule includes the lands subject to the CPO edged in red and coloured grey, with yellow bubble annotations identifying each plot of land subject to acquisition in accordance with the details provided in the associated Schedule i.e., 01a (Field), 01b (Access Road) and 01c (Sewer Manhole).
- 1.2.3. Plot 01a, with a stated area of 0.227ha, is indicated within the ownership/reputed ownership of all three objectors. Plot 01b, with a stated area of 0.0816ha is indicated with the ownership/reputed ownership of Mary Lafferty and Michael McMenamin. Plot 01c, within the field, is shown within the ownership/reputed ownership of the Council.

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<sup>1</sup> A Town Centre Regeneration Project to Strengthen, Enable, Engage and Deliver Transformational Change in Ballybofey-Stranorlar.

### 1.3. Part 8 Scheme

- 1.3.1. An application for the SEED Project previously took place under Part 8 of the Planning and Development Regulations 2001, as amended, under PA ref. Part 8 PG 20/21.
- 1.3.2. The proposed development was described in the statutory notices as:
  1. *Demolition of the double height auditorium block at the northern end of the former Ritz Cinema together with demolition of existing shed to the rear of same;*
  2. *Restoration and refurbishment of the entrance block to the former Ritz Cinema, construction of a new 2 and 3-storey contemporary extension with bridge link and change of use to an Enterprise building;*
  3. *Re-development of an existing public car park to provide for a civic space, inclusive of pedestrian infrastructure, road frontage canopy detail, public amenities and changing places facility;*
  4. *Construction of façade enhancements to the existing shopping arcade;*
  5. *Construction of a new two-storey car park with approx. 130 no. spaces, sustainable urban drainage system (SuDS) and enhanced pedestrian linkage to the new civic space;*
  6. *All associated ancillary works to include site drainage, connection to public water supply and other services, landscaping, development related signage & public art, connection & discharge to the public sewerage network.*
- 1.3.3. An appropriate assessment (AA) Screening Report (September 2020) was prepared and formed part of the assessment for the Part 8 process. It determined that AA was not required, concluding that the proposed development individually or in combination with other plans or projects would not have a significant effect on a European site.
- 1.3.4. A preliminary examination for the purposes of environmental impact assessment (EIA) (September 2020) was also carried out. The EIA screening concluded that there is no real likelihood of significant effects on the environment and an EIAR was not required.
- 1.3.5. On 16<sup>th</sup> November 2020, and in the absence of a resolution of Elected Members to vary, modify or not proceed, the local authority was authorised to carry out the development as per the recommendation to proceed in the Chief Executive's Report.

1.3.6. Appendix C of the Chief Executive's Report relates to a modified site layout (Dwg. No. BS/SEED/04/2). This drawing details the removal of a previously proposed right-turn lane into the car park, the location of existing disabled parking bays and proposed sightlines from the new car park and behind the shops. Appendix D outlines 11 no. conditions as per the Planning Report Part 8 PG 20/21 (see Appendix A below).

#### **1.4. The SEED Project and the CPO**

- 1.4.1. The Part 8 documentation indicates that the proposed development forms part of a broader strategy for the regeneration of Ballybofey-Stranorlar. As noted, the SEED Project can be broadly identified as three separate but linked elements, namely the reuse of the former Ritz Cinema, public space and a replacement car park building.
- 1.4.2. It is the latter element, namely the construction of a two-storey car park (now c. 112 no. spaces) to replace the loss of existing spaces that relates directly to this CPO case.

#### **1.5. Accompanying Documentation**

- 1.5.1. The submitted documentation includes the following:
  - Compulsory Purchase Order in a prescribed form, complete with:
    - Schedule, Signed and Sealed; and
    - Deposited Map (Dwg. No. CPDU-P010-CPO-01), Signed and Sealed
  - Original newspaper notice (Donegal Democrat, 6<sup>th</sup> June 2024)
  - Copies of letters and prescribed notices served on affected owners or purported owners (4<sup>th</sup> June 2024) including An Post registered post Certificate of posting.

### **2.0 Site Location and Description**

- 2.1. Located along and generally to the north and west of Chestnut Road, the subject site is situated in the town centre of Ballybofey, County Donegal. Chestnut Road forms a priority junction with the N15 (Lower Main Street) to the north of the site and links with Navenny Street to the west. It provides access to backland areas including Finn Park, home of Finn Harps FC, some mixed-use buildings and a recently built supermarket.

The River Finn lies to the east of the site and separates the 'Twin Towns' of Ballybofey and Stranorlar. It is also a European site i.e., the River Finn SAC (site code 002301).

- 2.2. The site is generally rectangular shaped and consists of a field and access road. The road, which runs along the northern boundary, has a concrete surface and is in a poor state of repair. It is used to service the shopping arcade units to the north with 'loading bay' and 'no parking' signs evident in places at the time of inspection. A number of cars were, however, parked along both sides of the access road with a commercial skip and refuse bins located towards the western extent of the northern site boundary.
- 2.3. A walkway linking Lower Main Street with Finn Park and the supermarket flanks the subject site to the west. The field is bound by this walkway, the aforementioned access road and Chestnut Road, including a section of public footpath. A 20kV substation is located on this footpath, near the walkway. Field boundaries are defined by a timber post and rail fence to the east and south, and a low block wall to the north. The western boundary is generally undefined save for some bollards at the end of the access road.
- 2.4. The surrounding area is generally characterised by a mix of commercial, recreational and residential uses, however there is a large agricultural field to the east of the site between the River Finn and Chestnut Road. A public car park, the 'HSE Car Park', lies immediately north of this field with the 'Shopping Centre Car Park' immediately west of that, and on the opposite side Chestnut Road. A third town centre public car park, 'Navenny Car Park', is located some 300m further west off Navenny Street.

## 3.0 Planning History

### 3.1. CPO Site

- 3.1.1. PA ref. 05/60163 – permission granted by the planning authority in March 2007 for a 4-storey mixed-use building including basement level car parking and 17 no. apartments. An extension of duration application was refused in July 2012 (ref. 12/60100) as the applicant did not respond to a further information request (Art. 45).

### 3.2. Adjacent Sites

*Costcutter, Ballybofey Shopping Arcade*

- 3.2.1. PA ref. 20/50589 – permission granted by the planning authority in August 2020 for alterations to the front elevation for the inclusion of seating area and toilet facilities etc.

*Gallagher's Bakery, Ballybofey Shopping Arcade*

3.2.2. PA ref. 06/60479 – permission granted by the planning authority in October 2006 for a front extension, the duration of which was extended to October 2016 (ref. 11/60173).

*Chestnut Road*

3.2.3. PA ref. 20/51276 – permission granted by the planning authority in December 2021 for new pumping station at Navenny Pumping Station etc.; upsizing of c. 300m of rising main on Navenny Street; and c. 150m of Ø375mm gravity sewer from the junction of Navenny Street and Chesnut Road to an existing manhole located on Chesnut Road.

*Aldi, Chestnut Road*

3.2.4. PA ref. 12/60106 – permission granted on appeal (PL05E.241916) in August 2013 for a discount foodstore, free standing sign, car and bike spaces, vehicular access etc. along with works to a flood defence embankment along the River Finn to the south.

3.2.5. PA ref. 18/50232 – permission granted by the planning authority in May 2018 for an extension to the foodstore, including an increase in parking spaces from 82 to 90 no.

*Ballybofey & Stranorlar Flood Mitigation Measures*

3.2.6. ABP-310657-21 – in December 2021, approval issued for the construction of two storm manholes and two pump hardstands behind the flood embankments on the River Finn. The Board was satisfied that the proposal, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European sites.

**3.3. Cases Cited by Objectors**

*Roosky, Monaghan, Co. Monaghan*

3.3.1. PL18.CH3233 – in October 2015, CPO annulled in relation to the acquisition of land to provide additional car parking facilities in Monaghan town centre. Having regard to the absence of a demonstrated community need and overall benefit to be achieved from the proposed acquisition and the insufficient information available (including information on the consideration of alternatives) and the inadequate case made to justify the need for the proposed acquisition etc., the Board considered that, the acquisition by the local authority of the lands in question had not been justified etc.

*Roundstone, Co. Galway*

3.3.2. ABP-306355-20 – in March 2022, CPO confirmed in relation to a planned WwTP.

## 4.0 Policy Context

### 4.1. Local Planning Policy

#### ***Seven Strategic Towns Local Area Plan 2018-2024***

- 4.1.1. I note that the Council's Part 8 decision was made under the provisions of the Seven Strategic Towns LAP 2018-2024 ('SSTLAP') where the subject site was identified within the 'town centre' on the Ballybofey zoning map (Map 3). The STTLAP also indicated the site as 'Opportunity Site 1' and within a flood risk area (Flood Zone A).
- 4.1.2. In relation to 'Opportunity Site 1', Ballybofey Town Centre, Section 5.4.2 of the SSTLAP acknowledges the 'major opportunity' to deliver a quality area of civic / public space at the existing parking area to the front of the Ballybofey shopping centre. It also notes, however, that the civic space cannot proceed unless and until the parking to be displaced has already been replaced at an adjacent site. This is reinforced under policy BS-TC-1. Design principle (a) notes that the existing car parking area may be the location for the development of a quality, designed civic space, subject to advance replacement of parking spaces that will be displaced at suitably convenient location(s).
- 4.1.3. It should be noted that the Ballybofey-Stranorlar content in the SSTLAP has been superseded by Chapter 19 of the County Donegal Development Plan 2024-2030.

#### ***County Donegal Development Plan 2024-2030***

- 4.1.4. The current Development Plan came into effect on 26<sup>th</sup> June 2024. The Plan was subject to a draft Ministerial Direction and is pending a final decision by the Minister following subsequent Chief Executive's Report (August 2024) and OPR recommendations (September 2024). Whilst the draft Ministerial Direction does, in part, relate to Ballybofey-Stranorlar, the provisions don't materially affect the CPO site.
- 4.1.5. I also note that proposed Variation No. 1 of the Plan was at pre-draft public consultation stage in February 2025, with Pre-Draft Public Consultation Report published in May 2025. Whilst the proposed variations would effectively replace the remaining provisions of the Seven Strategic Towns LAP, they do not affect the site.
- 4.1.6. The subject site is zoned 'urban core' in the Ballybofey / Stranorlar Area Plan Land Use Zoning Map (Map 19.1) and as noted, is subject to the provisions of Chapter 19.

4.1.7. Table 19.1 sets out the land use zoning matrix where typical town centre uses are 'acceptable in principle', including 'cultural uses' and 'park / playground' uses with 'community / recreational / sports' uses 'open for consideration'. Footnote 4 of the matrix notes that 'standalone car parks will only be considered in the urban core where they are not contrary to Urban Regeneration and Town Centre objectives of the LAP'.

4.1.8. Relevant sections include:

- 5.2 – Prioritisation of Town and Village Cores (Table 5.2)
- 8.4 – Flooding
- 19.6 – Economic Development and Employment
- 19.7.3 – Sustainable Mobility
- 19.9 – Urban Regeneration and Town Centre Development

4.1.9. Summary of relevant policies and objectives:

BS-TC-O-2 Seeks to fully implement the SEED Project including the provision of a new Civic Square and new 2 no. storey replacement car park etc.

BS-TC-O-3 Seeks to implement projects which achieve the placemaking objectives and principles set out in the Regeneration Strategy and Action Plan etc.

BS-TC-P-1 Seeks to facilitate projects which accord with the placemaking objectives set out in Section 5.0 of the Regeneration Strategy and Action Plan etc.

TV-O-6 Seeks to implement all RRDF funded projects, incl. the SEED Project.

F-O-1 Seeks to ensure that development does not give rise to unacceptable new flood risks or does not exacerbate existing flood risk.

F-P-1 Seeks to only permit development where flood or surface water management issues can be successfully addressed and/or where there is no unacceptable residual flood risk for the development, its occupants etc. within the catchment. The policy applies a precautionary approach to flood risk including the application of 'Avoid, Substitute, Justify' as set out in the Flood Risk Management Guidelines (DEHMG, 2009), and requires an independent Flood Risk Assessment; and evidence of compliance with the Justification Test, where considered appropriate.

## 4.2. Regional Planning Policy

### ***Regional Spatial and Economic Strategy (RSES)***

- 4.2.1. The Northern and Western Regional Spatial and Economic Strategy 2020-2032 (NWRA, 2020) sets the regional policy context. Section 3.3 relates to placemaking and Section 3.5 relates to smaller towns, villages and rural areas in the NWRA area.
- 4.2.2. In this regard, I note that Regional Policy Objective (RPO) 3.4 seeks to support the regeneration and renewal of small towns in rural areas; RPO 3.9 seeks to identify suitable development opportunities for regeneration and development that are supported by a quality site selection process etc.; RPO 3.13 seeks to support the role of medium sized towns, which demonstrate an important role in terms of service provision and employment for their catchments within the county's economic function

## 4.3. National Planning Policy and Guidelines

### ***Revised National Planning Framework (NPF)***

- 4.3.1. Project Ireland 2040, the National Planning Framework *First Revision* (DHLGH, April 2025), sets the national policy context. National Strategic Outcome (NSO) 5 promotes the concept of sustainable mobility whilst NSO 7 seeks to enhance amenities etc. I also note that NSO 1, relating to compact growth, is supported by urban regeneration and rural rejuvenation through the Urban Regeneration and Development Fund (URDF) and Rural Regeneration and Development Fund (RRDF) and other programmes targeted at addressing vacancy, dereliction and brownfield development.
- 4.3.2. National Policy Objective (NPO) 15 seeks to apply a tailored approach to urban development, linked to the Rural and Urban Regeneration and Development Funds, with a particular focus on strengthening Ireland's overall urban structure, particularly in the Northern and Western region, including cross-border networks focused on the Letterkenny-Derry North-West City Region, and by facilitating amenities catch-up.
- 4.3.3. NPO 25 seeks to target the reversal of rural decline in the core of small towns and villages through sustainable targeted measures that address vacant premises and deliver sustainable reuse and regeneration outcomes. NPO 26 seeks to continue to support the proportionate growth of, and appropriately designed development in, rural

towns that contributes to their regeneration and renewal, including public realm interventions, the provision of amenities, acquisition of sites and services provision.

### ***Compact Settlements Guidelines***

- 4.3.4. The Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (DHLGH, 2024) set out policy and guidance in relation to urban and rural settlements, with a focus on sustainable housing and compact settlements.
- 4.3.5. Section 1.3.2 relates to compact growth and introduces the concept of the '15-minute city'. It states that planning authorities at settlement level should plan for an integrated network of well-designed neighbourhoods that can meet day-to-day needs such as food, healthcare, education, sports and professional services. This will reduce the need for travel and the need for travel by private car, supporting the transition to a lower carbon society and the creation of settlements that are more socially inclusive.

### ***Flood Risk Management Guidelines***

- 4.3.6. The Planning System and Flood Risk Management, Guidelines for Planning Authorities (DEHMG, November 2009)<sup>2</sup>, seek to avoid inappropriate development in areas at risk of flooding, and new development increasing flood risk elsewhere, whilst also avoiding unnecessary restriction of national, regional or local economic growth.
- 4.3.7. Section 3.5 of the Guidelines notes that most types of development would be considered inappropriate in Flood Zone A and should be avoided and/or only considered in exceptional circumstances, such as in town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied, unless considered "water-compatible development" in accordance with Table 3.1, e.g., amenity open space. I note that local transport infrastructure is classified as a "less vulnerable development" type in Table 3.1, whereas essential infrastructure, such as primary transport, is "highly vulnerable".
- 4.3.8. Section 5.28 notes that the sequential approach cannot be used to locate certain "minor development" to lower-risk areas and the Justification Test will not apply in those cases. It also provides that commensurate risk assessment should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities.

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<sup>2</sup> These guidelines were amended/clarified under Circular PL 2/2014.

#### 4.4. Other National Policy and Guidance

##### ***Climate Action Plans***

- 4.4.1. The Climate Action and Low Carbon Development Act 2015, as amended, ('the Climate Act'), commits the State to a legally binding 51% reduction in GHG emissions by 2030 and to achieving net zero emissions by 2050. Section 15 places an obligation on the Commission to make decisions in a manner consistent with the Climate Act.
- 4.4.2. The Climate Action Plan 2024 (CAP24) follows the commitment in the Climate Act and sets out the range of emissions reductions required for each sector to achieve the committed targets. Measures to reach a 50% reduction in transport emissions include a 20% reduction in total vehicle kilometres and a 50% increase in daily active travel.
- 4.4.3. The Climate Action Plan 2025 (CAP25) was published in April 2025 (DECC) and builds upon CAP24 by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings and states that it should be read in conjunction with CAP24. As with CAP24, the CAP25 Annex of Actions contains only new, high-impact actions for delivery in 2025. Action TR/25/15 seeks to roll out key elements of the EV Infrastructure Strategy, including local authority network plans. Action TR/25/18 seeks to deliver the Renewable Transport Fuel Policy 2025-2027.

##### ***Renewable Transport Fuel Policy 2025-2027***

- 4.4.4. The Renewable Transport Fuel Policy 2025-2027 (Dept. of Transport, June 2025) sets a pathway for achieving CAP biofuel targets as well as delivering the targets for renewable energy share in transport under the EU's Renewable Energy Directive.
- 4.4.5. It notes that biofuel blending avoided the equivalent of 118,319 internal combustion engines on Irish roads in 2019 and this increased to 236,279 by 2024. It also highlights the EPA's projection that the biofuels consumption will achieve GHG emissions abatement of 1.61 MtCO<sub>2</sub>eq in 2030, exceeding the CAP23 target of 1.08 MtCO<sub>2</sub>eq.

##### ***National Sustainable Mobility Policy***

- 4.4.6. The National Sustainable Mobility Policy (Dept. of Transport, April 2022) sets out a framework to 2030 for active travel and public transport to support Ireland's climate action requirement to achieve a 51% reduction in greenhouse gas emissions by 2030.

4.4.7. Section 3 sets out the key principles underpinned by ten high-level goals, including behavioural change and demand management relating to private car use (Goal 5). I also note that Goal 7 aims to support enhanced permeability and ensure universal design and the Hierarchy of Road Users model is used to inform investment decisions.

### ***Town Centre First Policy***

4.4.8. *Town Centre First*, a Policy Approach for Irish Towns (DHLGH and DRCD, February 2022) aims to proactively address the decline in the health of towns across Ireland and supports measures to regenerate and revitalise them. It highlights how re-use and regeneration can be a catalyst to transforming the capacity of smaller Irish towns.

4.4.9. Cognisant of the dependence of many Irish towns on cars for day-to-day activities, and mindful of the impact of car dominance on the public realm in such towns, Section 2.5 advocates for a balance being struck between managing vehicle movements so as to ensure streets are accessible whilst not being dominated by cars and car parking.

## **4.5. Other Guidance**

### ***Ballybofey-Stranorlar Regeneration Strategy and Action Plan 2022***

4.5.1. Section 3.0 of the Ballybofey-Stranorlar Regeneration Strategy and Action Plan (April 2022) identifies the SEED Project as an ambitious proposal to bring lasting social and economic benefits and in doing so deliver a two-storey car park amongst other things.

4.5.2. Section 4.0 of the Plan identifies the SEED Project as a Core Regeneration Project in the Masterplan Strategy, located between two ‘regeneration districts’ (Ballybofey Village and Pentland Park). Thus, Section 6.0 refers to it as an ‘associated local project’ and notes that it was awarded rural regeneration funding (RRDF) in April 2021.

### ***Design Manual for Urban Roads and Streets (DMURS)***

4.5.3. Guidance relating to the design of urban roads and streets is set out in DMURS (DTTS and DHPLG, 2013, updated May 2019). Section 3.3.4 notes that wayfinding, or legibility, relates to how people can find their way around an area. In general:

- More orthogonal street layouts are more legible (as well as the most connected).
- The network should be structured to draw people towards Focal Points such as Landmarks, Gateways and other civic buildings and spaces.

## 4.6. Natural Heritage Designations

### 4.6.1. Relevant site(s):

- River Finn SAC (site code 002301) – c. 100m east

## 5.0 Grounds of Objection

### 5.1. One objection was received from Genesis Planning Consultants on behalf of:

- Seamus McMenamin (Plot 01a),
- Michael McMenamin (Plot 01a and Plot 01b), and
- Mary Lafferty (Plot 01a and Plot 01b).

### 5.2. The documentation includes:

- Planning Statement including Grounds of Objection,
- Copy of CPO Orders, and a
- Solicitors letter relating to ownership of lands.

5.3. Section 1.2 of the supporting Planning Statement sets out the relevant legal interest. It states that the subject lands are owned by Chestnut Partnership of which the above parties are shareholders along with family members. It also states that Mary Lafferty and Michael McMenamin are the registered owners in their capacity as trustees. This is detailed in the supporting solicitors' letter however I note that the attachments listed in that letter, including a copy of Chestnut Partnership Agreement, were not submitted.

5.4. The objection provides an overview of the SEED project, noting that the proposed two-storey car park, with c. 130 no. spaces, SuDS and pedestrian linkages, is identified on the objectors' land. It is stated that whilst aspects of the Part 8 scheme are acceptable, it is the provision of the car park which is the subject of their substantive objection.

5.5. The statement of case can be summarised as follows:

### 5.5.1. **Ground 1 – principal of the development in the planning policy context**

- Not consistent with NPO's 3a, 3c, 4, 6, 7, 11, 27, 33 and 53 of the NPF which set out the strategic objective to promote alternatives to the car and in relation to the achievement of urban consolidation.

- Contrary to the RSES – will result in town centre lands being developed for car parking – referencing Section 3.5 and RPO's 3.4, 6.30 and 7.20.
- Contrary to the Compact Settlement Guidelines – referencing Section 1.3.2 and noting that these Guidelines were introduced after the Part 8 consent.
- Contrary to the National Sustainable Mobility Policy – being a town centre site within walking distance of local amenities and bus stops and noting that this policy was introduced after the Part 8 consent.
- Not consistent with DMURS which recognises the need to encourage a mobility shift and this is best achieved by removing car parking – whilst also suggesting that it is not consistent with Section 3.3.4 in relation to 'wayfinding' / placemaking.
- Contrary to the Climate Action Plan and the modal shift away from private car use and refers to the principles set out in the 'most recent Galway Ring Road case'.
- Contrary to the principles of the Town Centre First Policy.
- Contrary to the Development Plan – whilst noting that the SEED Project is an objective of the Plan, states that the Plan as a whole supports urban regeneration so that sites, such as the CPO site, are developed in a manner that encourages urban living and commercial activity. Also notes that the Plan states that there is spare capacity in existing town centre car parks in Ballybofey and Stranorlar.

#### 5.5.2. **Ground 2 – need and lack of justification**

- Notes the lack of a parking survey for the Part 8; states that a parking review has been carried out and it highlights the need for a survey to justify the scheme.
- States that there are 503 no. public spaces and 373 no. commercial spaces in the town; suggests that an abundance of parking spaces are available and public parking is only required for other commercial and civic premises.
- Refers to an extract from Section 19.7 of the Development Plan which notes that Ballybofey and Stranorlar have spare capacity in the public car parks and outlines that parking will only be considered in 'urban core' in exceptional circumstances.
- Notes that the net increase in parking – 135 no. spaces to replace 77 no. spaces.

- Refers to a CPO case under ABP ref. PL18.CH3233, which the Board annulled on the basis of insufficient need etc. (see section 3.3.1 above) and highlights the concerns of the Inspector in that case regarding a lack of formal analysis etc.

#### 5.5.3. **Ground 3 – locational principles**

- Notes the town centre location and proximity to 2 no. bus stops.
- Suggests that a car park would be contrary to a modal shift towards public transport as per the National Sustainable Mobility Policy, undermining usage in the town.

#### 5.5.4. **Ground 4 – lack of housing in the town centre**

- Highlights a lack of housing, 27 no. units, in the town centre from 2018-2023, representing 10% of the Core Strategy figure (310 no. units) of the previous Plan and submits that this is unsustainable.
- To utilise the site for car parking which is otherwise suited to deliver residential development as per the previous permission (PA ref. 05/60163) is poor planning.
- Refers to an extract from Section 19.2 of the Development Plan which acknowledges the low level of housing completions over the last decade.

#### 5.5.5. **Ground 5 – urban regeneration in the town**

- Submits that the proposal is not appropriate as a 'Gateway' to the backlands and Chestnut Road area and will not realise an appropriate design response / placemaking as per DMURS, and Section 3.3.4 specifically.
- Highlights extracts from Section 2.5 (Regeneration of Public Space) and Section 2.6 (Sustainable Mobility) of the Town Centre First Policy and Section 19.9 of the Development Plan relating to vehicle dominated/poor pedestrian urban environments and underutilised backlands and states that the proposal is not appropriate in this context and thus contrary to the proper planning of the area.

#### 5.5.6. **Ground 6 – parking provision and a mobility shift towards sustainable transport**

- Submits that a net reduction in parking should be encouraged; this is particularly relevant in Ballybofey where there is spare capacity in the public car parks.

- Notes that such a mobility shift is supported at national level and reducing car parking aligns with national trends of supporting sustainable transport options, thus encouraging residents to opt for active travel and reduce carbon emissions.
- Refers to Part 8 schemes in Balbriggan (Fingal Co. Co.) and in Meath Street (Dublin City) where 129 no. and 21 no. public spaces were removed, respectively.
- Submits that the Council should move towards a renewal scheme policy that achieves a net reduction in parking spaces, thus promote sustainable transportation, reduce traffic congestion and enhance the overall public realm.

#### 5.5.7. **Ground 7 – alternatives not examined or justified**

- Notes that alternative sites were not examined or set out in the Part 8, nor was the absence of the proposed car park considered.
- No engagement with the landowner during the CPO process.
- Queries the need for the parking with the quantum of existing spaces and identified spare capacity therein.

#### 5.5.8. **Ground 8 – criteria for a CPO**

- Submits that there are four criteria to be applied when the use of CPO powers are proposed as per *Compulsory Purchase and Compensation in Ireland: Law and Practice* (1992) and sets out a case under each.
- Community need – refers to the absence of a parking survey to demonstrate the need for the existing spaces or net increase that would arise; invites the Inspector to survey current availability; refers to CPO case under ABP ref. PL18.CH3233.
- Suitability of the land – notes the town centre location and proximity to 2 no. bus stops and states that additional car parking would be contrary to a modal shift and represents poor design in the context of DMURS, Town Centre First Policy and the provisions of the Development Plan.
- Compliance with Development Plan – Part 8 scheme was not assessed against the provisions of the current Plan which incorporates the Area Plan for Ballybofey/Stranorlar; suggesting that the Plan as a whole supports urban regeneration notwithstanding the specific objective regarding the SEED Project.
- No alternatives presented in the Part 8 scheme or under the CPO.

## 6.0 Response to Objections

6.1. The Council's written response to the objection is contained within a 'Brief of Evidence' jointly prepared by Mr Ardal McDermott and Ms Sinead McCauley and a 'Brief of Evidence (Addendum)' prepared by Mr Frank Sweeney. Both Council reports were received by the Commission on 10<sup>th</sup> October 2025 and circulated to the Objectors.

6.2. It is noted that the latter report is dated 12<sup>th</sup> September 2024 whereas the 'Brief of Evidence (Addendum)' circulated at the hearing is dated 14<sup>th</sup> October 2025. There is no substantive difference, with some additional policy context in the initial report.

6.3. The main 'Brief of Evidence' sets out the scope of the proposed works, noting that the SEED Project involves works on lands that are in the charge of the Council, lands that have been acquired by the Council through negotiation and also privately owned lands that are subject of the CPO. It also sets out a need for the project, noting the role of Ballybofey-Stranorlar in the county's settlement hierarchy and the current socio-economic challenges it faces in terms of unemployment and commercial vacancy.

6.4. Section 4.0 sets out the stages of project development, including broad options:

1. *Do Nothing*
2. *Purchase and development of the Ritz into an enterprise centre, no public realm or car park*
3. *Acquisition and development of land for public realm works and car park*
4. *Acquisition and development of Ritz, public realm and car park*
5. *Acquisition and development of Ritz and public realm, no car park.*

6.5. Section 4.3 notes that an economic appraisal concluded that Option 4 was the preferred option i.e., the best value for money whilst also a major regeneration project. Section 4.4 and Figure 12 set out the five options for the replacement car park element:

1. *Lands to rear of McElhinney's Department Store*
2. *Lands to the rear of Ballybofey shops*
3. *Lands east of Chestnut Road*
4. *Siting of public realm at HSE car park*
5. *Shared car park/public realm (to the front of Ballybofey shops)*

6.6. The criteria which these options were considered against are detailed as follows:

- *Distance and accessibility of the option from the proposed public realm via existing networks.*
- *Opportunity for additional project interventions to reduce distance and improve accessibility between the option and the proposed public realm.*
- *The capacity of the option to provide a sufficient number of replacement car parking spaces and whether it could provide any additional car parking capacity to support increased footfall that was anticipated to be generated as a result of the overall regeneration project.*
- *The resultant character of the option that could be enabled through RRDF investment in being constituted as 'a suitably convenient location'.*
- *The environmental and planning status of the option.*

6.7. I note the selection process placed an emphasis on what would constitute 'a suitably convenient location' as per policy BS-TC-1 of the extant SSTLAP at that time. It concluded that Option 2, the CPO site, was the optimum location for the replacement car parking as a critical component of the wider transformational regeneration project.

6.8. Section 7 of the report responds to the grounds of objection. It can be summarised as:

#### 6.8.1. **Ground 1 – principal of the development in the planning policy context**

- Notes the CPO lands form an integrated component of a wider transformational regeneration project tailored to activate community and economic activity.
- Notes the project options and suggests that the replacement car parking via the CPO constitutes essential infrastructure to enable the wider regeneration scheme and thus aligns with national, regional and local policy.
- Contends that the objection under Ground 1 considers the proposed car park in isolation of the wider regeneration scheme and fails to take into account the replacement nature of the proposal and thus misrepresents the policy context.
- Submits that the project, inclusive of the car park, demonstrates strong policy compliance given its nature as an enabler for town centre reinvention through compact growth and the Town Centre First Policy.

- Outlines specific policy responses as follows:
  - Regarding NPO's 3a, 3c, 33 and 53, contends that the SEED Project and CPO have been developed in the context of a strong housing and land management strategy in the Development Plan 2024-2030.
  - In relation to NPO's 4, 6, 7 and 27, contends that the wider regeneration scheme will achieve these benefits and replacement car parking represents a tailored approach to same by responding to town centre context.
  - Regarding NPO 11, contends that the replacement car parking will enable more footfall to the town, resulting in increased vitality, viability, economic competitiveness and jobs.
  - Also notes strong alignment with NSO 1 and NSO 3 of NPF *First Revision*.
  - Contends, again, that the objection inappropriately considers the replacement car parking in isolation, stating that the wider project fully aligns with the RSES, i.e., public sector led town centre intervention.
  - Contends that the replacement car parking is an appropriate design response to its context and rejects any assertion that the proposal is contrary to the Compact Settlement Guidelines.
  - In relation to the National Sustainable Mobility Policy, contends, again, that the objection fails to recognise the CPO is required to enable the wider SEED Project which aims to implement the 'avoid-shift-improve' principle.
  - Notes that DMURS is a technical manual but nonetheless contends that its requirements were met through the Part 8 process, and strengthened through detailed design, rejecting any inconsistency with Section 3.3.4.
  - Regarding the Climate Action Plan, contends, once again, that the objection fails to recognise that the CPO forms part of a wider regeneration scheme which aims to manage road users and adapts car dominance in core areas.
  - Contends that the Town Centre First Policy advocates designing in context and the need for the implementation of tailored, ambitious and creative responses, highlighting Section 2.5 of the policy in this regard.

- Contends that the current Development Plan (objective BS-TC-O-2) provides clear support and differentiates between this and ‘spare capacity’.

#### 6.8.2. **Ground 2 – need and lack of justification**

- Suggests that a survey of existing car parking would have been superfluous to the Part 8 due to the clarity of the in the provisions of the SSTLAP at that time.
- Refers to the quantitative and qualitative assessment of existing car parks serving Ballybofey (Figure 13), noting the objection focuses on the former, and states that the other public and private car parks are not appropriate replacement alternatives.
- States that the qualitative assessment reinforces the purposes of the original objective of the now superseded SSTLAP regarding the necessity for replacement car parking and notes the continued policy via objective BS-TC-O-2 of the Plan.
- Notes the “niche role” that Ballybofey-Stranorlar performs as a centre of sporting excellence, highlighting the demand for parking on “key match days” in addition to its significant retail role and associated parking demand on “sale days”.

#### 6.8.3. **Ground 3 – locational principles**

- Refers to the Council’s responses under Ground 1 and the assessment of existing parking under Ground 2, asserting that the wider scheme will support the ‘avoid-shift-improve’ principles that reflect the Town Centre First Policy.

#### 6.8.4. **Ground 4 – lack of housing in the town centre**

- Submits that the zoning of the site was determined on the basis of a detailed planned analysis of housing demand and confirms that the site has potential for a range of uses rather than solely residential use via a ‘Primarily Residential’ zoning.
- Notes that the Development Plan makes provision for residential zoned land elsewhere to meet its core strategy and this was arrived at following the statutory plan making process, including public consultation.
- States that there are opportunities beyond the CPO site to facilitate residential development including adaptive reuse of vacant and derelict buildings and notes that Ballybofey-Stranorlar suffers from the highest levels of vacancy in the country.

#### 6.8.5. **Ground 5 – urban regeneration in the town**

- Refers the Commission the response under Ground 1 which sets out the context for consideration of the CPO as the wider regeneration scheme and if implemented, will deliver on the Town Centre First priorities.
- States that the proposed replacement car park is wholly justified and to proceed without it would be contrary to the particular policy of the Development Plan, noting the clear and unambiguous policy framework under objective BS-TC-O-2.
- Rejects the suggestion that the design represent an inappropriate ‘Gateway’ at Chestnut Road, noting the cluttered appearance of the rear of the shopping arcade (Fig. 16) compared to the high-quality architectural form (Fig. 17) as per DMURS.

#### 6.8.6. **Ground 6 – parking provision and a mobility shift towards sustainable transport**

- States that the context of Ground 6 reiterates the previous Grounds 1, 2, 3 and 5.
- Reiterates the following:
  - Largely replacement car parking.
  - Replacement car parking essential as per qualitative assessment.
  - Project takes account of the challenges; ‘one size fits all’ won’t work.
  - Exemplar of town centre regeneration and supported through the RRDF.
  - Net increase of 35 no. new spaces is negligible in the new context.
  - Clearly and unambiguously supported by local, regional and national policy.

#### 6.8.7. **Ground 7 – alternatives not examined or justified**

- Notes the broad options considered as detailed in section 6.3 above and the specific options in relation to the car parking component as noted in section 6.4.
- States the following regarding the claim that there was no landowner engagement:
  - First engaged with Mr Seamus McMenamin in August 2020 on the Part 8 and the Council’s interest in acquiring the site, and to also invite the owner(s) to a planned drop-in event on 10<sup>th</sup> September 2020.
  - No representative of the landowners presented / disclosed as present during the drop-in event and no submission made in relation to the Part 8.

- Telephone engagement with Mr Michael McMenamin in November 2020 providing a Part 8 project update and confirming the Council's interest in acquiring the lands by agreement or CPO, and subject to funding.
- Confirmed further engagement has been maintained throughout the CPO.

#### 6.8.8. **Ground 8 – criteria for a CPO**

- Response in respect of community need can be summarised as:
  - Tackling the congested, car dominated challenges by the under-performing area to the front of the Ballybofey shops is a priority community need.
  - In the absence of the CPO site for replacement car parking, the public realm cannot proceed and the community needs cannot therefore be met as other car parks are deficient by reason of location and connectivity etc.
  - The wider regeneration will result in increased footfall and the practical demand for town centre parking will continue and thus justified; noting that the net increase of c. 35 spaces is negligible in that regard.
  - The cited CPO case in Monaghan is not comparable given the evidence base and options presented in support of the CPO.
- Response in respect of the suitability of the land can be summarised as:
  - Urban core zoning provides for a range of land uses.
  - Evidenced options analysis concluded that the CPO site is the optimum in terms of a suitably convenient location as per policy BS-TC-1 of the SSSLAP and of sufficient size and configuration as a replacement car park.
  - Positive design aesthetic screens the rear of the Ballybofey shops and provides strong legibility and wayfinding.
- Response in respect of compliance with the Development Plan is summarised as:
  - Strong compliance of the wider regeneration project with national, regional and local policy (objective BS-TC-O-2 of the Development Plan specifically).
- Response in relation to alternative methods can be summarised as:
  - Evidence of broad options for the regeneration project and specific options for the replacement car park detailing the alternatives considered.

## 7.0 Oral Hearing

- 7.1. An oral hearing was held on Tuesday 14<sup>th</sup> October 2025. Representatives of the Objectors and Donegal County Council were in attendance at the hearing and oral submissions were heard on behalf of the parties. The proceedings of the oral hearing are summarised in Appendix B and referenced in the assessment of case below. The proceedings were also recorded and are available to the Commission on an audio file.
- 7.2. As noted, the Council submitted 'Brief of Evidence' documents in advance of the hearing that were circulated to the Objectors prior to the hearing. It was evident from the oral hearing that the contents of this submission, most notably 'Section 7.0 – Objections Received and Council Responses' and the associated Addendum, did not adequately address the Objectors concerns in relation to the acquisition of the subject lands. This is elaborated upon in their rebuttal statement presented during the hearing.
- 7.3. The Commission should note that the Council also presented a suite of maps, drawings and CGI's during the hearing in addition to an inter-departmental letter of 8<sup>th</sup> September 2025 regarding detailed design amendments and a schedule of variations to the Part 8 scheme. The number of parking spaces is reduced from c. 130 to 112.
- 7.4. I note that the Objectors raised concerns regarding the adequacy of time afforded to assess the Council's submissions during the hearing, however I am satisfied that the information related to the Part 8 and did not impact on the CPO. In this regard, the oral hearing was conducted in a manner in accordance with Section 135 of the Act.
- 7.5. All documents submitted at the oral hearing were cross circulated amongst the parties.

## 8.0 Assessment of Case

### 8.1. Preliminary Points

- 8.1.1. Donegal County Council, the acquiring authority, are seeking to compulsorily acquire lands required to implement the SEED Project, a Part 8 urban regeneration scheme. The development and renewal of areas in need of regeneration and the provision of public amenities are amongst the prescribed developments in Section 212 of the Act.
- 8.1.2. The authorisation, to use a neutral term, for the scheme came following a meeting of Donegal County Council on 16<sup>th</sup> November 2020. Whilst I note that the Council have

suggested that this was ‘a decision by resolution’, it is important to clarify that the authorisation to proceed with a Part 8 is a passive one insofar as it relates to the Elected Members<sup>3</sup>. This was noted by the Objectors, who suggested that there is no evidence of a formal decision in the absence of a Chief Executive’s Order to proceed.

- 8.1.3. The Council was unable to clarify whether there was a Chief Executive’s Order but did highlight that a Chief Executive’s Report was prepared, as required. I note it is signed by a Director of Service who also signed the recommendation to proceed with the development as presented to the Council, presumably in accordance with a scheme of delegation under Section 154 of the Local Government Act 2001, as amended.
- 8.1.4. Thus, the question mark over the Chief Executive’s Order is not pivotal, in my opinion. The Part 8 scheme is evidently the express intention of the Elected Members and Executive, and a recommendation to proceed is at the behest of a Director of Service.

#### *Phasing*

- 8.1.5. The Council, at the oral hearing, clarified both the phasing of the SEED Project and the title of the CPO which refers to ‘Phase 1’. In this regard, I note that the latter countenances the possibility of further CPOs for other lands required to implement the Project whereas the phasing of the Project itself was confirmed by the Council as:
  - Phase 1 – restoration and refurbishment of the former Ritz Cinema;
  - Phase 2 – construction of the two-storey car park; and
  - Phase 3 – redevelopment of the public car park to provide public realm.
- 8.1.6. The remaining assessment considers the issues raised in the written objection; the points raised at the oral hearing and the general principles to be applied in CPO cases.

#### *General Principles*

- 8.1.7. The Objectors, at the beginning of the hearing, raised concerns in relation to the tests to be applied in this case. They noted that there is no statutory basis for what are considered the ‘relevant tests’ and a divergence in case law was highlighted by them.

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<sup>3</sup> Section 179(4)(b) of the Planning Act provides that following the consideration of the chief executive’s report, the proposed development may be carried out as recommended in that report, unless the local authority, by resolution, decides to vary or modify the development, otherwise than as recommended in the chief executive’s report, or decides not to proceed with the development.

8.1.8. Whilst the Council noted that these tests were not disputed in the recent King case<sup>4</sup>, I equally accept that they were not explicitly endorsed but it is relevant, nonetheless.

8.1.9. In that case, Simons, J. noted that ‘the approach adopted by the Board’, in practice, is to carry out a form of proportionality exercise and apply the four-stage test identified in Galligan and McGrath, *Compulsory Purchase and Compensation in Ireland: Law and Practice* (Bloomsbury Professional, 2013). Simons, J. reproduced the tests as:

- “(i) *there is a community need that is to be met by the acquisition of the property in question;*
- “(ii) *the particular property is suitable to meet that community need;*
- “(iii) *any alternative methods of meeting the community needs have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate); and*
- “(iv) *the works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan.”*

8.1.10. Notwithstanding the Objectors initial reservations, they ultimately engaged with the tests at the hearing and, on balance, I am satisfied the approach remains appropriate.

8.1.11. Additionally, the Commission must consider whether the acquisition of the lands will have an excessive or disproportionate effect on the interests of the affected persons. In this regard, the High Court asked itself the following questions in *Reid v IDA*<sup>5</sup>:

- “(1) *Is the compulsory purchase provided by law and thus connected to the objective of the legislation, is it arbitrary, unfair, or based on irrational considerations?*
- “(2) *Are the applicant's rights as little impaired as possible?*
- “(3) *Are the effects on his rights proportionate to the objective?”*

8.1.12. Furthermore, for the Commission to confirm the CPO, it must be satisfied that the Council has demonstrated that it is in the public interest or ‘clearly justified by the

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<sup>4</sup> *Anne King v An Bord Pleanála* [2024] IEHC 6.

<sup>5</sup> [2013] IEHC 433.

common good<sup>6</sup>. I will therefore address each of the test criteria, together with the issue of proportionality and other issues arising from the objection and the hearing.

8.1.13. However, before turning to the tests, it is important to address key procedural matters raised by the Objectors at the outset and during the course of their oral submissions.

## 8.2. Procedural Matters

8.2.1. Amongst the procedural matters raised, the Objectors have highlighted the fact that the Council are proposing to acquire lands that they already own or alternatively those lands have now transferred into the ownership of Uisce Éireann under S.I. No. 13 of 2015<sup>7</sup>. In this regard, the Objectors have submitted that the CPO Schedule is wrong as a matter of fact and as a matter of law, and that this error is fatal to the CPO process.

8.2.2. The land referred to is Plot 01c in the Schedule to the CPO with an area of 16sq.m (stated as 0.0016ha) and described as a “sewer manhole in field”. Donegal County Council are listed as the “owners or reputed owners” and the plot is illustrated as a 4 by 4 metre square within Plot 01a on the CPO Map (Dwg. No. CPDU-P010-CPO-01).

8.2.3. During cross-questioning the Objectors reiterated their position that Uisce Éireann have a vested interest in the CPO and need to be identified. They also queried the actual location of the sewer manhole, adding that it couldn’t be sited in a recent search.

8.2.4. The legal interest of Mr Seamus McMenamin, one of the Objectors and a person listed amongst the “owners or reputed owners” of Plot 01a, also arose during cross-questioning. It is the stated position of the Objectors that Mr Seamus McMenamin has no legal interest in the subject lands. Moreover, the Objectors claim that the acquiring authority failed to formally engage with them prior to the decision to proceed to CPO.

### *Ownership of Plot 01a*

8.2.5. Much of the hearing was given over to the identity of the owners of Plot 01a. It was stated that Mr Seamus McMenamin has no legal interest in the lands and concerns were raised by the Objectors regarding the basis on which he was included ‘when there was no evidence on land registry’; adding that ‘it is conclusive as to ownership’.

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<sup>6</sup> *Clinton v An Bord Pleanála* [2007] IESC 19.

<sup>7</sup> Water Services (No. 2) Act 2013 (Property Vesting Day) Order 2015.

8.2.6. It is common case that the lands were first registered in the name of Ms Mary Lafferty and Mr Michael McMenamin with the Property Registration Authority in February 2021.

8.2.7. The Council, at various points during the hearing, submitted that Mr Seamus McMenamin was a reputed owner of the lands or at the very least put himself forward as a representative of the landowners from August 2020 onward. In this regard, the Objectors confirmed that Mr Seamus McMenamin is the father of the registered landowners, Ms Lafferty and Mr Michael McMenamin. Whilst I generally agree that land registry can be conclusive as to land ownership, Mr Seamus McMenamin's role in prior negotiations was not disputed in any way, and to my mind, this is noteworthy when considered in concert with his familial relationship with the registered owners.

8.2.8. Critically, however, Section 1.2 of the Objectors original submission states that the subject lands are owned by the Chestnut Partnership of which the Objectors are "shareholders along with family members". It clarifies that Ms Lafferty and Mr Michael McMenamin are the registered owners "in their capacity as trustees". This was raised with the Objectors during the hearing and the omission of a copy of the Chestnut Partnership Agreement, supposedly included in the original submission, was noted. I also note that a Copy of Deed Transfer is missing from the same original submission.

8.2.9. I am also cognisant of the fact that the CPO takes the prescribed form as set out in the associated regulations<sup>8</sup>. They explicitly refer to "owners or reputed owners". For the reasons noted above and having regard to the Oxford English Dictionary (3<sup>rd</sup> ed.) definition of the word 'reputed', to which I defer to in the absence of a relevant statutory definition, I am satisfied that the Council generally believed Mr Seamus McMenamin was the owner, and his ongoing role in negotiations has evidently crystallized this view.

8.2.10. In this regard, I am unpersuaded of the merits in deleting Mr Seamus McMenamin's name from the CPO Schedule in respect of Plot 01a, as requested by the Objectors. Whilst I accept that he is not one of the registered owners, those individuals are the registered owners in their capacity as trustees of the Chestnut Partnership. He was, however, identified by the Council by reasonable inquiry at the time of the Part 8 and in the absence of the land being registered at that time. This is since confirmed by the

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<sup>8</sup> S.I. No. 454/2000 - Housing Act, 1966 (Acquisition of Land) Regulations, 2000.

Objectors own documentation. It thus remains reasonable, in my view, for the acquiring authority to identify Mr Seamus McMenamin as an “owner or reputed owner”.

#### *Ownership of Plot 01c*

- 8.2.11. To address the location issue first, Plot 01c is shown some 4 metres from the southern boundary of Plot 01a, which is described as a “field” in the CPO Schedule, and some 29 and 42 metres from the western and eastern plot / field boundaries respectively.
- 8.2.12. Following the hearing, I established the location of two adjacent cast iron manhole covers, one circular and one square, generally within the locus of Plot 01c as per the Deposited CPO Map. Whilst it would have been beneficial to the proceedings for the Council to have had a services drawing of the lands to hand, including the layout of the underlying sewer network, and indeed clarified which manhole cover the CPO Schedule refers to, if not both, which is the probable scenario, I am satisfied that the deposited CPO Map and associated Schedule adequately details the relevant plot.
- 8.2.13. In terms of the ownership, the Council indicated during the hearing that it was not unusual for their own lands to be included in a CPO process and rejected any suggestion that Plot 01c is in the ownership of Uisce Éireann. In this regard, they stated that a land registry search had been carried out on all lands subject to the CPO.
- 8.2.14. The issue raised by the Objectors is novel and certainly requires careful deliberation. The provision being relied upon is Article 4 of S.I. No. 13 of 2015. It states the following:

*“On the property vesting day referred to in article 3, the following property, which immediately before this day was vested in a water services authority, and used or intended to be used by a water services authority in connection with the water services functions transferred to Irish Water by section 7 of the Act, shall stand vested in Irish Water:*

- (i) *all water mains and sewers (other than storm water sewers) and any related accessories; and*
- (ii) *all pipes, waterworks and waste water works that are located under land, along with any related accessories.”*

- 8.2.15. For completeness, Article 3 of the Order provides that ‘property vesting day’ for the purposes of Section 12 of the Water Services (No. 2) Act 2013, the primary provision regarding the transfer of property of water services authorities, was the 20<sup>th</sup> of January

2015, and Article 2 provides that 'accessories' has the meaning assigned by the Water Services Act 2007<sup>9</sup>. It is therefore the Objectors position that Plot 01c was automatically vested in Irish Water, now Uisce Éireann, since the 20<sup>th</sup> of January 2015.

- 8.2.16. Notwithstanding the lack of specific detail in relation to the underlying sewer network and indeed the observed manhole covers, the acquiring authority during the course of the hearing confirmed that the sewer was a combined foul and storm system. They also clarified that the process of land transfer to Uisce Éireann as a result of S.I. No. 13 of 2015 is ongoing and it appears that the subject land has not yet transferred.
- 8.2.17. As it stands, it is the evidence of the Council that they are the registered landowners of Plot 01c, and to borrow the Objectors expression, this is conclusive as to ownership, albeit with exceptions, as noted above, but determinative nonetheless for Plot 01c.

#### *Actions of Acquiring Authority*

- 8.2.18. I also note that a significant amount of cross-questioning related to the actions of the Council during the Part 8 process and prior to the decision to proceed with the CPO.
- 8.2.19. In this regard, the Objectors submit that there was no formal engagement, written or otherwise, with the registered landowners, Ms Lafferty and Mr Michael McMenamin. Whilst it is established that there were verbal discussions with their father, Mr Seamus McMenamin, it is the Objectors position that he is not, and never was, the landowner.
- 8.2.20. The Objectors suggest that this is relevant because neither Ms Lafferty nor Mr Michael McMenamin were aware of the Part 8 scheme when the site was purchased. However, it seems unlikely that the conveyancing of the lands did not identify the Part 8 in a planning search in advance of the registration of ownership in February 2021.
- 8.2.21. Moreover, the Part 8 process is a distinct statutory procedure with a mandatory public consultation period and notification requirements. In this regard, I note that the Part 8 scheme was on public display from Tuesday 22<sup>nd</sup> September to Tuesday 20<sup>th</sup> October 2020, albeit the minimum 4-week period permissible under Article 81 of the Planning Regulations, but sufficient nonetheless for public notification. It was also accompanied

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<sup>9</sup> "accessories", in relation to a waterworks, waste water works, water main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, overflow weirs or chambers, valves, tanks, sluices, culverts, wash-out pipes or stopcocks for them, or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the waterworks, waste water works, main, sewer or other pipe or of another accessory.

by the required notification, including a newspaper notice published in the Donegal Democrat on Tuesday 22<sup>nd</sup> September 2020. Additionally, it is the evidence of the Council that there was informal public consultation in August 2020, followed by a public information event on 10<sup>th</sup> September 2020. In the absence of a registered owner in and around the time of the Part 8 process, I am satisfied the Council acted reasonably.

8.2.22. Additionally, the Council provided evidence during the hearing, in relation to various contacts with Mr Michael McMenamin around November 2020. The Council stated that Mr Michael McMenamin purported part ownership of the site and made enquiries over the status of the Part 8 and whether a planning application to develop the site could still be made. Whilst the Objectors went on to suggest that this was a person of the same name, but not one of the owners, it is a proposition that I find difficult. In this regard, I note that Mr Michael McMenamin was present at the hearing and the opportunity to dispute the Council's account was available but ultimately passed over.

8.2.23. Thus, I am not persuaded that the Objectors did not know about the Part 8 at the time the site was purchased. What is more tangible however, and what was established by the Objectors during the hearing was that there was a lack of communication with the registered landowners, Ms Lafferty and Mr Michael McMenamin, prior to the decision to proceed with the CPO. In this regard, the Council stated that the CPO cannot have been a surprise to the Objectors because when they bought the land, they did so in the knowledge that it was going to be acquired for use as a car park.

8.2.24. Whilst I share some reservations over the acquiring authority's actions at that stage, it does appear to me, at least, that the lack of communication was not entirely of their own making. I have already concluded that they acted reasonably in communicating and negotiating with Mr Seamus McMenamin, who put himself forward as a representative of the landowners prior to the Part 8, and up to and since the CPO and the Council did so in good faith. At no point during did Mr Seamus McMenamin inform the acquiring authority that he was not the landowner or had no control over the land.

8.2.25. Thus, the lack of communication with Ms Lafferty or Mr Michael McMenamin after the Part 8 was authorised, whilst sub-optimal, lies partly at the feet of the Objectors, Mr Seamus McMenamin and his children, Ms Lafferty and Mr Michael McMenamin.

### *Conclusion on Procedural Matters*

8.2.26. The CPO Map and Schedule take the prescribed form as set out in the aforementioned regulations. I note that the latter explicitly refers to “owners or reputed owners”. For the reasons outlined above, I am satisfied that the acquiring authority believed Mr Seamus McMenamin was the reputed owner, at least, by reasonable enquiry. Whilst I accept that he is not the registered owner, it is not a flaw or erroneous to include him.

8.2.27. Nor am I convinced by the argument put forward by the Objectors in relation to the validity of the CPO insofar as it relates to the “owners and reputed owners” of Plot 01c and I do not consider there was a formal requirement to serve notice on Uisce Éireann.

8.2.28. Similarly, in seeking to compulsorily acquire land from themselves, I accept that the Council have adopted a conservative approach to ensure clean title, but it is not unusual, as suggested by the Objectors, nor prohibited by statute. In this regard, I note the provisions of the Third Schedule of the Housing Act 1966, as amended<sup>10</sup>.

8.2.29. I also consider that the Council have demonstrated that reasonable steps were undertaken to acquire the land by negotiation. Indeed, there was a suggestion in the hearing that agreement had been reached on Plot 01b. In this regard, it appears to me that the acquiring authority have acted in good faith throughout and the lack of explicit negotiations with the registered owners is not fatal for the reasons outlined.

8.2.30. On balance, I am satisfied that the Commission has a valid CPO before it to consider and therefore I now turn my attention to the test criteria to be applied in such cases.

### **8.3. Community Need**

8.3.1. In terms of community need, Ground 8 of the Objectors original submission refers to the absence of a parking survey to demonstrate the need for the existing spaces or net increase that would arise. This is elaborated upon under Ground 2 of their submission where they suggest that there is an abundance of parking, referring to Section 19.7 of the Development Plan in this regard. They also refer to a previous CPO annulment<sup>11</sup> and invite the Inspector to survey current car parking availability.

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<sup>10</sup> Article 4(b) requires the service of notice of a compulsory purchase order on every owner, lessee and occupier of any land to which the order relates.

<sup>11</sup> See section 3.3.1 above relating to a CPO case for a proposed car park in Monaghan town centre.

8.3.2. The Council's Brief of Evidence provided a response to the issues raised, noting generally that the Part 8 documentation did not include a survey of existing car parking due to the policy clarity in the SSTLAP (see section 4.1.2). Their submission does now, however, include a quantitative and qualitative assessment of existing car parks in Ballybofey (Figure 13) and states that the qualitative assessment reinforces the purpose of the superseded SSTLAP regarding the need for replacement car parking.

8.3.3. In more specific terms, the Council submit that tackling the challenges presented by the congested, car dominated area to the front of the arcade of shops through the urban regeneration scheme as a whole is a priority community need, and that need will not be realised in the absence of the CPO site for replacement car parking. In this regard it is suggested that the increase in spaces, 35 no. as opposed to 58 no., is justified due to the expected increase in footfall derived from the wider regeneration.

8.3.4. I also note that the Council's closing statement at the hearing added that community need must be assessed not just in respect of the car park element and in that regard, it can be distinguished from the Monaghan case which was for a standalone car park.

8.3.5. The Objectors rebuttal statement, which was prepared by Genesis Planning and circulated during the hearing, reaffirms their position in the initial objection. In addition, the Objectors submit that the five options identified in Figure 12 of the Council's submission are based on locational principles rather than community need and suggest that the submission, at page 33, admits to an absence of community need.

#### *Consideration of the Issues*

8.3.6. Dealing with the suggested precedent case first, I note that ABP ref. PL18.CH3233 relates to the proposed CPO of lands to provide additional car parking facilities in Monaghan town centre. The Objectors highlight the concerns raised in the Planning Inspector's report in that case, noting their commentary in relation to the dearth of usage surveys and formal analysis (section 9.1.4); their question mark over whether an adequate case was made in terms of community need (section 9.1.5); and the observed levels of vacancy in existing car parks during their site visits (section 9.5.2).

8.3.7. As noted, An Bord Pleanála, annulled the CPO in that case. The absence of a demonstrated community need and overall benefit to be achieved from the acquisition were amongst the Board's reasons and considerations. I am familiar with the case specifics and indeed the geography of the town in question. Whilst there is a

distinction to be drawn between the status of the respective towns in their county settlement hierarchies, population, and quantum and distribution of public car parks, the main concern I have is in relation to the purpose of the CPO in the cited case.

- 8.3.8. In this regard, I agree with the Council that the Monaghan CPO case is not directly analogous to the CPO in dispute. It was evidently for a standalone car park and whilst the Council in that case submitted that the car park would provide some regeneration impetus and alleviate pressure from some of the spaces that could be lost at short notice at another rented public car park, neither comprehensive town centre regeneration nor the actual loss of spaces were tethered to the CPO. The case here is quite different, the CPO relates to an authorised Part 8 town centre regeneration scheme and that's where the issue of community need must be tested, in my opinion.
- 8.3.9. Nonetheless, having visited the various car parks, public and commercial, during my site inspection, as requested by the Objectors, and reviewed the Council's parking assessment (Figure 13), which is different from a 'usage survey', I might add, I find it difficult to agree with a perceived lack of need for the replacement public car park. Of the eight car parks surveyed by the Objectors and assessed by the Council, only three are public, one of which, the 'Shopping Centre Car Park', is the car park to be replaced through the Part 8. It was observed at near capacity during my initial site inspection.
- 8.3.10. Moreover, I observed at least two of the commercial car parks (Aldi and Lidl) as having clamping or towing in operation for users other than shop patrons and I find it difficult to accept the proposition that the 77 no. displaced parking bays can be readily accommodated elsewhere, particularly in the surrounding commercial car parks. Whilst the adjacent 'HSE Car Park', has a capacity of 136 no. bays, over half of which were occupied during my visit, it provides insufficient headroom for the spaces that will be lost. The other public car park off Navenny Street, has a capacity of 220 no. bays and more than sufficient headroom based on my site observations. It is however removed from the town centre and I agree with the Council's analysis in this regard.
- 8.3.11. Similarly, whilst I note the Objectors suggest that the five options identified in the Council's submission (Figure 12) are based on locational principles rather than community need, there is clearly a need for patrons and shoppers alike to be close to the destination shops and businesses and this need is evidently a locational issue. A need which, I must stress, is indivisible from the overall Part 8 regeneration project

and in this regard, I agree with the Council that community need must be assessed not just in respect of the car park element alone but in terms of the wider SEED Project.

8.3.12. Additionally, the five options are “adjacent sites” to the ‘Shopping Centre Car Park’ or at least “suitably convenient locations” as envisaged by Section 5.4.2 and design principle (a) of policy BS-TC-1 of the SSTLAP. This is discussed in further detail below, as are the Objectors concerns regarding Section 19.7 of the Development Plan.

8.3.13. Overall, I consider that the acquiring authority has presented a reasonable case in relation to the urban grain challenges presented by Ballybofey-Stranorlar. At a macro level they note it had a commercial vacancy rate of 33.7% in Q2 of 2025, which was the highest in the State, and significantly above the national and county averages of 14.6 and 20.3%, respectively. At a micro level they suggest that the area to the front of the shopping arcade is a congested, car dominated environment where vehicles and pedestrians compete for space. This reflects my experience during my site visit.

8.3.14. In the absence of the CPO site for replacement car parking, the Council suggest that the development of public realm cannot proceed and thus the community needs cannot be met. I am inclined to agree with this statement. It grounded in the policy of the Council, the genesis of which is the superseded SSTLAP as now carried over into the current Development Plan via the authorised Part 8 project. The Objectors have not engaged with or sought to challenge the merits of the wider regeneration project and I agree with the Council’s suggestion at the hearing that much of the information quoted by the Objectors can be read as supportive of the SEED Project as a whole.

#### *Conclusion on Community Need*

8.3.15. On balance, I am satisfied that the proposed CPO is justified and justifiable in terms of community need. The acquiring authority have detailed the benefits to be achieved from the acquisition of the land in question which will unlock a major regeneration project for Ballybofey town and meet a demonstrable community need in this regard.

8.3.16. This need is more than just a need for replacement parking, it is a need for greatly improved public realm, including safer spaces and enhanced public amenities, and targeted interventions in the urban fabric of the town, including the restoration of a derelict building and the introduction of a new building of design merit to a vacant backland plot. These benefits are direct and tangible and distinguish this case from the Monaghan CPO case. They will also lead to indirect benefits through increased

dwell time in the area owing to the enhanced civic square coupled with the absence of a busy car park at that location. In this regard, the net increase of 35 no. parking spaces is justified and provides headroom against anticipated increase in economic and social activity. Thus, I consider the information available to be sufficient to justify the overriding community need for the proposed acquisition at this particular time.

#### **8.4. Suitability of the Land**

- 8.4.1. Noting the town centre location and proximity of the CPO site to 2 no. bus stops along the N15, Ground 8 of the Objectors original submission states that additional car parking would be contrary to a modal shift and represents poor planning in the context of DMURS, Town Centre First and the provisions of the Development Plan. These are elaborated upon under Grounds 1, 3, 5 and 6 of their submission, as noted above.
- 8.4.2. In terms of town centre location, the Council's Brief of Evidence notes that the urban core zoning provides for a range of uses and suggests that the positive design aesthetic screens the rear of the shopping arcade and provides strong legibility and wayfinding. Moreover, they suggest that the CPO site is the optimal site of sufficient size and configuration and suitably located as per policy BS-TC-1 of the SSTLAP.
- 8.4.3. The Objectors rebuttal statement reaffirms their position in the initial objection and again refers to the judgement in the "Galway Ring Road" case, highlighting the duty on the Commission to act in a manner consistent with the Climate Act and Climate Action Plan. Their rebuttal also queries the suitability of the land given its vulnerability to flooding and refers to the High Court judgement in Heather Hill<sup>12</sup> in this regard. Their oral submission also suggested that the proposal materially contravenes the Development Plan in relation to flooding. This is considered in section 8.5 below.
- 8.4.4. The Council's oral response suggested that flood risk was assessed during the Part 8 process, noting that whilst the CPO site is located within Flood Zone A, and at risk of a 1:100-year flood event, it is a defended area with defences along the River Finn. Moreover, they stated that the car park and plaza uses were considered water compatible in accordance with the Section 28 Guidelines on flood risk management in the Part 8 assessment and there was no Justification Test needed for those uses.

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<sup>12</sup> *Heather Hill Management Company v An Bord Pleanála* [2019] IEHC 450.

8.4.5. Whilst Ground 8 of the Objectors submission focusses on DMURS, Town Centre First and the Development Plan, Grounds 1, 3, 5 and 6 infer a tension between the provision of a replacement car park at the CPO site and the NPF, RSES, Compact Settlements Guidelines, National Sustainable Mobility Policy, and the Climate Action Plan. In the interests of clarity, I will comment on the relevant provisions in each of the national and regional policy and guidance documents and flood risk insofar as it relates to the suitability of the land. Comments on flood risk management insofar as it relates to the Development Plan and the other issues raised are considered in section 8.5 below.

#### *Consideration of Policy Issues Raised*

8.4.6. In relation to the NPF, I note the referenced NPO's relate to the previous iteration of the document (see section 5.5.1 above). The NPF *First Revision* was published in April 2025 but it does reflect the core provisions relied upon by the Objectors in relation to urban consolidation and the promotion of alternatives to private vehicle use. Whilst this may be relevant to the car park proposed on the CPO site, this cannot be viewed in isolation of the overall regeneration project, which is evidently supported by the NPF *First Revision*, and indeed its predecessor. It specifically notes that NSO 7, relating to enhanced amenities, requires investment in well-designed public realm, including public spaces and streets, as well as recreational infrastructure. It also notes the role of the RRDF in supporting urban regeneration and compact growth (NSO 1) and the Council confirmed that RRDF funding was awarded for the SEED Project. Thus, I am not persuaded by the Objectors argument that the CPO site is unsuitable in this regard.

8.4.7. Regarding the RSES, the Objectors raised similar concerns in respect of urban consolidation, but as noted above, much of the information quoted can be read as supportive of the SEED Project as a whole. For example, they refer to Section 3.5 which highlights that the regeneration of smaller towns is now a major priority and focus on the provisions of RPO 3.4 which seeks to support the regeneration and renewal of small towns. For clarity, urban consolidation and renewal doesn't relate entirely to infill residential development, it must be a balanced response to address the prevailing economic, physical and social issues and the CPO site is suitable in this regard and indeed as a central element of the overall Part 8 regeneration scheme.

8.4.8. For similar reasons, I am unconvinced that the proposed CPO, or indeed the Part 8 as claimed by the Objectors, is contrary to Section 1.3.2 of the Compact Settlements

Guidelines or indeed that the Guidelines are particularly relevant. As noted, this section of the Guidelines relates to compact growth and the ‘15-minute city’ concept. It provides general advice for planning authorities at settlement level and whilst I note the emphasis placed on ‘the intensive use of infill sites’, it also relates to the ‘re-use of existing buildings’, which the overall regeneration project seeks to achieve. In this regard, the Council observed that whilst the Objectors may submit that a car park isn’t the best use of the land, that isn’t the test; noting the test is whether the land is suitable.

- 8.4.9. Similar broad arguments are presented by the Objectors in relation to the National Sustainable Mobility Policy, DMURS, the Climate Action Plan and Town Centre First.
- 8.4.10. Whilst I accept that the National Sustainable Mobility Policy sets out a framework for active travel and public transport, and this supports the State’s commitment to a legally binding 51% reduction in GHG emissions by 2030, and net zero by 2050, as elaborated upon in CAP24 and CAP25, including a 20% reduction in total vehicle kilometres and a 50% increase in daily active travel, it is not directly applicable to the proposed CPO. In this regard, I agree with the Council that the suggested mobility shift to alternative modes of transport is contingent on larger urban locations and not relevant, thus far, to Ballybofey-Stranorlar, to suggest otherwise conflates the issue.
- 8.4.11. Similarly, the Galway Ring Road case is distinguishable from a replacement car park and I do not consider CAP24 and CAP25 can be construed as a moratorium on car parks. The provision of a replacement car park, with net increase of 35 no. spaces, does not militate against climate change having regard to the changing nature of fuels consumed by private motor vehicles, including EV’s and renewable fuels for transport.
- 8.4.12. Finally, the Objectors state that the provision of a car park as part of the SEED Project will by itself be contrary to the Town Centre First principles. As noted above, Section 2.5 advocates for a balance to be struck between managing vehicle movements in order to ensure streets are accessible whilst not being dominated by cars and car parking. It also acknowledges the loss of the traditional civic / cultural function of such spaces to car parking and this has contributed to urban decline in many cases. There is, however, no suggestion in Town Centre First, or indeed any of the above guidance that a moratorium should be placed on new car parking, never mind replacement parking as part of a comprehensive, multi-element town centre regeneration scheme.

### *Consideration of Flooding Issues Raised*

8.4.13. A more tangible issue, in my opinion, in relation to the suitability of the land was raised during the oral hearing. In this regard, the Objectors submit that the principle of development is not compliant with the Flood Risk Management Guidelines. Whilst it was not raised in the initial objection and therefore not addressed by the Council in their written responses, it does highlight some issues that require consideration.

8.4.14. The Council's oral evidence is, however, that flood risk was assessed during the Part 8 process and they suggested that the car park is water compatible development within the context of the Guidelines, thus does not require a Justification Test. In this regard, I note that Section 3.0 of the Flood Risk Assessment (FRA) (Tobin, September 2020), which was prepared for the Part 8, states that "the proposed car-park and civic space are classified as "water compatible" in terms of their sensitivity to flooding".

8.4.15. Having reviewed Table 3.1 of the Guidelines, I can find no explanation for the proposed car park being considered as "water compatible development", particularly given the disabled bays illustrated at ground level on the drawings submitted during the hearing. It is, at best, a "less vulnerable development", such as "local transport infrastructure".

8.4.16. Nonetheless, Section 3.5 of the Part 8 FRA suggests that the SEED Project is a minor development for the purposes of the Guidelines and a Justification Test does not apply. It therefore considers the effect of the development on the criteria outlined in Section 5.28 of the Guidelines, i.e., on flood risk elsewhere; on flood risk for users of development; on access to watercourse for maintenance etc. In this regard, the FRA states that the proposed works will have a minimal impact on flood plain storage and will not impact on the flow path of the River Finn due to the existing flood defences.

8.4.17. The FRA concludes that the proposed SEED Project will have an imperceptible impact on flood risk in the area, subject to greenfield runoff rates in accordance with SuDS principles and suggests that access for people and/or emergency vehicles to/from the area will not be altered. In this regard, the FRA states that the proposed development satisfies the Flood Risk Management criteria for 'minor proposals' in flood risk areas.

8.4.18. I note that flood risk concerns were addressed in Section 4.2 of the Part 8 Chief Executive's Report. It indicates that the SuDS measures, as detailed in the surface water drainage report (Tobin, September 2020), will provide a satisfactory system to facilitate the proposal within the broader flooding context of the town with operational

arrangements of the proposed storage tank to be confirmed at detailed design stage. The report also refers to internal reports which confirm that the proposal does not contribute further to flood risk and notes that the objective of the ongoing Flood Relief Scheme for Ballybofey and Stranorlar is to address the existing flood risk in the town.

8.4.19. In this regard, I consider that the Council fully considered the flood risk implications in relation to the CPO site during the Part 8 process and deemed it suitable to meet the community need. Whilst the CPO site is within Flood Zone A due to the residual risk of overtopping or embankment breach, it is otherwise within a defended area and at risk of a 0.1% fluvial AEP i.e., Flood Zone B. This flood risk equally applies to the surface car park to the front of the shopping arcade and the majority of this part of the Ballybofey town centre as per existing CFRAMS fluvial mapping (Fig. 2.4 of Part 8 FRA). The relevance of this being that the sequential approach cannot be used to relocate the existing car parking to a lower-risk area whilst serving the same function as envisaged in the SSTLAP i.e., “adjacent sites” or “suitably convenient locations”.

8.4.20. The Objectors have not provided any evidence to contradict the conclusions in the independent Part 8 FRA or surface water drainage report, or indeed the comments in the Chief Executive’s Report. Whilst I note that a Justification Test did not accompany the Part 8, it appears to me, at least, that the Part 8 process was the trigger point for the submission of same. In this regard, the Council were evidently satisfied that the proposed scheme complied with the Guidelines and the Development Plan policies and objectives at that time. In the absence of an engineering report to suggest otherwise, I am satisfied that the CPO site is suitable from a flood risk perspective.

#### *Conclusion on Suitability of the Land*

8.4.21. On balance, I am not convinced that the proposed CPO, or indeed the Part 8 project of which it forms an integral part, is inconsistent with the objectives of the NPF or is contrary to the RSES or Compact Settlements Guidelines insofar as they seek to promote urban consolidation, compact growth and alternatives to the private motorcar.

8.4.22. Nor have the Objectors outlined a suitably robust case to convince me that the proposed CPO is contrary to the provisions in the National Sustainable Mobility Policy, DMURS, CAP24 and CAP25, or the Town Centre First policy. Whilst I accept that a number of the policy documents were published after the Part 8 was authorised, as

highlighted by the Objectors, it does not alter the suitability of the land to meet the stated community need as identified above, namely the town centre renewal scheme.

- 8.4.23. Indeed, I would suggest that the proposed CPO aligns neatly with the wider policy context and thus the Part 8 was pre-emptive in many respects. I specifically note that Section 2.5 of Town Centre First, as incidentally highlighted by the Objectors, acknowledges that, in some cases, public spaces in towns have lost their traditional function as civic/cultural spaces and many are now used as parking areas. With the greatest of respect to the Objectors, this is clearly what the Council are attempting to tackle within the context of the local planning policy at the time of the Part 8 and which has since been carried over to the Development Plan, as discussed further below.
- 8.4.24. In similar regard, and for the reasons outlined above, I am satisfied that the proposed car park on the CPO site is suitable from a flood risk management perspective. Specific concerns in relation to material contravention are considered further below.

## **8.5. Provisions of the Development Plan**

- 8.5.1. In relation to County Development Plan issues, the Objectors original submission axiomatically notes that the Part 8 was not assessed against the provisions of the current Plan which incorporates the Area Plan for Ballybofey-Stranorlar. In this regard, they submit that the Plan as a whole supports urban regeneration, so that sites, such as the Objector's, are developed in a manner that encourages more urban living and town centre activity, adding that a car park would not accord with the current Plan.
- 8.5.2. The Council's Brief of Evidence suggests that there is proof of strong compliance of the wider regeneration project with national, regional and local policy frameworks, including unambiguous support in objective BS-TC-O-2 of the Development Plan.
- 8.5.3. As noted, the Objectors rebuttal queries the suitability of the land and suggested that the proposal materially contravenes policy F-P-1 of the Development Plan, indicating that a Justification Test would at least be required. It also focusses on design grounds. There they submit that the proposed car park does not accord with the urban design principles in the Development Plan and refer to extracts from Section 19.9 of the Plan.
- 8.5.4. In relation to the alleged material contravention of the Development Plan, the Council noted the adoption of the new Development Plan since the Part 8 process and stated at the hearing that the Part 8 project is stitched into the current Development Plan.

### *Consideration of the Development Plan Issues*

- 8.5.5. In the first instance, it is patently clear that the Part 8 SEED Project has, to borrow the Council's expression, been stitched into the current Development Plan. In general terms this is evidenced not only in Chapter 19, which sets out the Ballybofey-Stranorlar Area Plan, with specific references found in Sections 19.3, 19.6 and 19.9, but also in Section 5.2, Table 5.2 of which lists all the projects funded under the RRDF, including the SEED Project (€9.7m). The subsequent objective, TV-O-6, seeks to implement all RRDF funded projects listed in Chapter 6, including, evidently, the SEED Project.
- 8.5.6. This is reinforced by objective BS-TC-O-2, which seeks to fully implement the SEED Project including the provision of a new civic square, restoration / extension of the old Ritz Cinema, and provision of a new two-storey replacement car park with associated enhanced pedestrian link. As noted above, the origins of this can be found in Section 5.4.2 of the now superseded SSTLAP, insofar as it relates to Ballybofey-Stranorlar. It acknowledged the opportunity to deliver a quality civic / public space at the existing parking area to the front of the Ballybofey shopping arcade subject to the advanced replacement of the parking to be displaced. This was reinforced in policy BS-TC-1.
- 8.5.7. I therefore agree that there is clear and unambiguous Development Plan support for the proposed CPO. Whilst I accept that Section 19.9 of the Plan outlines a number of key urban regeneration / town centre challenges in Ballybofey-Stranorlar, including the vehicle dominated, poor pedestrian environment, it goes on to state that the SEED Project aims to tackle such issues through transformative, inter-related regeneration interventions in the centre of Ballybofey, including the new replacement car park. In this regard, there is no conflict with Section 19.7 of the Plan. Whilst I accept that it outlines a general approach of only considering parking proposals in urban core zonings in exceptional circumstances, these circumstances are evidently met as per Footnote 3 of the zoning matrix, i.e., where it is not contrary to regeneration objectives.
- 8.5.8. Finally, in terms of the flood risk provisions in the Development Plan, I note that objective F-O-1 seeks to ensure that development does not give rise to unacceptable new flood risks or does not exacerbate existing flood risk, and policy F-P-1 seeks to only permit development where flood or surface water management issues can be successfully addressed and/or where there is no unacceptable residual flood risk etc. I note that the latter applies a precautionary approach to the consideration of flood risk

espoused in the Flood Risk Management Guidelines and requires evidence of compliance with the Justification Test to be submitted, where considered appropriate.

- 8.5.9. I note that similar provisions existed in the previous Development Plan, 2018-2024, and it is evident that the planning authority, in their assessment of the Part 8 at that time, did not consider a Justification Test was required. Whilst it does not necessarily follow that their approach then negates any material contravention concerns in relation to the current Plan and CPO now, it can be taken as a fair indication, nonetheless.
- 8.5.10. In this regard, I am cognisant of the statutory prohibition on the Council effecting development which materially contravenes the Development Plan under Section 178 of the Planning Act. This restriction appears to apply equally to the Part 8 and the CPO, and it is one element of the 'double lock', as suggested by the Objectors, the other being the general duty to secure the objectives of the Plan under Section 15.
- 8.5.11. Herein lies the dispute. There is clear and unambiguous Development Plan support for the proposed CPO and there is a more technical aspect in relation to flooding that was already assessed during the Part 8. Whilst the lack of a Justification Test could be construed to contravene policy F-P-1, it is evidently not a material contravention given the proven suitability of the land in accordance with Plan objective F-O-1.

#### *Conclusion on Development Plan Issues*

- 8.5.12. On balance, I am unconvinced that the works to be carried out on the CPO site are in material contravention of the Development Plan generally or in relation to urban design, or indeed flooding, specifically. I am fully satisfied that the proposed CPO will not just accord with the Development Plan but will actively secure specific objectives of the Development Plan in relation to the 'full implementation' of the SEED Project.

### **8.6. Consideration of Alternative Methods**

- 8.6.1. In terms of the alternatives considered, Ground 8 of the Objectors original submission states that no alternatives were presented in the Part 8 scheme or under the CPO. This is elaborated upon under Ground 7 which also notes the lack of engagement with the landowner during the CPO process. The latter issue has been addressed above.
- 8.6.2. The Council's Brief of Evidence provides a substantive rebuttal to the issues raised, noting the broad options considered at the initial project scoping and options stages,

with Option 4, the Part 8 scheme, selected as the preferred option following economic appraisal (see section 6.3 above). The report also details the specific options in relation to the replacement car parking component, with Option 2, the CPO site, being selected as the optimum location in accordance with the SSTLAP (see section 6.4).

8.6.3. The Objectors rebuttal reaffirms their position in the initial objection and they directly addressed the issue during cross-questioning. In this regard, the Objectors raised specific concerns in relation to the Council's failure to consider the 'HSE Car Park' as an alternative. I also note that in response to the Council's suggestion that the 'HSE Car Park' was ruled out on an urban design basis, the Objectors stated if it was wrong there then it is wrong on the CPO site, which they suggest is in the middle of a plaza.

#### *Consideration of the Issues*

8.6.4. It is important at this juncture to reiterate that the test states that '*any alternative methods of meeting the community needs have been considered but are not demonstrably preferable etc.*' In this regard, a robust assessment of alternatives has been presented by the Council, not just in terms of the options for the replacement car park element but also in terms of the overall Part 8 project. Whilst I accept that it is somewhat unusual for the Council not to have formally considered the replacement car park at the 'HSE Car Park' site, I do not consider it fatal to the 'alternatives test'.

8.6.5. In this regard, I note the design issues debated between the parties, and particularly the dispute over whether the CPO site is or is not a plaza. That appears to me to be largely immaterial, the fundamental design issue, in my opinion relates to the size of building required, in terms of height and footprint, to facilitate the displaced parking spaces whilst maintaining the existing quantum of spaces in the 'HSE Car Park'. The obvious solution to that question can be found in the CPO site where the plot size, topography and access arrangements are demonstrably preferable than the other options considered. I therefore agree with the Council, who concluded that the 'HSE Car Park' was considered, albeit in the initial stages, and performed comparably to Option 3 in any event, and the Objectors have not made a case for a better alternative.

#### *Conclusion on Alternatives*

8.6.6. On balance, I am satisfied that the Council's consideration of alternative methods of meeting the community needs is reasonable and not demonstrably preferable to the SEED Project through the Part 8, including the replacement car park on the CPO site.

## 8.7. Other Issues Raised by Objectors

8.7.1. The proposed further modification of the Part 8 and the Habitats Directive interactions are the other main issues raised by the Objectors during the course of the hearing.

### *Proposed Modifications to the Part 8*

8.7.2. As noted, the Part 8 scheme was authorised by virtue of Section 179 of the Planning Act subject to a modified layout and 11 number conditions (section 1.3 above).

8.7.3. During the hearing the Objectors raised concerns regarding compliance with the list of conditions, which were referred to as 'planning conditions'. Whilst I accept that the conditions outlined in Appendix D of the Chief Executive's Report, and replicated in Appendix A below for completeness, read like 'planning conditions' as per Section 34 of the Planning Act, there is no provision for such conditions in Section 179 of the Act.

8.7.4. The best interpretation of the "conditions" is, therefore, as additional modifications over and above the modified layout as provided for in Dwg. No. BS/SEED/04/2, Revision A. This is explicit in Section 179(4)(b) i.e., "unless the local authority, by resolution, decides to vary or modify the development, otherwise than as recommended in the chief executive's report." What turns on this is minimal in any event. Whilst I note the Objectors concerns, and particularly in the context of "conditions 2(a) and 6" which require certain activities and actions to be undertaken prior to the commencement of development, I do not consider it alters the underlying explanation for compulsory acquisition or draws into question any aspect of need, as suggested by the Objectors.

8.7.5. In this regard, I accept that detailed design generally follows initial authorisation, and this has been evolving in the last year, as stated by the Council. This principle equally applies to the schedule of variations to the car park as circulated during the hearing. In that regard, I agree that the design envelope is not being fundamentally altered.

8.7.6. Secondly, during the course of the hearing I queried the Council's inclusion of Plot 01b. For clarity, whilst the CPO Map evidently includes this plot, which, as noted above, is described as an "access road" in the associated Schedule, this land parcel was not included in the Part 8 scheme and was, heretofore excluded from any works.

8.7.7. In this regard, the Objectors submitted that there is no basis on which the CPO can be confirmed, suggesting that the Commission are being asked to determine that the test

could be met where there has been no planning assessment of part of the land, adding that this was the difficulty faced in the King case<sup>13</sup> and it now also applies to this case.

8.7.8. Whilst I acknowledge the Objectors concerns, and these concerns were sufficient for the question to be posed in the first place, I am satisfied that the inclusion of Plot 01b is not fatal, and there is a sufficient distinction between the King case and the CPO presently in dispute. In that case, the acquiring authority, Irish Water (now Uisce Éireann) had no authorising consent in place whatsoever for a planned wastewater treatment plant in the village of Roundstone, County Galway. The purpose of that CPO was effectively to address a legislative deficiency in terms of a legal interest to make the application in the first place. I note this deficiency, which I agree was akin to putting the cart before the horse, has since been addressed by the legislature<sup>14</sup>.

8.7.9. As detailed above, the substantive works on the CPO site, namely Plot 01a and 01c are authorised by virtue of the Part 8 consent. In any event, the Council now propose works within Plot 01b as detailed on the drawings circulated during the hearing. Whilst the statutory authorisation for these works was also raised by the Objectors, and with respect, the Council's response was far from exacting, I do not consider this alters the overriding community need for the SEED Project and hence the CPO. In this regard, I note the commentary in Browne, *Simons on Planning Law* (3<sup>rd</sup> ed., Round Hall, 2021) (at 10-21 and 10-22) when considering whether a development scheme is required:

*“There is a sliding scale. On one end, the planning authority should be required to put forward specific proposals and to demonstrate that the necessary permissions and consents will be available for the development. [...]”*

*“At the other end of the scale, the acquiring authority might only have to go so far as establishing that anything would be better than the current use of the land. This might most readily be understood in the context of land requiring redevelopment or regeneration. There, all that the acquiring authority would have to do is to establish that the lands were in need of regeneration.”*

8.7.10. What is clear from the case law, however, is that land can only be acquired compulsorily where it is required for a particular purpose. In *Clinton v An Bord*

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<sup>13</sup> *Anne King v An Bord Pleanála* [2024] IEHC 6.

<sup>14</sup> S.I. No. 565/2022 Planning and Development (Amendment) (No. 2) Regulations 2022.

Pleanála (No. 1)<sup>15</sup> the court was satisfied that “particular purpose” refers to a “particular statutory purpose”. Whereas Geoghegan, J. in Clinton v An Bord Pleanála (No. 2)<sup>16</sup> preferred to decide the case on the narrower ground that the regeneration of an area of O’Connell Street was the “particular purpose” within the meaning of Section 213 of the Act without giving any final determination on the High Court interpretation.

8.7.11. Either way, the purpose for which acquisition is sought is clear and unambiguous in this instance, namely the implementation of the SEED Project. The fact that the Council have now come forward with what are effectively surface upgrade works on an area strictly outside the red line boundary of the Part 8 site does not alter that.

*Habitats Directive*

8.7.12. Finally, the Objectors raise a second novel issue in relation to multi-stage consents, referring to obiter comments in King v An Bord Pleanála<sup>17</sup>. Without determining the substantive issue in that case, Simons, J. suggested that there are strong grounds for saying that a decision to confirm a CPO constitutes part of a multi-stage development consent, adding that if this is correct, then the decision is one which is, in principle, subject to the EIA Directive, and thus by extension the Habitats Directive. In that context, the Objectors submit there is a potential significant impact on the River Finn.

8.7.13. The above could be construed as separate to the appropriate assessment and environmental impact assessment screenings carried out during the Part 8 process, notwithstanding the Council's submissions. However, as noted, a distinction can be drawn between the King case and the present case. The sequencing of decision making in the former was predicated on the legislative regime at that time and since amended for Uisce Éireann applications in November 2022. In the absence of a substantive decision on the matter, I retain the position that the application before the Commission is not a plan or project as defined under the provisions of either the Habitats Directive or EIA Directive and therefore neither currently apply in this regard.

*Conclusion on Other Issues Raised*

8.7.14. On balance, I do not consider that the proposed modifications to the Part 8, including the resurfacing of Plot 01b, fundamentally alter my previous conclusions in relation to

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<sup>15</sup> [2005] IEHC 84.

<sup>16</sup> [2007] IESC 19.

<sup>17</sup> [2024] IEHC 6.

community need, the suitability of the land, the provisions of the Development Plan which evidently support the CPO or the Council's consideration of alternative methods.

8.7.15. Nor do I consider there is a current obligation on the Commission to scrutinise the proposed CPO against the provisions of the EIA Directive or indeed Habitats Directive.

## 8.8. **Proportionality and Necessity**

8.8.1. During the hearing, the Objectors queried as to where the issue of proportionality is addressed in the Council's evidence, citing the Clinton case as a key test in this regard.

8.8.2. The Council stated that proportionality is one to be considered by the Commission in light of all the evidence put forward, adding that there was no requirement to address it in the documentation submitted or in their evidence to the Commission at hearing.

### *Consideration of the Issues*

8.8.3. As I have already outlined, I am satisfied that the acquiring authority have reasonably followed all procedures and have demonstrated that there is a community need for the acquisition, the site is suitable to address this need having considered alternatives and there is local policy support for the CPO. The issue of proportionality is thus critical.

8.8.4. In this regard, I queried what steps the Objectors had so far taken to develop the CPO site. The Objectors response lacked a cogent proposal but they did submit that they would not be opposing the CPO unless they had plans for the CPO site. It was also stated that the land has been sterilised by way of the Part 8 project, adding that a proposal could not be formulated in the teeth of the compulsory acquisition process.

8.8.5. The Council on the other hand stated that the first suggestion that the Objectors have an active proposal for the CPO site came at the hearing, adding that it is noteworthy that they did not object to the Part 8 project and in the intervening years they did not bring forward any development proposal despite the fact that they were free to do so.

8.8.6. In this regard, the decision of Hedigan, J. in Reid v IDA<sup>18</sup>, which was unaltered by the subsequent Supreme Court decision insofar as it related to the issue of proportionality, is relevant. As noted, in that case the High Court asked itself the following questions:

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<sup>18</sup> [2013] IEHC 433.

- “(1) *Is the compulsory purchase provided by law and thus connected to the objective of the legislation, is it arbitrary, unfair, or based on irrational considerations?*
- “(2) *Are the applicant's rights as little impaired as possible?*
- “(3) *Are the effects on his rights proportionate to the objective?”*

8.8.7. In relation to the first question, I find that the proposed CPO is provided for by law and is clearly intended to achieve the legislative objective of carrying out the development and renewal of areas in need of physical, social or economic regeneration and providing open spaces and other public amenities<sup>19</sup>. In dealing with the Objector, the acquiring authority has, as I found during the course of the hearing, exhausted all avenues in terms of acquisition by agreement. In this regard, I note that other lands necessary to for the SEED Project have been acquired by agreement (see Figure 3 of the Council’s Brief of Evidence). The acquiring authority has also considered alternative methods of meeting the stated community need but the lands in question are, in their view, the most suited for the purpose. Thus, the decision to proceed to CPO was neither arbitrary, unfair nor based on irrational considerations in my opinion.

8.8.8. The rights of the Objectors to their lands in particular have been considered. It is only right given the protection afforded to constitutionally protected property rights and the European Convention on Human Rights. That said, Plot 01a is currently vacant and under grass, with no evidential use during either of my site inspections, and Plot 01b, which runs along the northern boundary of the field, is an access/service road with informal parking. As noted, the Council during the course of the hearing, confirmed that access to the rear of the shopping arcade will be maintained and the site layout drawing circulated during the hearing illustrates as much, and indeed a formalised access and parking arrangement. There are no extant planning permissions on the CPO site and the Objectors have not come forward with any proposals to develop the site since their acquisition, which was first registered in February 2021. There is an element of betterment by virtue of the authorised Part 8 scheme, and this, in my opinion, is the most that can be practicably done to minimise the effect of the CPO.

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<sup>19</sup> Section 212(1)(e) of the Planning and Development Act 2000, as amended.

Moreover, the Objectors did not make any case in relation to proportionality and the impact the proposed CPO would have on their rights and particular circumstances.

8.8.9. Lastly, in terms of the proportionality of the effects on the Objectors rights and the overall objective of the CPO, which is indivisible from the Part 8 SEED Project, it appears to me, for the reasons outlined above, that the public interest must outweigh the individual in this case. The necessity of the regeneration scheme has been clearly established, from initial inception in the SSTLAP, through to the Part 8 and subsequent stitching into the current Development Plan. There is a strong evidential baseline for local authority intervention in Ballybofey and it is clearly justified by the common good.

*Conclusion on Proportionality and Necessity*

8.8.10. On balance, and in light of all the evidence put forward, I am satisfied that the necessity of the CPO has been established and its effects are proportional on the Objectors.

## 9.0 Recommendation

9.1. I recommend that the Commission **CONFIRM** the above Compulsory Purchase Order without modifications based on the reasons and considerations set out below.

## 10.0 Reasons and Considerations

Having considered the objections made to the Compulsory Purchase Order, the written submissions and observations made to the oral hearing held on the 14<sup>th</sup> day of October 2025, the purpose of the Compulsory Purchase Order to facilitate the delivery of The SEED Project in Ballybofey, Co. Donegal and also having regard to the following:

- (i) the community need to acquire lands to provide for a replacement car park within the context of a comprehensive, multi-element, town centre regeneration scheme, the public interest served and overall benefits of this scheme, including the provision of a civic space, inclusive of pedestrian infrastructure, road frontage canopy detail, public amenities and changing places facility,
- (ii) the suitability of the lands and the necessity of their acquisition to facilitate the replacement of an intensively utilised car park in the commercial core of Ballybofey as a central element of the SEED Project regeneration scheme,

- (iii) the provisions of the National Planning Framework *First Revision*, the Regional and Economic Spatial Strategy 2020-2032 for the Northern and Western Regional Assembly and in particular the County Donegal Development Plan 2024-2030 which clearly supports the implementation of the SEED Project,
- (iv) the overall design response, which has been appropriately tailored to the identified community need,
- (v) the consideration of alternative methods to deliver the scheme,
- (vi) the proportionality and necessity for the level of acquisition proposed having regard to protection afforded to property rights as set out in the Constitution of Ireland and European Convention on Human Rights,
- (vii) the authorisation of the Part 8 SEED Project under PA ref. Part 8 PG 20/21 to facilitate comprehensive town centre regeneration in Ballybofey, Co. Donegal,
- (viii) the Climate Action Plan and the move away from carbon emitting vehicles, and
- (ix) the report and recommendation of the Inspector who conducted the oral hearing into the objections,

it is considered that, the permanent acquisition by the local authority of the lands in question, as set out in the Compulsory Purchase Order and on the Deposited Map, has been justified and is necessary for the purposes stated, which is a legitimate objective being pursued in the public interest, and that the Compulsory Purchase Order and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

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

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Philip Maguire

Inspectorate

28<sup>th</sup> November 2025

## Appendix A (Part 8 Conditions)

1. *Development shall be carried out strictly in accordance with lodged plans and details, particularly the modified plan entitled 'Proposed Site Layout,' Dwg. No. BS/SEED/O4/2.*

*Save as hereinunder otherwise required.*

**Reason:** *To define the approved scheme.*

2. (a) *Prior to the commencement of the development, operational arrangements in respect of attenuation storage provision shall be provided at detailed design stage and shall be implemented in full in the construction process.*

*(b) Appropriate flood resistant construction measures and proprietary flood protection devices shall be implemented in the detailed design of the Ritz Cinema building and associated renovations/ extensions to same.*

**Reason:** *To cater for orderly development.*

3. *The Office Units within the Enterprise Building shall be used in accordance with the uses defined under Use Class 2 and Use Class 3 of Schedule of 2 of the Planning and Development Regulations, 2001 (as amended).*

**Reason:** *To cater for orderly development of the area and to define the terms of the permission.*

4. *The construction of the development shall be managed in accordance with a Construction Management Plan. This plan shall provide for, *inter alia*, the phasing of construction works and the management of traffic flows on the public road during on-site construction works.*

**Reason:** *In the interests of traffic safety and to cater for orderly development of the area.*

5. *On-site construction works to the Ritz building shall be between the hours of 0800-1800 Monday – Friday inclusive, and 0830 – 1500 hours Saturday, and shall exclude Sundays and all Bank Holidays /Public Holidays.*

**Reason:** To cater for orderly development and in the interests of residential amenity of surrounding dwellings.

6. (a) Prior to the commencement of development a Stage 1 & 2 Road Safety Audit shall be carried out following the detailed design stage. This Road Safety Audit shall include all development accesses, pedestrian crossing facilities and the all other civil engineering works along Chestnut Road.  
(b) All recommendations of the Road Safety Audits shall be implemented in full in the construction process, and shall be completed, prior to the commencement of any other development.

**Reason:** In the interests of traffic safety and to cater for orderly development.

7. All waste associated with the development shall be disposed of in an environmentally friendly manner and off site at an authorised/licensed facility.

**Reason:** To ensure the integrity and preservation of Natura 2000 sites and their qualifying interests.

8. (a) The car park, internal service road and entrance area shall be appropriately designed in terms of thickness and strength and shall be surfaced in bituminous macadam with minimum thickness 40mm.  
(b) Car parking shall be appropriately marked with thermoplastic road marking materials designating parking bays, distinguishing disabled parking bays, circulation lanes and areas to be kept clear of parking.  
(c) Roadways and paved areas shall be drained by the provision of an adequate number of gullies so arranged to avoid ponding. The gully grating shall be lockable type to B.S. 497 Part 1.

**Reason:** In the interests of traffic safety and to avoid flooding.

9. Public lighting shall consist of low energy LED lights. Luminaries shall comply with I.S. EN 60598-2-3.

**Reason:** To cater for orderly and sustainable development and in the interests of public safety.

10. (a) *No L.E.D, neon or similar lights shall be erected on the subject premises, structure or site.*

(b) *No digital displays or similar illuminated streaming media shall be erected or displayed on the subject premises, structure or site.*

**Reason:** *To cater for orderly development and in the interests of public safety.*

11. (a) *Public signage shall abide by the provisions of The Official Languages Act 2003, An tOrdú Logainmneacha (Ceantair Ghaeltachta) 2004, Signage Regulations S.I. No. 391 of 2008 and the Road Traffic Manual in relation to the use of Irish and English.*

**Reason:** *To cater for the orderly development of the area and to comply with Section 9.7 of Appendix 3 of Part B of the County Donegal Development Plan, 2018-2024.*

(b) *Business and/or community signage (with the exception of the front façade of the Ritz Premises) shall be in the Irish Language only, or if bilingual signage is proposed, then the Irish language shall be first and shall be of an area, size and prominence that is at least equal to or greater than the area, size and prominence of signs provided in other languages.*

**Reason:** *To cater for the orderly development of the area, to comply with Section 9.7 of Appendix 3 of Part B of the County Donegal Development Plan, 2018-2024 and to preserve the amenities and built fabric of the host environment.*

*Applicants are advised that adequate provision shall be made to facilitate access to and the use of the proposed development by disabled persons. The access and use requirements shall be in accordance with Part M of the Building Regulations.*

## **Appendix B (Summary of Proceedings at Oral Hearing)**

Note 1: The oral hearing proceedings were recorded and this recording is available to the Commission. What follows is a brief summary of the proceedings at the hearing and the persons in attendance. It is not intended to be a comprehensive overview of the proceedings and should be read in conjunction with the main body of the IR.

Note 2: During the hearing the parties referred to An Coimisiún Pleanála and Uisce Éireann as An Bord Pleanála and Irish Water. The correct names are used below.

### **1. Background**

An oral hearing was held on Tuesday 14<sup>th</sup> October 2025 in relation to the proposed compulsory acquisition sought by Donegal County Council – ‘The SEED Project (Phase 1), Ballybofey, Compulsory Purchase Order 2024’. The hearing was held at the Villa Rose Hotel, Ballybofey, County Donegal. The following made submissions:

### **2. Submissions on behalf of Donegal County Council**

Bryan Armstrong, Solicitor

Frank Sweeney, Senior Executive Planner

Sinead McCauley, Senior Executive Planner

Ardal McDermott, Senior Executive Engineer

### **3. Submissions on behalf of the Objectors**

Michael O’Donnell, Senior Counsel

Elizabeth O’Donnell, Solicitor

Ronan Woods, Genesis Planning

Seamus McMenamin, Objector

#### **4. Opening of Hearing**

The Inspector commenced the hearing at 10.00am with an opening statement, including an overview of the agenda and noted a slight modification to the running order. The names and roles of the parties in attendance were confirmed. It was noted that the other objectors, Mary Laffery and Michael McMenamin, were in attendance. The parties were reminded that the hearing relates to the CPO only, and not the Part 8. The opening statement concluded with ground rules for conduct during the hearing.

#### **5. Submissions by Donegal County Council**

- Mr Armstrong opened on behalf of Donegal County Council ('the Council').
  - Noted that the response to the objection is incorporated in the 'Brief of Evidence' and was cross circulated (note: received by the Commission on 10<sup>th</sup> October 2025 and circulated to the Objectors the same day).
  - Requested that drawings of the developed design of the car park, 'as alluded to in the Brief of Evidence' be circulated at the hearing.
    - Cross-circulation agreed to by the Inspector.
- Mr McDermott gave an overview of the CPO and the Part 8 SEED Project.
  - Synopsis of the projected detailed in the 'Brief of Evidence'.
  - Provided an overview of the Part 8 scheme and noted the decision of the Elected Members on Monday 16<sup>th</sup> November 2020 to proceed with the proposed development / project.
  - Provided an overview of the CPO and noted the delivery of the SEED project requires the acquisition of private property over three parcels of land and agreement has not been reached with all of the landowners.
  - Confirmed that the CPO related to plots 01a, 01b and 01c (0.3102ha).
  - Stated that the phasing of the Project is as follows:
    - Phase 1 – The Ritz (detailed design & tender documents completed).
    - Phase 2 – Car Park (detailed design & tender documents completed).
    - Phase 3 – Public Realm (advanced stage detailed design & tender).

- Referred to Section 4.4 of the 'Brief of Evidence' in relation to justification for land acquisition with reference to alternatives considered.
  - Noted 5 options were considered and 5 selection criteria applied.
  - Option 2 selected – the CPO site.
- Mr Sweeney outlined the planning policy basis for the SEED Project.
  - Referred to a 'Brief of Evidence (Addendum)' previously submitted to the Commission<sup>20</sup> which sets out the appropriateness and consistency of the SEED Project with national, regional and local planning policy.
  - Stated that the evidence now presented focusses solely on the consistency of the Part 8 SEED Project with the local the Development Plan.
  - Noted the provisions under Section 178 of the Planning and Development Act 2000, as amended, ('the Act') i.e., a county council shall not effect any development which contravenes materially the development plan.
  - Noted that relevant Development Plans 2018-2024 and 2024-2030 and the Seven Strategic Towns Local Area Plan 2018-2024 ('the SSSLAP').
  - Stated that the planning authority was satisfied that the Part 8 complied with the operative plan at the time, i.e., County Development Plan 2018-2024.
    - CS-O-11 (e), TV-O-1, TV-O-4, ED-O-3 and TOU-O-1 highlighted.
  - Noted the provisions of the SSSLAP including the site's location within 'Opportunity Site 1' and highlighted 'further enhancement of the streetscape' as a key issue and the 'replacement of the displaced parking spaces' as a pre-requisite for the delivery of civic space in the shopping centre car park.
    - Objective BS-TC-1 specifically referenced.
  - Stated that the planning authority was satisfied that the Part 8 was consistent with the policies and objectives of the SSSLAP.
  - Highlighted Objective BS-TC-O-2 of County Development Plan 2024-2030.

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<sup>20</sup> See section 6 of IR.

- Mr Armstrong referred to the updated design of the car park and asked Mr Sweeney for his view of same in terms of the Part 8 process.
  - Mr Sweeney stated that the changes did not constitute a material deviation of the Part 8 in terms of the scale, mass and form of the building and whilst it was acknowledged that the revised external finishes were a ‘major change’, it was stated that the planning authority considered that it did not constitute a material change and it was more fitting at this location.
  - Mr O’Donnell raised concerns regarding the further modification of the Part 8 development and requested that the acquiring authority furnish the Inspector and Objectors with the information pertaining to the modifications and correspondence between the planning authority and acquiring authority in respect of same<sup>21</sup>.
  - Mr Armstrong stated that as the design has developed a change has emerged and he just wished to make it clear that Mr Sweeney is happy that that change is compliant with the Part 8 process.
  - Mr O’Donnell highlighted that the Council rely on the Part 8 to justify the scheme and raised concerns regarding the planning conditions imposed thereon, whether they had been complied with, and how they engage with the further modifications proposed.

## 6. Submissions by Objectors

- Mr O’Donnell opened on behalf of the Objectors.
  - Stated that the onus of proof rests with the County Council.
    - All requirements / preconditions must be met / satisfied.
    - There must be an appropriate draft CPO before the Inspector.
  - Raised procedural issues with the lands to be acquired.
    - The Council are proposing to acquire land that they already own.

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<sup>21</sup> A Donegal County Council inter-departmental letter dated the 8th of September 2025, with relevant schedule of variations, was submitted and cross-circulated prior to the Council’s Response (see Section 7 below).

- Alternatively, states that the sewer manhole, identified as plot 01c, is now in the ownership of Uisce Éireann by virtue of S.I. No. 13 of 2015.
- The schedule to the CPO is thus wrong as a matter of fact and law and the scheme is therefore misconceived and that's fatal.
- Raised concerns regarding the “relevant tests” in a CPO case.
  - No statutory basis for the tests – McDermott & Woulfe (2<sup>nd</sup> ed.)
  - All case law takes a different approach.
  - If the tests do apply, then the Council must show that they satisfy these tests, and particularly compliance with the Development Plan.
  - The Planning Act provides a “double lock” – the Council must secure the objectives of their Development Plan and must not contravene the Development Plan.
  - If there is a question that they do not comply with their Development Plan then the CPO is *ultra vires* and it cannot be confirmed.
  - States that the proposal contravenes both a policy and an objective in the Development Plan in relation to flood risk management.
- Raised concerns regarding the formal decision to proceed with the CPO.
  - Referring to McDermott & Woulfe, stated that there is an absence of grounding criteria and questioned the basis on which the Council took the decision to proceed with the CPO.
- Raised concerns regarding suitability and need.
  - Queried whether the lands are suitable or appropriate for a car park.
  - Stated that suitability is not addressed directly by the Council.
  - The submissions raised profound concerns regarding the principle of a car park and the location of car park and this overlaps with need.
  - Queried how a need could be addressed if there is a surplus of car parking and stated that this has not been addressed.
- Raised concerns regarding community need.

- Noted Ballybofey as the commercial centre of the northeast of Co. Donegal and highlighted the retail drivers and uses in the town.
  - Noted the core zoning and the zoning matrix which identifies the permissibility of all major uses, with a caveat for car parking.
  - Stated that there is a fact to be established that this is a critical and appropriate piece of infrastructure.
  - Queried whether a car park is appropriate as part of urban regeneration, suggesting that the starting point would never be such.
  - Stated that it is hard to see how it is appropriate in terms of regeneration given the manner in which the zoning is applied.
- Stated that there is a deficiency in the process with regard to European law.
  - Referred to the judgement of Simons, J. in *King v. An Bord Pleanála*.
  - As per Simons, J., stated that the Habitats Directive is engaged in a multi-stage consent process.
  - Stated that there is a significant impact, potentially, on the River Finn.
  - In the event of a deficiency in any of the processes to date, stated that the Commission has a duty to comply with Community law.
- Mr Woods continued on behalf of the Objectors.
  - The submission included a presentation based on the 'Rebuttal Statement' submitted during the hearing. The statement was cross circulated.
  - Stated that the key issue is material contravention of the Development Plan.
  - In terms of community need, refuted the suggestion that the car park is a "replacement car park", noting a net increase by c. 50 spaces and highlighted that no surveys were carried out by the Council.
  - In terms of suitability of the land, raised concerns in relation to:
    - Urban renewal – not good planning to facilitate more car parking, particularly in a town with over 30% vacancy.
    - Flood risk – within Flood Zone A – requires Justification Test.

- Part 8 documentation silent on FRA for the car park.
- Material contravention of policy F-P-1 of the Development Plan 2024-2030 which is tethered to the Flood Risk Management Guidelines.
- Stated that the proposal is not justified from a planning policy perspective.
- Noted that other grounds are elaborated upon in the ‘Rebuttal Statement’.

## 7. Council’s Response

- Immediately prior to the Council’s response, the Council cross-circulated a list of the variations to the Part 8 submitted plans and the Senior Executive Planner’s comments in relation to these deviations in a letter of the 8<sup>th</sup> of September 2025.
- Mr McDermott responded to the initial grounds of objection.
  - Ground 1 – referred to Section 7.1 of the Brief of Evidence. Stated that the proposal is seen by the Objectors in isolation of the wider regeneration benefits of the scheme and highlighted alignment / consistency with the NPF (NSO 1 and NSO 3), the RSES (RPO 3.4), the Compact Settlements Guidelines (Chapter 4 – Quality Urban Design and Placemaking), the National Sustainable Mobility Policy, the Design Manual for Urban Roads and Streets (Section 3.3.4), CAP24, the Town Centre First policy (Section 2.5), and the County Development Plan 2024-2030 (objective BS-TC-02).
  - Ground 2 – referred to Section 7.1 of the Brief of Evidence including a quantitative and qualitative analysis of existing car parking spaces in Ballybofey. Stated that there is need for the replacement car parking having regard to the analysis presented in Figure 13 of the submission, highlighting particular issues with quality of connections with existing private car parks.
  - Ground 3 – referred to the Council’s case as set out under Ground 1 above and stated that it replicates much of the issues raised by the Objectors under Ground 3. Stated that the CPO is required having regard to the wider regeneration scheme, referring again to Figure 13 of the submission.

- Ground 4 – stated that the zoning was determined on the basis of detailed plan-led analysis of housing demand and confirmed that the site has the potential for a range of uses rather than reserving it solely for residential development. Noted that the statutory development plan making process determined the location of residential zoned land in Ballybofey and stated that there is sufficient land zoned for housing elsewhere in addition to the adaptive reuse of the vacant buildings through various Council programs.
- Ground 5 – referred to the Council’s case as set out under Ground 1 above and indicated that it is relevant to the issues raised under Ground 5. Stated that the proposed replacement car park will improve the view from Chestnut Road, referencing Figures 16 and 17 of the submission.
- Ground 6 – referred to the Council’s case as set out under Grounds 1, 2, 3 and 5 above, reiterating that the CPO relates to replacement car parking to cater for removed spaces and is essential due to the qualitative assessment.
- Ground 7 – stated that alternatives have been examined and justified.
- Ground 8 – stated that the Council is of the view that the tests for the CPO are met in terms of community need, suitability of the land, compliance with the Development Plan and represents the most optimum lands for replacement car parking having regard to the alternatives considered.
- Mr Sweeney responded to the specific flood risk issues raised during the hearing.
  - Stated that flood risk was fully assessed as part of the Part 8 process.
  - Noted that the site is located within Flood Zone A, at risk of a 1:100-year flooding event, albeit defended by flood defences along the River Finn.
  - Stated that the planning authority considered that the car park and plaza uses were water compatible in accordance with the Section 28 Guidelines on flood risk management in the Part 8 assessment and there was no justification [test] needed for either of those uses.

## 8. Questioning between the Parties

- Mr O'Donnell's opening question related to the preparation of the CPO including investigations into property interests and the ownership of the land.
  - Ms McCauley, on behalf of the Council, stated that the initial stages were carried out by the Regeneration & Development Team who identified and engaged with the various landowners by telephone call in August 2020, a pre-Part 8 consultation drop-in event on 10<sup>th</sup> the September 2020 and by invitation for written submissions through the statutory Part 8 process.
- Mr O'Donnell queried whether there was any written correspondence with any of the landowners prior to the initiation of the CPO procedure.
  - Ms McCauley stated that there was no written correspondence, clarifying that there was verbal communication only, but highlighted that the statutory Part 8 notices indicated the Council's clear intentions for the site.
- Mr O'Donnell queried the basis on which Mr Seamus McMenamin was identified.
  - Ms McCauley stated that local representatives were involved in identifying Mr Seamus McMenamin.
  - Mr O'Donnell stated that the position is that Mr Seamus McMenamin has no legal interest in the land.
  - Ms McCauley indicated that that was not communicated to her during the telephone conversation with Mr Seamus McMenamin and stated that there was an openness to discuss the matter and noted that she did ask for clarification whether he was the representative and owner of the land.
- Mr O'Donnell queried when this telephone conversation took place.
  - Ms McCauley stated that the telephone conversation took place in August 2020 and prior to the drop-in event in advance of the Part 8 publication.
  - Mr O'Donnell highlighted that this was long in before of any decision to proceed with the CPO in 2024 and stated that this is a self-contained, highly regulated and serious procedure in its own right and there is a prior obligation to engage with the owners of the land.

- Ms McCauley stated that she couldn't recall if she looked at the land registry maps in 2020 when asked by Mr O'Donnell if she had.
- Mr Armstrong interjected at this point, and stated that the sequencing of witnesses is important, notably Ms McCauley's involvement in the Part 8 process and Mr McDermott's involved in the CPO process.
- Mr Armstrong has stated that in August 2020 the McMenamin's were not the registered owner of this land on the Property Registration Authority folio.
- Mr O'Donnell pressed on the property investigations and communications immediately before the decision to proceed to the CPO, stating that there is an obligation to engage with the landowners in such circumstances.
  - Ms McCauley confirmed that there was no written communication prior to the public of the Part 8, reiterating that there was verbal communication and statutory notices of the Part 8.
  - Mr McDermott indicated that a land registry search was carried out prior to CPO and, in addition, Mr Seamus McMenamin was identified as having an interest in the subject lands.
  - Mr McDermott also stated that Mr Seamus McMenamin notified the Council that he was the representative for the lands and he would be taking the discussions going forward, adding that there were a number of communications and negotiations that took place.
- Mr O'Donnell queried whether there was any evidence of written correspondence with the landowners prior to the decision to proceed to CPO, noting that it is a process of last resort, and queried the basis Mr Seamus McMenamin was included.
  - Mr McDermott reiterated that Mr Seamus McMenamin identified himself as the representative and put himself forward for negotiations and the Council made attempts to purchase the land amicably on a number of occasions, including recent negotiations, and that process has been exhausted.
  - Mr O'Donnell stated that there is no record of written communication with any of the landowners prior to the decision to proceed to CPO.

- Mr McDermott reiterated that Mr Seamus McMenamin stated that he was the representative for the lands and should be included in all documentation.
- Mr O'Donnell stated that this is about ownership and who owns the land and queried the basis on which Mr Seamus McMenamin was included when there was no evidence on the land registry, which is conclusive as to ownership.
- Mr McDermott indicated that it extends beyond owners, including trustees and lessees, in order to give everyone an opportunity to participate in the process, and that is why he is included, particularly when he put himself forward as a representative for negotiations.
- Mr O'Donnell stated that Mr Seamus McMenamin's children are identified on the land registry.
- The Inspector then referred to Section 1.2 of the Objectors supporting statement which sets out the relevant legal interest and states that the subject lands are owned by Chestnut Partnership of which the Objectors are shareholders along with family members and also states that Ms Mary Lafferty and Mr Michael McMenamin are the registered owners in their capacity as trustees.
- The Inspector also noted that this is also stated in the supporting solicitors' letter dated 26<sup>th</sup> June 2024 but noted that the documents listed in that letter, including a copy of the Chestnut Partnership Agreement, were not enclosed, as suggested.
  - Mr O'Donnell requested as part of the submission that the Commission delete Mr Seamus McMenamin.
  - Mr Armstrong interjected at this point and stated that the law requires service on the "owners or reputed owners".
  - Mr O'Donnell listed the following as members of the Chestnut Partnership:
    - Aine McMenamin
    - Pauric McMenamin
    - Sheila McMenamin
    - Ciarán McMenamin

- Mr O'Donnell asked Mr McDermott what communication had taken place with the two registered owners of the land prior to the CPO.
  - Mr McDermott stated that communications were through Mr Seamus McMenamin as a representative.
- In relation to Plot 01c, Mr O'Donnell queried whether the manhole referred to in the CPO Schedule is in respect of a sewer.
  - Mr McDermott stated that it is a combined system, storm and foul.
- Mr O'Donnell stated that the manhole forms part of the sewer, noting S.I. No. 13 of 2015 which transferred all of the assets to Uisce Éireann, and quoted a footnote in Bland, *Highways* (Round Hall, 2020) (at pg. 555) relating to Uisce Éireann's liability issues and the transfer of any property including gullies, manholes, covers and pipes, and put it to Mr McDermott that the manhole cover and the area of land comprised within the pipe is vested in Uisce Éireann and there is no reference to Uisce Éireann on the face of the CPO Schedule, adding if it was considered.
  - Mr McDermott stated that the CPO Schedule is based on owners or reputed owners through local knowledge and queried whether it is the case that every manhole should be CPO'd for every site, adding that it is not unusual for the Council to include their own lands in a CPO.
  - Mr Armstrong interjected at this point, stating that Plot 01c is separately registered with the Property Registration Authority on a folio in the name of Donegal County Council, adding that the transfer of property to Uisce Éireann is not as simple as suggested, adding that the lands held by the Council were to be subject of separate statutory instruments and that is a process that has been happening over the past number of years and it appears to be the case that the subject land has not yet transferred.
  - Mr Armstrong confirmed that the plot was included to ensure an entire title, adding that the need is to capture every interest, adding that in his experience it is not unusual or remarkable of a local authority to include its own lands in a CPO for that reason.
  - Mr O'Donnell stated that the Council purport, on the face of the CPO Schedule, to claim all of the land and that is demonstrably not the case,

reiterating that Uisce Éireann need to be identified as at least part of the land is owned by Uisce Éireann, namely the pipe, manhole and cover.

- Mr O'Donnell then queried the actual location of the manhole cover, Plot 01c, adding that it couldn't be located by the Objectors in a recent investigation, putting it to Mr McDermott that it is at a different location within the land.
  - Mr McDermott stated that the Council are aware that that is the location of the manhole, adding that it was investigated by the Design Team through the detailed design process within the last year.
  - Mr O'Donnell stated that the area in question appears to belong the McMenamin family, asking if there was any evidence of its location, none of which was presented during the hearing.
- The questioning then returned to the issue of ownership and prior communication during the Part 8 process, with Mr O'Donnell querying whether there was any consent obtained from the McMenamin family.
  - Ms McCauley stated that Mr Seamus McMenamin presented himself as an owner or representative during the Part 8 process and there was no written consent requested from the McMenamin's to proceed with the publication of the Part 8 on lands that were not owned by them.
  - Ms McCauley stated that the statutory notices gave effect to written notification and added that no written submission was received during this process.
  - The Inspector interjected at this point, querying why the Objectors did not participate in the Part 8 process.
  - Mr O'Donnell stated that there was no communication with the owners of the land.
  - Ms McCauley reiterated that she had a telephone conversation with Mr Seamus McMenamin in August 2020 and noted that the Part 8 process was concluded at a plenary meeting on 16<sup>th</sup> November 2020.
- Mr O'Donnell asked whether there was a Chief Executive's Order in respect of the Part 8 and noted the procedural requirements behind the Part 8 process.

- Ms McCauley stated that there was a Chief Executive's Report which recommended proceeding with the Part 8.
  - Mr O'Donnell stated that there was no evidence of a formal decision.
- Mr O'Donnell raised concerns regarding the conditions attached to the decision to proceed with the Part 8, suggesting that they made not be suitable or necessary as the parameters of design are unknown.
  - Mr O'Donnell then asked if there is any evidence to support the contention that the Part 8 scheme has been fully designed for the Council to satisfy the Commission.
  - Mr McDermott stated that detailed design was not yet complete but confirmed that the conditions attached to the Part 8 can be met.
- Mr O'Donnell queried where the issue of proportionality is addressed in the evidence and made reference to *Clinton v An Bord Pleanála* as they key test.
  - Mr Armstrong stated that proportionality is one to be considered by the Commission in light of all the evidence put forward and stated that the Council take the position that there is no requirement to do so.
  - Mr O'Donnell highlighted that no evidence has been presented.
- Mr O'Donnell queried whether there was any consideration given to incorporating the Habitats Directive in the process for deciding whether or not to CPO the land, particularly in light of the judgement of Simons J. in *King v An Bord Pleanála*.
  - Ms McCauley stated that EIA and AA screening was carried out as part of the Part 8 process and relied upon as the project has proceeded.
- In terms of the proposed modifications presented by the Council during the hearing, Mr O'Donnell queried the authorisation of the works that is connected with the River Finn SAC.
  - Mr McDermott stated that the fundamental design of the building is not modified, suggesting that the amendments are minor and generally internal.
  - Mr O'Donnell queried whether excavation would be required for surface water attenuation and the extent it cover.

- Mr McDermott confirmed that excavation will be required but was unable to confirm the extent, adding that the Council are not hiding any information and would have made this available had it been an issue of concern.
- Mr O'Donnell asked why the HSE car park wasn't considered as an alternative.
  - Ms McCauley stated that it was ruled out from an urban design perspective and that it would have performed similarly to Option 3 in any event, noting that it was ruled out at a high-level scoping exercise.
  - Mr O'Donnell stated that it was never an option because it was Council owned land and suggested a contradiction in approach, stating that the reasons to rule it out on design grounds would be the same for the CPO site which is in the 'middle of a plaza'.
  - Ms McCauley rejected the idea that the CPO site is in the middle of a plaza, suggesting that it is infill / urban consolidation and already subject to informal parking arrangements, and thus distinct from the HSE car park.
  - In response to a question from the Inspector, Ms McCauley stated that the car park is the primary access to the HSE building but was unaware if this is the subject of a right of way.
  - Noting that this is the only land sought to be acquired, Mr O'Donnell questioned whether it is appropriate, stating that if it is wrong on the HSE car park then it is wrong on the CPO site, on the Council's own evidence.
- The Inspector asked what measures the Objectors have taken to develop the site.
  - Mr O'Donnell stated that the site was bought in or around the time of the Part 8 and the Objectors would not be opposing the CPO unless they had plans for it, adding that the land has been sterilised by way of the Part 8 and suggesting that a proposal could not be formulated in the teeth of a compulsory acquisition.
  - Mr O'Donnell rejected any suggestion that the purchase of the land in or around the time of the Part 8 offered any mitigation to the level of communication the Council has with the Objectors at that time.

- The Inspector queried whether the Council had taken or considered any other active land management measures such as inclusion on the Residential Zoned Land Tax (RZLT) map, Vacant Site Register or Derelict Site Register.
  - Collectively, the Council indicated that the Part 8 process was the only measure pursued.
- At this juncture, Mr Seamus McMenamin made an oral submission in relation to the background of the site.
  - Planning permission was obtained in 2007 by a previous developer.
  - Stated that the Bank took over the site around 2008.
  - Referred to attempts by the developer to recover the site and a subsequent refusal on the basis of a failure to provide a flood survey.
  - Stated that the site was acquired from the Bank.
  - Suggested that a similar proposal to 2007 was being considered.
  - Noted the communication from Ms McCauley shortly afterwards regarding the SEED Project but was unaware of this at the time the site was bought.
  - Mr O'Donnell reiterated that there was no communication with the owners.
  - Mr Armstrong suggested that the Objectors were aware of the Part 8, albeit not the owners at the time, and it is the Council's evidence that Mr Seamus McMenamin held himself out as the representative of the owners, adding if he wished to deny it then they would be entitled to question him about that.
  - Mr Armstrong further stated that there is effective acknowledgement that a phone conversation took place in August 2020 and the fact of public record that the McMenamin family became the registered owners in February 2021, concluding that at the time of the acquisition of the property the McMenamin's were well aware, adding this is a reasonable conclusion.
  - Mr O'Donnell stated that the focus is whether prior notice given.
- Mr O'Donnell asked how Mr Seamus McMenamin's phone number was found.
  - Ms McCauley stated she got it via an Elected Member, adding that Mr Seamus McMenamin did not say that he was not the owner of the land.

- At this juncture, Ms McCauley referred to a note of various contacts that the Council made at the outset of project development, including calls to local businesses and to the various landowners that the Council were aware of, adding that an Elected Member advised that Mr Seamus McMenamin was the contact regarding the site.
  - Ms McCauley went on to summarise a contemporaneous note from November 2020 where she was contacted by Mr Michael McMenamin, who indicated that he was part of the ownership of the site, and enquired about the stage in the Part 8 project.
  - Ms McCauley indicated that she discussed the Part 8 and the subsequent Rural Regeneration and Development Fund application with Mr Michael McMenamin and he queried whether he could submit a planning application and whether consideration of such an application would be precluded.
  - Ms McCauley stated that she advised Mr Michael McMenamin that there would be no reason that an application could not be made and considered and him advised to speak with the Council's Development Management Team, adding that she emailed Mr Frank Sweeney and Ms Ciara Condon (Planning Officer) on 20<sup>th</sup> November 2020 in respect of same, with Mr Sweeney responding and advising that Mr Michael McMenamin should contact Ms Condon directly.
  - Ms McCauley further stated that she telephoned Mr Michael McMenamin and advised him to contact Ms Ciara Condon as per Mr Sweeney's request, adding that there was considerable communication at this time.
  - Mr O'Donnell suggested that the Mr Michael McMenamin that Ms McCauley spoke to was not the Mr Michael McMenamin listed as Objector.
  - Ms McCauley stated that the individual who presented as Mr Michael McMenamin advised that he is part-owner of the lands, adding that the conversation with Mr Seamus McMenamin was in August 2020 and subsequent contact with Mr Michael McMenamin in November 2020.
- The Inspector then asked the Council to clarify the reference to 'Phase 1' in the title of the CPO, having regard to phasing of the project as previously identified.

- Mr McDermott stated that the reference to 'Phase 1' relates to the first phase of lands that require acquisition, noting that there may be other land parcels / plots that require acquisition in order to implement the entire Part 8.
- Noting Footnote 3 accompanying the land-use zoning matrix, Table 19.1 of the County Donegal Development Plan, which states that standalone car parks will only be considered in the urban core where they are not contrary to Urban Regeneration and Town Centre objectives of "the LAP", the Inspector asked the Council to clarify the reference to "the LAP", asking whether it is the Seven Strategic Towns LAP (SSTLAP) or the 'area plan' in the current Development Plan.
  - Mr Sweeney stated that it is reference to the SSTLAP.
  - The Inspector then asked the Council to clarify the status of the SSTLAP.
  - Mr Sweeney indicated that the provisions of the SSTLAP insofar as they relate to Ballybofey-Stranorlar have been replaced by the Development Plan.
- In relation to Plot 01b, the Inspector asked the Council whether access will be maintained to the rear of the shops.
  - Mr McDermott stated that Plot 01b would not necessarily be required as part of the overall project but was considered part of the entire plot through negotiations with the landowner, adding that that access would be maintained to the rear of the shops.
- In relation to the modified layout and vulnerable uses in the flood zone, the Inspector queried whether there would be disabled spaces at ground floor level.
  - Mr McDermott confirmed that there would be disabled spaces at ground level but added attenuation will be built in and noted that the entire car park would be fully accessible at both levels.
- Noting the proposed layout modifications, which includes an access route for Plot 01b, Mr O'Donnell queried the proposal and legislative authority to carry out same.
  - Mr McDermott stated that it will be an access route to the existing shops and the works will be carried out under the Roads Act, adding that Plot 01b was included with the agreement of the Objectors following negotiation.

## 9. Closing Statements

- Mr Armstrong closed for the Council, approaching it by looking at the timeline.
  - Property Registration Authority, now Tailte Éireann, records indicate that the lands were registered in February 2021 but accepts that the time of acquisition was earlier than that.
  - Public consultation process took place in relation to the Part 8.
    - Informally in August 2020 and Mr Seamus McMenamin contacted.
    - Public information event on 10<sup>th</sup> September 2020.
    - Public display from 22<sup>nd</sup> September 2020.
    - Approval of the Part in November 2020.
  - No written communications as there is no practice of notifying in writing but what this does show is that the Objectors did know about the Part 8 and did know at the time acquisition.
  - Submitted that the CPO cannot have been a surprise to the Objectors because when they acquired the land, they did so in the full knowledge that the property was going to be acquired and used for a car park.
  - Stated that the Objectors submission relates to various reports and policy documents with little or no relevance to the proposed car park and the specific circumstances of the town of Ballybofey.
  - Stated that one can read much of the information quoted by the Objectors as supportive of the SEED Project as a whole and submitted that this is what the Commission has to do, the reality being that all other lands were acquired by agreement.
  - Stated that there is no specific car park to service adjacent shops and the overall project seeks to achieve urban renewal through the provision of a dedicated public space and the subsequent replacement parking spaces.
  - Suggested that the alternative transport modes identified are contingent on a large urban location and not relevant to the local setting, and this is critical.

- Noting that there is just one objector to the CPO, and stated that the Commission should consider the position of the McMenamin's who have not claimed any personal prejudice and cited a number of scenarios where prejudice is claimed e.g., the CPO of part of a farm would be prejudicial to the farming operation etc.
- Stated that the first suggestion that the Objectors have an active proposal for the site came today and it is noteworthy that they did not object to the Part 8 project and in the intervening years they did not bring forward any development proposal despite the fact that they were advised that they were quite free to do so and such an application would be considered.
- Submitted that the Commission does not approach this as a planning authority, noting that there is no appeal to the Commission against a Part 8 decision and the function of the Commission is limited to adjudication as between the rights of the McMenamin family to the ownership of the land on one hand and the public good or community need on the other.
- Queried the implications for the democratic process that has happened if the Commission remove one element of the scheme, noting that there is no element of public participation in the CPO process.
- Stated that the reference to McDermott & Woulfe is out of date and referred to para. 19 of the *King v An Bord Pleanála* judgement, noting that in many circumstances the four-stage test identified in Galligan & McGrath is applied in CPO cases, including the criteria regarding community need.
- Stated that nobody argues that there isn't a community need for the SEED Project and the rehabilitation of the town centre that will contribute to, and the CPO has to be assessed in the totality of the SEED project.
  - The argument is whether that requires the car park.
  - The suggestion that there is too much car parking in Ballybofey doesn't lie with the Part 8 process.
  - Community need must be assessed not just in respect of the car park and in that regard, it can be distinguished from the Monaghan case which was for a standalone car park.

- Stated that nobody is suggesting that the site isn't suitable for the construction of a car park, it may be that people think it isn't the best use of the land, but that isn't the test, the test is 'is it suitable'.
- Quoted Simons, J. in relation to alternatives i.e., not enough to show alternatives, the alternatives must be demonstrably preferable, highlighting that this is different to McDermott & Woulfe.
- In relation to the alleged material contravention of the Development Plan, noted the new Development Plan since the Part 8 process and stated that the Part 8 is stitched into the current Development Plan, rejects the suggestion that the flood risk issue is a material contravention.
- Stated that there is no personal prejudice alleged here, the Objectors have not come forward with a cogent proposal and it was open to them to do so.
- In relation to the HSE car park, stated that it was considered and the Objectors have not made a case for a better alternative.
- Regarding the manhole, stated that the process of transfer to Uisce Éireann has not happened, and queried what really turns on this point, given the CPO relates to the owner or reputed owner and there are no points to be made.
- Concludes that the case had been made and onus of proof is discharged and the Commission should confirm the CPO.

  

- Mr O'Donnell closed for the Objectors by responding to Mr Armstrong's statement.
  - Stated that it's not nit-picking not to identify a legal interest in the process, in relation to the Council's failure to identify Uisce Éireann.
  - Stated that there is no evidence that the land can be described in the manner it has been on the documentation and on the other hand the Objectors land has not been properly described.
  - Stated that there is an obligation to engage with owners of the land through a formal process as opposed to covert, improper and inappropriate conduct.
    - Noted the decision in '*Gormley v ESB*' in this regard.

- Highlighted a breach of European Community law in relation to a failure on behalf of the Council to incorporate the Habitats Directive in the decision to proceed to the CPO.
- Stated that the entire justification for this scheme is based on the Part 8 but noted that Plot 01b was not included in the Part 8 and therefore there is no basis on which the CPO can be confirmed, adding that the Commission are being asked to determine that the test could be met where there has been no planning assessment of part of the land and this was the difficulty faced in the Roundstone case where the Inspector stated that the 'cart was before the horse', and that now applied here and this is fatal to the CPO.
- Suggested that Simons, J. did not necessarily endorse the tests of Galligan and McGrath in *King v An Bord Pleanála*.
- In relation to alternatives, queried how a car park owned by the Council could not be considered, the one piece of land that was never considered.
- In ruling out the HSE car park on urban design grounds, stated that it must follow that it is equally inimical to the CPO site, suggesting that this is a project designed by engineers where car is the dominant feature.
- Stated that there was no discussion by way of telephone call, letter or otherwise with Mr Michael McMenamin as alleged by Ms McCauley and the acknowledgement by Ms McCauley of a proposal to carry out a development on the lands and is amounts to prejudice.

## 10. Closing of Oral Hearing

- The Inspector made some brief final comments and thanked the participants.
- It was confirmed that a report would be prepared and presented to the Commission, who will make a determination on the proposed CPO in due course.
- The Inspector closed the oral hearing at 2.45pm.