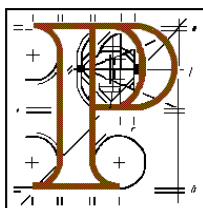


## An Bord Pleanála



### Inspector's Report

<b>Development</b>	Realignment of N60 at Oran, County Roscommon
<b>Order:</b>	Compulsory Purchase Order for lands at Oran, County Roscommon. (CPO no. 1, 2015)
<b>Local Authority:</b>	Roscommon County Council
<b>Objectors:</b>	Dominic Gunning Bovale Developments
<b>Inspector:</b>	Gillian Kane
<b>Date of Site Inspection:</b>	29/02/16 and 22/03/16
<b>Date of Oral Hearing:</b>	23/03/16

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## **1.0.0 INTRODUCTION**

1.0.1 This report relates to objections received by the Board to the serving of a Compulsory Purchase Order no. 1 2015 for the compulsory acquisition of the lands described in Part IA and IB in the townlands of Fearaghafin, Carrowgarve, Oran, Carroweighter, Ballydooley, Runnabackan and Clooneenbaun in County Roscommon, for the purposes of providing a road development of approx. 3.4km of National Secondary Road, comprising 1.7km of offline construction and 1.7km of online widening, associated works including the provision of grade junctions, side roads, accommodation works and other ancillary and consequential works. The Order provides for the extinguishment of the public rights of way described in Part II of the schedule. The Order had the seal of the Council affixed on the 13<sup>th</sup> November 2015 and was advertised publically on the 20<sup>th</sup> of November 2015

## **2.0.0 SITE LOCATION AND DESCRIPTION**

2.0.1 The lands subject of the CPO are located in a rural area in County Roscommon, between the village of Ballymoe and Roscommon Town. The 92km long N60 runs through Counties Mayo, Galway and Roscommon. The 3.4km section of the N60 that is subject to the proposed CPO commences approx. 10km northwest of Roscommon town in the townland of Clooneenbaun and then travels north-westwards through the townlands of Ballydooley, Runnabackan, Carroweighter, Oran, Carrowgarve and Fearaghafin. This section of the N60 runs through mostly agricultural lands with a small number of commercial premises accessing off the existing road. A number of one-off dwelling houses, some with associated agricultural lands access directly on to the existing road.

2.0.7 Photographs and maps in Appendix 2 serve to describe the site and location in further detail.

## **3.0.0 BACKGROUND**

### **3.1.0 Part 8 Development Process**

3.1.1 The proposed road realignment project has been subject to the process set out under in Part XI of the Planning and Development Act, 2000, as amended, and Part 8 of the Planning and Development Regulations, 2001, as amended. On the 20<sup>th</sup> November 2012, the Council gave notice that they proposed the following works:

*Improvement of approx. 3.4km of standard single carriageway national secondary route, consisting of 2.1km of offline construction and 1.3km of online widening, including local road improvements / realignments, farm / accommodation roads, watercourse crossings, fencing, drainage and landscaping, utilities and service diversions, accommodations works and other ancillary works at Fearaghafin, Carrowgarve, Oran, Carroweigher, Ballydooley, Runnabackan, Clooneenbaun townlands, County Roscommon.*

3.1.3 The report prepared for the Part 8 process stated that the project has been classified as a minor works project. The development was subject to **AA screening**, ultimately finding that the proposed development is not likely to have any significant effects on any Natura 2000 site. The scheme was also **screened for EIA**, concluding that the proposed development did not exceed any of the thresholds prescribed in the Roads Act that would trigger a mandatory requirement to conduct an EIA and prepare an EIS. A **planning report** assessed the proposed development against the policies of the development plan and found that the development entirely accorded with the aims and objectives of the Plan and the proper planning and sustainable development of the area. Following the above process, a **Managers report** was prepared by the Council. Each of the submissions was addressed in detail with the ultimate finding that no change was proposed to the project. The report concluded with a recommendation that the road project proceed.

3.1.4 At a meeting of July 22 2013, the Council declared the resolution to proceed with the works listed under section 179 of art XI of the Planning and Development Acts, carried.

#### **4.0.0 PROPOSED DEVELOPMENT**

4.0.1 The CPO seeks to acquire land in order to realign a section of the national secondary road, the N60 between the villages of Ballymoe and Roscommon town.

4.0.2 The proposed 3.4km road is a 7.3m wide carriageway with 2.5m paved hard shoulders and verges of approx. 3m on each side. The proposed road commences in the townland of Carrowgarve / Fearaghafin, approx. 8km east of Ballymoe Village. The proposed road travels eastwards along the existing road through the townland of Oran for a distance of approx. 900m. A staggered junction is proposed at the intersection of the existing L1622

Carrowgarve road to the north, the old N60 and the 'new' N60. The proposed road then goes 'off-line', departing from the existing N60, travelling eastwards through the townland of Carroweighter for approx. 700m and then south-eastwards for approx. 500m. Where the proposed road crosses the existing L1625 Ballinaheglish road a new junction is proposed to the north. The proposed road continues in a south-easterly direction through the townlands of Runnabackan and Ballydooley for approx. 600m where a new junction is proposed to connect the new road to the old N60. The proposed road then travels eastwards before joining the existing N60 in the townland of Ballydooley and continues along the existing road for approx. 700m. *See section 5.1 of Brief of Evidence of Alan Mulryan Project Engineer, Roscommon County Council for further details.*

4.0.3 As described above, the proposed road route crosses three local roads:

1. Local road L-1622 Carrowgarve, travels northwards approx. 9km, through a series of townlands before terminating at a T junction north of Castle Plunkett Village. This road will be realigned forming a new junction with the N60.
  2. Local road L 1629 known as the Donamon Road, travels in a southerly direction for approx. 5km towards Donamon Castle and the River Suck. This junction and section of the N60 will be severed.
  3. Local Road L1625 known locally as Ballinaheglish Road, runs in northerly direction to Ballinaheglish Village 3.5kms to the north. Road will be realigned forming a new junction with the N60
- Public rights of way on the existing side roads will be extinguished.

4.0.4 The proposed road will generally be constructed on a low embankment or at grade with the existing road. One area of the proposed off-line section involves a cut depth of 3.5m. An existing drainage ditch at the eastern end will be culverted. Approx. 38% of the proposed road improvement works are located on-line and therefore land acquisition occurs along the existing roadside boundary. The remaining 62% of the proposed route involves agricultural land take. Roadside boundary treatments through agricultural lands are to be timber post and rail fence with chain link wire mesh. At residential properties replacement of boundary walls will be on a 'like for like' basis.

## **5.0.0 COMPULSORY PURCHASE ORDER**

5.0.1 On the 13<sup>th</sup> of November 2015, the Chief Executive of Roscommon County Council, signed an Executive order ordering that approval be given for the compulsory acquisition of lands and extinguishment of public rights of way for the realignment of the national secondary road N60 Oran realignment in the townland of Fearaghafin, Carrowgarve, Oran, Carroweighter, Ballydooley, Runnabackan and Clooneenbaun in the County of Roscommon.

5.0.2 The order was accompanied by the following documents:

- Maps RN1180115-15-16680 (sheets 1 -3)
- Copy of proposed order, including schedule Part IA, schedule Part 1b and Schedule Part II
- Certificate of Project Engineer that maps are an accurate description of the lands and rights of way that will be affected.
- Certificate of Senior Planner that proposed development is in conformity with the proper planning and sustainable development objectives of the area under the Planning and Development Acts, the National Spatial Strategy 2002-2020, the National Development Plan 2007- 2013, the Regional Planning Guidelines for the West 2010-2022 and the Roscommon County Development Plan 2014-2020

5.0.3 The seal of the Council was affixed to the CPO documents on the 13<sup>th</sup> November 2015. The proposed CPO was advertised in the Roscommon People and The Irish Independent on Nov. 20<sup>th</sup> 2015, advising that objections were to be submitted to the Board by 04.02.2016. The advertisement in the Roscommon People included Schedule Part IA – lands proposed to be compulsorily acquired and Schedule Part IB – lands to be temporarily acquired and Schedule Part II Public Rights of Way to be extinguished by order after the acquisition of land:

- Section of the N60 in the townlands of Fearaghafin, Carrowgarve, Oran and Carroweighter
- Section of L1622 in townlands of Carrowgarve and Carroweighter
- Section of L1625 in townlands of Carroweighter, Runnabackan and Ballydooley
- Section of the N60 in the townlands of Ballydooley and Clooneenbaun

## **6.0.0 OBJECTIONS TO THE ORDER**

6.0.1 Corr Property Consultants act on behalf of the 2<sup>1</sup> no. remaining objectors to the Order. The objectors are

1. Bovale Developments, 27 Dublin Road, Swords, Co. Dublin
2. Dominic Gunning, Carrowgarve, Oran, Donamon, Co. Roscommon

6.0.2 The two objections raise the following four issues:

- Acquisition Area: The Council appear to be acquiring on a permanent basis more land than is necessary for the scheme.
- Boundary Treatment: Client is dissatisfied with proposed boundary treatment.
- Access: Issues with access to the retained property arise as a consequence of the scheme
- Drainage: Drainage issues are a concern and the proposed drainage design may cause issues for the retained land.

## **7.0.0 PLANNING POLICY CONTEXT**

### **7.1.0 National Policy Framework**

7.1.1 **National Spatial Strategy 2002-2020** is a planning framework designed to achieve a better balance of social, economic, physical development and population growth between regions. It provides a national framework to guide policies, programmes and investment in the country. Transport is identified as a key component of the overall spatial policy and an important tool in balancing regional development. Part of this involves building on Ireland's radial system of main roads and rail lines connecting Dublin with other regions, and developing an improved network of roads and public transport services. Implementing the road investment programme under the National Development Plan is considered to be a key element in enhancing regional accessibility and underpinning better regional development.

Roscommon is identified as having strong functional links with parts of the Midlands region, particularly Athlone. It is envisaged that the town will benefit from the Galway and Midlands gateways by virtue of its location on a national transport route. Road and public transport is identified as one of the critical factors to secure improvements in regional accessibility.

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<sup>1</sup> Mr Tom Carr acting on behalf of Mary Gunning, Carrowgarve withdrew her objection to the CPO by written submission at the Oral Hearing. See Appendix 2 Summary of Oral Hearing.

### 7.1.2 **Smarter Travel-A Sustainable Transport Future 2009-2020**

Smarter Travel sets out a transport policy for Ireland. The policy proposed is to retain investment in roads that will remove bottlenecks, ease congestion and pressure in towns and villages and provide the necessary links to support the NSS.

### 7.1.3 The **National Secondary Roads Needs Study-Network Options Report –West Region (March 2011)**

recognises that over the past decade road infrastructure investment has focussed primarily on the National Primary routes. There has been little capital expenditure devoted to upgrading or renewing the National Secondary Road (NSR) network and the condition and safety of these roads is likely to deteriorate unless improvement works are implemented. The NRA is now proposing to focus its attention on addressing these deficiencies. It is recognised that the national secondary road system is a critical component of the overall road infrastructure, which is particularly important in serving and connecting smaller towns to one another and to the bigger centres served by the national primary routes. The report was commissioned by the NRA to identify national secondary routes, or sections of a route suitable for investment to a higher standard.

The report examines the existing condition of the N60, stating that the first 7.2km of the route east of Ballymoe is to a good standard and no upgrade is needed. The remainder of the route (Fearaghafin to Roscommon) is described as being of a lesser standard, narrow with poor horizontal and vertical alignment. The report notes that there are no environmentally designated areas in the vicinity of the route and there is 1 no. narrow stone bridge at Clooneenbaun that will need to be widened / replaced. Table 8.5 of the report lists the Ballymoe to Roscommon section of the N60 as a priority 2 scheme in the West region.

### 7.2.0 **Regional Policy**

7.2.1 The **Regional Planning Guidelines for the West Region 2010-2022** provides a framework for the long-term strategic development of the West Region over a twelve year period. It is acknowledged that for a peripheral region such as the West Region, good transport infrastructure is vital to promote economic and social well-being. **Section 5.2** refers to priority access infrastructure and to objectives and policies that support the provision of infrastructure.

**Policy IP2** supports the NRA investment to remedy deficiencies generally in the road network minimising environmental impacts.



**Policy IP3** relates to implementing transport policy objectives of the National Development Plan and Transport 21 by supporting the NRA programme of works in national routes, minimising environmental impact.

**Objective IO5** identifies works for priority completion in order to promote balanced regional development and includes the reclassification and upgrading of the N60/N61 as a National Primary Route,

**Objective IO6:** Supports the use of ecological assessment of strategic roads infrastructure projects including reservation of land and upgrading of routes to ensure route options have sufficient flexibility to avoid or mitigate significant environmental impacts. Mitigation Measures for the protection of habitats or movement of species should be provided where feasible and appropriate.

## 7.2.0 Local Policy Framework

### 7.2.1 Roscommon County Council Development Plan 2014-2020

7.2.0 The operative development plan for the lands is the Roscommon County Development Plan 2014 - 2020. Policies of relevance to the proposed development include:

7.2.1 **Chapter 4: Infrastructure** Section 4.1 notes that both the National Spatial Strategy and the Regional Planning Guidelines emphasise the importance of good connectivity and access infrastructure, linking the regions Gateways, Hubs and key town for the sustainable development of the region. It is noted that Co Roscommon is extremely reliant on car transportation given the largely dispersed and rural based population and comparatively modest settlement sizes.

The **Strategic Aims for Transportation & Movement** include the following:

- Develop a safer, more efficient and integrated transport system that will improve the road network and particularly alternative forms of transport to serve the urban and rural population of Roscommon.
- Ensure that the transport system is suitably developed and upgraded to a level that can support increased economic, social and cultural development in the county.

- 7.2.2 **Section 4.1.3** of the plan notes that the N60 (Roscommon – Castlebar) is prioritised for reclassification and upgrade to National Primary Road status as part of the priority infrastructure objectives set out in the Regional Planning Guidelines for the West. Objective 4.28 and 4.22 stated that the Council will continue to pursue the upgrade of the N60 to National Primary Status and facilitate the programmed improvement to the National Road Network as per Table of National Road priorities in Section 4.1.3 of the County Development plan.
- 7.2.3 Section 4.1.3 also stated that “In addition it is envisaged that the road realignment scheme at Oran on the N60 will also be delivered within the period of the plan”
- 7.2.4 **Table 4.2** ‘Planned National Secondary Road Projects’ identifies the 3.4km (2km offline) Road Realignment Scheme at Oran as being undertaken within 2014-2020. The plan notes that NRA approval to publish the CPO and funding to progress the construction of this scheme will be sought.
- 7.2.5 **Policy 4.11** – Provide a safe and modern road network throughout the county, having regard to National and Regional policies and guidelines as well as liaising with national agencies.
- 7.2.6 The **Landscape Character Assessment**, which forms a support document to the development plan divides the county into landscape character areas. The site is located in Landscape Character Areas 11 (Castlerea and Upper Suck Valley) and 30 (Oran undulating open farmland). Character area 11 is designated as being of ‘High’ landscape value and area 30 is of ‘Moderate’ landscape value. Appendix 1 of the Landscape Character Assessment contains details of Scenic Routes and Views. The N60 is not designated as a scenic route and there are no scenic views along the proposed road corridor.
- 8.0.0 ORAL HEARING**
- 8.1.0 An oral hearing was held in the Abbey Hotel, Roscommon, Co. Roscommon on 23<sup>rd</sup> March 2016. The hearing commenced at 10.00am and an audio recording of the proceedings was made. Following an adjournment, Mr Tom Corr, the agent for Ms. Mary Gunning, Carrowgarve, Co. Roscommon advised the hearing of the withdrawal of her objection to the CPO. A signed letter to that fact was submitted to the hearing.

8.1.1 A summary of the Oral Hearing is attached in Appendix 1 and referenced throughout section 9 below.

## 9.0.0 ASSESSMENT

9.0.1 The statutory powers of the Local Authority to acquire land are contained in section in s11(7)<sup>2</sup> of the Local Government Act 2001 and sections 212 and 213 of the Planning and Development Act 2000, as amended. Under s212 of the Planning and Development Act 2000 a Local Authority may, in order to carry out its functions powers and duties, carry out forms of development and in so doing a Local Authority is entitled to use CPO powers. S212(1) of the Act confirms the general power of a Planning Authority to develop, secure or facilitate the development of land and may do one or more of the following (a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving; (b) develop any land in the vicinity of any road or public transport facility which it is proposed to improve or construct; (c) provide areas with roads, infrastructure facilitating public transport and such services and works as may be needed for development.

9.0.2 Section 212(2) of the Planning and Development Acts stated that a Planning Authority may provide or arrange for the provision of (c) transport facilities, including public and air transport facilities, and (d) any services which it considers ancillary to anything which is referred to in *paragraph (a), (b) or (c)*.

9.0.3 Under s213(1)(i) of the act, in terms of land acquisition, the power conferred on a Local Authority to acquire land shall be construed to acquire land, permanently or temporarily, by agreement or compulsorily. Section213(2)(a)<sup>3</sup> of the act stated that a Local Authority may, for the purposes of performing any of its functions including giving effect to or facilitating the implementation of its

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<sup>2</sup> Local Government Act 2001 (7) A Local Authority to which *subsection (3) or (4)* relates shall (a) continue to be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold, manage, maintain and dispose of land or any interest in land,

<sup>3</sup> 213(2) (a) A Local Authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under *section 94*, do all or any of the following: (i) acquire land, permanently or temporarily, by agreement or compulsorily, (ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, (iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, and the performance of all or any of the functions referred to in *subparagraphs (i), (ii) and (iii)* are referred to in this Act as an “acquisition of land”.

development plan, acquire land, permanently or temporarily, by agreement or compulsorily.

9.0.4 It is generally accepted that there are four test criteria<sup>4</sup> that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property.

1. There is a community need, which is met by the acquisition of the property in question.
2. The particular property is suitable to meet the community need.
3. The works to be carried out accord with the Development Plan.
4. Any alternative method of meeting the community need have been considered but are not available.

9.0.5 These criteria will be applied to the compulsory acquisition of land currently before the Board for confirmation prior to addressing the issues raised by objectors

### 9.1.0 **Community Need**

9.1.1 According to the Council the existing N60 along the stretch of the proposed route, is sub-standard single carriageway road, typically 5.5m to 6.5m in paved width. Road alignment is characterised by a series of sharp bends and relatively steep gradients. The need for the proposed development was stated by RCC to be the serious deficiency in horizontal & vertical alignment and cross section. Outlining the concerns of the Council in relation to safety, the evidence submitted by Mr Alan Mulryan Project Engineer regarding the road is that it is deficient as follows:

- **alignment** – the horizontal and vertical alignments do not allow safe stopping and passing distances for the permitted speed limit. Horizontal alignment consists of twenty curves ranging in radii from 100m to 2040m, six of which are less than 255m radii (the minimum for a design speed of 50kph). Vertical alignment consists of 18 vertical curves, 12 of which are below the minimum requirement. Only 10% of the road meets the full stopping sight distance (SSD) of 215m. Part of the route achieves only 90m. There are no safe overtaking opportunities between Fearaghafin / Carrowgarve and Clooneenbaun, with a continuous white centre line. The DMRB requires 30% overtaking value. The junctions with local roads are of poor

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<sup>4</sup> McDermott & Woulfe, Compulsory Purchase and Compensation: Law and Practice in Ireland (Butterworths, 1992)

standard in respect of road layout, width and visibility. There is a high frequency of private entrances giving rise to a conflict of slow and fast moving vehicles which is exacerbated by the substandard cross section. The road has a permitted speed limit of 100kph but the existing road characteristics correspond to a road with a design speed of just 60kph in respect of geometric alignment and visibility.

- **Cross-Section** – existing road has a paved width of 5.5 to 6.5m with no hard shoulders. Grass verges where present are less than 1m wide. The brief stated that in relation to collisions, the road boundary incorporates non-forgiving features such as stone walls, trees and ditches. It stated that this section of road poses a safety risk to all road users, particularly vulnerable road users.
- **Junctions** – All four at-grade priority junctions are substandard in relation to alignment and/or layout geometry. None meet the minimum visibility requirements. There are 66 no. direct accesses from houses, farms, business, commercial premises etc. along the route, all with substandard visibility due to deficiencies in horizontal and vertical alignment and cross section.
- **Accident History** – the accident rate on the road is over twice the national average for rural single carriageway roads. 22 no. accidents recorded from 1995 to 2013, half of which were single vehicle accidents. The conclusion is that drivers were unable to respond to the road layout.

9.1.2 As noted above, the existing road has been assessed for compliance with appropriate geometric parameters as set out in the NRA DMRB and revealed to be seriously deficient in many respects. The horizontal and vertical alignment are substandard and with a paved width of between 5.5m - 6.5m with no hard-shoulders does not meet the minimum requirements for a single carriageway. There are no safe overtaking opportunities and this is reflected by the presence of a continuous central white line over the entire stretch of carriageway. Visibility at junctions is seriously deficient and the safety and capacity of the road is compromised by the significant number of direct accesses from houses, farms and commercial premises etc. onto the carriageway. The hazard associated with the road is reflected in the high accident rate, which is double the typical rate for a rural carriageway. These inadequacies provide for dangerous driving conditions. Having conducted a site inspection of the stretch of roadway in question, I concur with the Local Authority that the overall condition and

alignment of same is substandard and thus necessitates improvement in the interests of traffic and pedestrian safety

9.1.3 During the oral hearing it was clear that the landowners involved did not object to the realignment of the road in principle, but raised others areas of concern that required consideration.

9.1.4 It is considered that the case for the community need for the proposed road realignment has been established and can be justified by the exigencies of the common good. The proposed realignment will provide a road that will significantly improve road safety, is fit for purpose, minimises the impact on the environment, land and property owners and is in accordance with national, regional and local policy.

## **9.2.0 Land is suitable for proposed development**

9.2.1 The total area of land covered by the Order is 15.949ha of which 2.997ha is public road. Approx. 38% of the proposed road improvement works are located on-line with the remaining 62% involving agricultural land take.

9.2.2 The lands comprise mainly agricultural lands and public road, with some sections of private road (215d.01, 220f.01, 220g.01 to be compulsorily acquired and 215f.01, 220k.01 and 220l.01 to be temporarily acquired) and some section of front garden (100d.01, 100e.01, 220g.01 and 220l.01). The lands are not affected by any nature conservation designations, or tree preservation orders. There are no protected views in the locality and no development constraints have been identified. No buildings of any description will be removed to facilitate the road.

9.2.3 In terms of built heritage, there are a significant number of surviving monuments centred around the medieval ecclesiastical site of Oran within the area of the proposed development. Roscommon County Council carried out a report on the built heritage of the area during the Part 8 process. The report stated there are a significant number of built heritage sites in the study area: 17 no. sites, (table 1.2 of Draft Built Heritage Report). The report notes that avoidance of all heritage impacts was not possible and that there is a direct impact on one area of archaeological significance (ID17, 3 enclosures of late pre-historic medieval date in Carroweighter). Section 4.1 of the report stated that the enclosures lie partly within the land take for the proposed development – the north parts of the two Ringfort are located north of the hedgerow line that forms the northern boundary

of the proposed road will not be affected but those parts of the enclosures that lie south of the boundary will be directly affected. Notwithstanding that the enclosures are below ground their removal is rated as severe.

- 9.2.4 Direct impacts are also identified on a post-medieval kiln in Carrowgarve (ID1, RO034-061) and a complex in Carroweighter (ID9, RO034-81). I note that the non-technical summary stated that these are “possible direct impacts”, whereas Table 1.2 classifies them as ‘direct impacts’. Section 4.2 of the report notes that it is likely that the Carrowgarve Kiln site has already been removed as no trace of the site was found. The report notes that such kilns are common, of local interest only with no visible heritage interest.
- 9.2.5 A positive impact is identified for the ecclesiastical site at Oran (ID8). The proposed road runs north of the site and the reduced traffic levels are predicted to offset any residual visual impact. Planting along the southern boundary of the road is proposed to reduce further visual impact. The report notes that the North-eastern corner of a monuments complex in Carroweighter (ID9) is directly impacted but that there are no traces of upstanding archaeological features. The report identifies the impact as slight.
- 9.2.6 In terms of architectural heritage sites, the wider study area includes Ballydooley Lodge (RPS 03400066 and NIAH 31934004), to the south of the N60 and the Round Tower (RPS 03400067) in Carroweighter. The Tower is both a recorded monument and a protected structure and is in the ownership of Roscommon County Council. Neither structure will be affected by the proposed development.
- 9.2.7 Proposed mitigation measures are detailed in section 5 of the report and include planting along the southern boundary of the proposed road, archaeological excavation of the area of archaeological significance in Carroweighter under licence from the DAHG, and additional test trenching pre-construction. All features noted as being impacted upon will be fully recorded in accordance with the National Monuments Acts.
- 9.2.8 I note the comments of the Department of Arts Heritage and the Gaeltacht responded recommending that should the scheme proceed, that the mitigation measures detailed in section 5 of the Draft Built Heritage Report should be carried out in full in advance of the commencement of any construction works. It is also

recommended that the archaeological component of the scheme be overseen by a Project Archaeologist. During the oral hearing, the brief of evidence submitted by Alan Mulryan Project Engineer stated that consultation with the National Monuments service took place during the Part 8 process and that the proposed development will be overseen by a project Archaeologist. He stated that the Council will comply with the Code of Practice agreed between the Minister for Arts, Heritage, Gaeltacht and the Islands and the NRA and that consent of the Minister has been granted in accordance with s14 of the National Monuments Act 1930, as amended.

- 9.2.9 The proposed road realignment was screened for EIA and AA by the Council during the Part XI process. The finding was that the development was sub-threshold for EIA and that significant effects on a Natura 2000 site was not likely.
- 9.2.10 The Council carried out AA screening for the proposed realignment, concluding that as the nature of the proposed works is small, the site area is not within or adjacent to any Natura 2000 site and there is no significant habitat or surface water hydrological connection between the proposed works and any Natura 2000 site, that the proposed development would not give rise to any significant effect on any European site, individually or in combination with any other developments.
- 9.2.11 The closest Natura 2000 site is River Suck Callows SPA, which is located approx. 6.5km to the south of the proposed road site. The Corliskea / Trien / Cloonfelliv Bog SAC is approx. 8.5km to the north-west.
- 9.2.12 There are no direct or indirect hydrological or hydrogeological links between the SPA and the subject lands. No removal or disturbance of habitat is proposed. Indirect or secondary impacts from the proposed construction are unlikely due to the distance between the two sites. I am satisfied that there will be no significant negative impacts on the conservation objectives of the River Suck Callows SPA.
- 9.2.13 Whilst the scheme will result in the loss of agricultural lands, these lands are not subject to any designations or constraints, which would render them unsuitable for the proposed development. There are no significant severance issues. I am satisfied that the CPO lands are suitable in principle for the proposed scheme.



### 9.3.0 Compliance with the Development Plan

9.3.1 During the course of the Oral Hearing, the Senior Planner for RCC confirmed that the proposed development was assessed under the National Spatial Strategy, the Regional Planning Guidelines for the West Region 2010-2022, and the Roscommon County Development Plans 2008-2014 and 2014-2020. She confirmed her view that the proposed development was wholly in accordance with the County Development Plan and the proper planning and sustainable development of the area.

9.3.2 The proposed realignment of the N60 at Oran is supported by a number of policy documents. Of particular relevance to the proposed development is The **National Secondary Roads Needs Study-Network Options Report –West Region (March 2011)**. The report examines the existing condition of the N60, stating that the first 7.2km of the route east of Ballymoe is to a good standard and no upgrade is needed. The remainder of the route (Fearaghafin to Roscommon) is described as being of a lesser standard, narrow with poor horizontal and vertical alignment. Table 8.5 of the report lists the Ballymoe to Roscommon section of the N60 as a priority 2 scheme in the West region. Likewise, the Regional Planning Guidelines for the West Region recommends that the N60 Athlone to Castlebar via Roscommon should be reclassified to National Primary Status and upgraded accordingly (Objective IO5).

9.3.3 On a local level, the 2014 Roscommon County Development Plan aligns with the national and regional policy, and **Section 4.1.3** of the plan notes that the N60 (Roscommon –Castlebar) is prioritised for reclassification and upgrade to National Primary Road status. **Objectives 4.28 and 4.22** state that the Council will continue to pursue the upgrade of the N60 to National Primary Status and facilitate the programmed improvement to the National Road Network as per Table of National Road priorities in Section 4.1.3 of the County Development plan.

9.3.4 Specifically relating to the proposed development, section 4.1.3 of the plan stated that “it is envisaged that the road realignment scheme at Oran on the N60 will also be delivered within the period of the plan”. This is supported by **Table 4.2** ‘Planned National Secondary Road Projects’ which identifies the 3.4km (2km offline) Road Realignment Scheme at Oran as being undertaken within 2014-2020.

9.3.5 I am satisfied therefore that the proposed development is in compliance with the policies and objectives of the Development Plan.

#### **9.4.0 Alternatives Assessed**

9.4.1 According to the brief of evidence submitted to the oral hearing by Mr. Alan Mulryan three alternative route options were identified and assessed: a route to the north of the existing N60 (option 1), a predominantly online route (option 2) and a route to the south of the existing N60 (option 3) (see drawing no. RN118015-13-25001, submitted to the Oral Hearing).

9.4.2 Assessing the **safety and engineering** of each option, the brief noted that the route with the least number of direct accesses is preferred. Option 2 with 70 no. accesses and restrictions placed by the number of adjoining premises results in limited safe overtaking opportunities. Option 3 will result in 5 no. new junctions, one of which is relatively complex. Option 1 with four junctions and a simple mid-section junction is also 200m shorter than options 2 and 3. Option 1 proposes an off-line section for the most deficient central section and has the least impact in terms of earthworks.

9.4.3 In terms of **property and land** Option 2 would require the acquisition of four occupied properties and the land in the curtilage of seven other properties. Option 3 would require the acquisition of one house, lands in the curtilage of two houses, the provision of accommodation tracks to access severed land and has the most significant impact on agricultural land due to severance. Option 1 does not require the acquisition of any dwelling house and has only a slight impact on the curtilage of two dwellings.

9.4.3 The third criteria assessed was **archaeology**. Options 2 and 3 have significant impacts on the national monument complex at Oran Cemetery and Ballydooley Lodge respectively. Option 1 has the least impact on the complex and removes approx. 85% of traffic away from the complex. In summary, the opinion of the Council is that Option 1 is the preferred option.

9.4.4 It was noted during the hearing that the alternatives assessed informed the Part 8 process but were not put forward by way of any public consultation. Notwithstanding this, the route chosen is clearly the most reasonable in terms of impact on landowners, extent of land acquisition and impact on built and archaeological heritage

whilst achieving the primary objective of improving road safety along this stretch of the N60.

### **9.5.0 Issues Raised by Objectors**

9.5.1 The issues raised by the objector's are as follows:

- Acquisition Area: The Council appear to be acquiring on a permanent basis more land than is necessary for the scheme.
- Boundary Treatment: Client is dissatisfied with proposed boundary treatment.
- Access: Issues with access to the retained property arise as a consequence of the scheme
- Drainage: Drainage issues are a concern and the proposed drainage design may cause issues for the retained land.

9.5.2 The validity or the legal sustainability of the objections was raised by RCC as both the acquiring and the road authority, during the course of the hearing. Mr Flanagan SC on behalf of RCC stated that as the subject development had undergone a public consultation process under Part 8 and was subsequently approved by the elected members, the Board was not being asked to approve "the works". Referring to the test by which An Bord Pleanála would confirm a compulsory acquisition, there was within the Part 8 process a consideration of the "works" included in the proposed development, noting the references in the Managers report to consideration of the environment, built heritage and the National Monuments Service. He noted that as part of the Part 8 process the approved development had incorporated various guidelines such as the NRA Landscape & Visual Assessment guidelines and the Noise & Vibration guidelines. He noted that the approved works were screened for EIA and AA. All of the parties had an opportunity to make representations during the course of the part 8 process in relation to the works themselves. Mr Flanagan submitted that Mr Corr's clients were exercised by some "works" and stated that those had already been approved in 2013. Mr Flanagan stated that therefore, the question was whether or not any of the objections were legally sustainable, having regard to the works that are already approved. Regarding the specific issues of objection, Mr Flanagan noted that matters of boundary treatment / fencing had been raised and addressed in the planning report as had the NRA guidance on drainage. Noting that the matters had been approved by the elected representatives of the Council, he stated that the "works" of the proposed development had been considered through the process of public engagement and had been approved of themselves.

9.5.3 Referring to the power of the Board under s217(c)<sup>5</sup> Mr Flanagan stated this this was the power to confirm a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof. He stated that conditions could only relate to matters such as the temporary or permanent acquisition or where surplus land was identified. The imposition of works was not something the Board could consider. Mr Flanagan submitted that the remaining objections appeared to relate to the works themselves as distinct to the meeting of the public need and therefore they were not grounds for not confirming the Order. They were not sustainable grounds for any change to the order as presented to the Board. Mr Flanagan stated that RCC as a road authority say that they have satisfied the legal test and ask that order be confirmed as proposed with the amended schedule.

9.5.4 In response, Mr Corr noting the argument of RCC that the objections related only to works, referred to the precedent set in the Ballaghadereen by-pass case<sup>6</sup> where his client's similar argument was accepted as a sustainable ground of objection by the Board.

9.5.5 Notwithstanding that boundary treatments was the single or most ventilated argument during of the hearing, it is the case that three other grounds of objection to the proposed CPO were raised and must be evaluated by the Board. The grounds of objection raised in the written submission do not relate solely to works but also to the extent of the land take, drainage and access issues.

## **9.6.0 Acquisition Area**

9.6.1 As noted above, approx. 38% of the proposed road improvement works are located on-line and therefore land acquisition occurs along the existing roadside boundary. The remaining 62% of the proposed route involves agricultural land take. The brief of evidence presented to the oral hearing by Mr Mulryan, Project Engineer addressed this issue, stating it had been raised and addressed during the Part 8 process. He stated that all lands

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<sup>5</sup> **217C.**— (1) Notwithstanding any provision of any of the enactments referred to in section 214, 215A, 215B or 215C concerning the confirming or otherwise of any compulsory acquisition, the Board shall, in relation to any of the functions transferred under this Part respecting those matters, have the power to confirm a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof.

<sup>6</sup> PL20.CH3046 refers

included in the CPO were necessary and sufficient for the construction, operation and maintenance of the project, and that there are no surplus lands.

9.6.2 Noting that the ground of objection referred to the extent of land being acquired on a “permanent basis”, during the oral hearing, an amended schedule of lands was submitted to the Board. RCC noted that following requests from the landowners a number of amendments to the Order were made. These can be summarised as follows:

<b>Plot 105.01</b> will be subdivided as follows:	105c.01 permanent acquisition of part of public road 105f.01 temporary acquisition of entrance 105g.01 temporary acquisition of entrance
<b>Plot 110.01</b> will be subdivided as follows:	110a.01 permanent acquisition of part of public road 110b.01 temporary acquisition of entrance
<b>Plot 125.01</b> will be subdivided as follows:	125a.01 permanent acquisition of part of public road 125b.01 temporary acquisition of entrance
<b>Plot 155.01</b> will be subdivided as follows:	155b.01 permanent acquisition of part of public road 155d.01 temporary acquisition of entrance
<b>Plot 200.01</b> will be subdivided as follows:	200h.01 permanent acquisition of part of public road 200m.01 temporary acquisition of entrance

9.6.2 The proposed amendments split the portion of land at the entrance to private dwellings, allowing for the permanent acquisition of the road bed and the temporary acquisition of the entrance. During the questioning of the Council, it was stated that these amendments were made following requests from the relevant landowners. It was submitted by the Council that the amendments were beneficial to all parties as it allowed entrances to be returned to the ownership of the landowner following the construction of the road. Mr Corr, on behalf of the landowners he represented (not just those who remained as objectors), confirmed that the subdivision of the plots was being done with the consent of and at the behest of the landowners. He stated that he had made representations on behalf of those landowners he represented and requested that the recessed entrances be made on a temporary basis. He noted that the permanent acquisition of recessed entrances can create problems at a later date if the council own a wedge of land into private property. He stated that the use of temporary acquisition of recessed entrances should be the norm in all CPO's.

9.6.3 In response to the Inspectors comment that this benefit should have been extended to all landowners and not just those who had objected to the scheme, Mr Flanagan stated that before the construction phase, if a notice to treat is served on a landowner, there can be negotiations as to how the ultimate conveyance will be. As a general proposition once the construction works are done, at the conveyancing stage the land take can be reduced or amended.

### **9.7.0 Boundary Treatment**

9.7.1 Mr Corr, on behalf of his two clients, confirmed at the start of the hearing that the single most pressing issue for his clients was that of the existing stone walls at their dwelling houses and the Council's reluctance to replace or reinstate the walls.

9.7.2 On behalf of the Council, each of the three representatives (Mr Flanagan, Mr Mulryan and Ms Grier) confirmed that the proposed boundary treatment at domestic properties is the replacement of existing boundaries on a like-for-like basis, subject to safety considerations. Permanent fencing through agricultural lands will be timber post and rail fence with chain-link wire mesh in accordance with the NRA road construction drawing no. RCD/300/1. This standard and specified fence type is used on all national road projects through agricultural lands. The fence type has and continues to be used throughout the country on similar road projects. The manufacture of the fence is to an appropriate detailed specification which has proven to be a robust stock proof fence type. As a national road project, the terms of the 2016 agreement between the Irish Farmers Association (IFA), the Dept. of Transport, Tourism and Sport (DoTTS) and Transport Infrastructure Ireland (TII) will apply to the acquisition of agricultural lands within the CPO. Where fencing is erected on the boundary of the national road, it will be maintained by the Local Authority in accordance with the agreement between the TII and the IFA. Where it is erected on non-national roads it will be the landowners responsibility. The agreement provides that "Local Authorities will provide and maintain stock proof fencing on all new motorways, dual-carriageways and national roads provided on or over land to which the agreement applies". On lands to which the agreement does not apply, the maintenance of roadside boundaries rests with the landowner.

9.7.3 It was stated during the hearing that the Council would not advocate the replacement of the stone walls on the grounds that in

collisions, they are more unforgiving and result in more severe impacts. The presence of stone walls adjacent to national roads is not preferred on safety grounds, as such walls present an unforgiving roadside to road users in the event of a collision. Stone walls are recognized as an avoidable hazard. In response to this allegation, Mr Corr stated that the stone walls in question were dry stone walls with no mortar or cement and so were not fixed / immovable. He noted that Mr Mulryan on behalf of RCC had confirmed during the hearing that there had never been any issues with maintenance of the stone walls in question.

9.7.4 During the hearing Mr Corr submitted that, in his opinion, the reinstatement or replacement of the stone walls was in compliance with the policies and objectives of the development plan in reaction to roadside boundaries (section 9.5.2), biodiversity (section 5.2.3 and objective 7.5), landscape (objective 7.9), and built heritage (section 7.5.22). He noted the importance of the stone walls from a visual and built heritage perspective and the legacy of passing on such heritage to the next generation. Mr Corr impressed the importance of the stone walls to his clients and their strong desire to have them retained. He noted the intention of Mr Gunning to re-build the wall regardless of the outcome of the CPO and drew the Boards attention to the waste of tax payers money in providing an expensive fence where none was needed. Mr Corr noted the policy of Bord Gais to re-build walls and the practice in the UK of reinstatement of farm boundaries.

9.7.5 Regarding the maintenance of the fence, Mr Corr stated that his Clients were happy to maintain the stone walls in the manner in which they had always done. Both parties agreed that the offer of the Council via the TII / IFA agreement, to maintain the proposed fence was not binding and the landowner could opt-out should they so wish. Mr Corr stated that his clients would opt-out and would be happy to continue to maintain the fence. Mr Corr submitted that the visual impact of stone walls was very positive and a welcome break from the monotony of agricultural fencing. In conclusion, Mr Corr stated that the Council had no basis for refusing to reinstate the stone walls on the grounds of safety or maintenance.

9.7.6 In response to Mr Corr's evidence, RCC reiterated their opinion that stone walls were an avoidable safety hazard and that the existing walls had no protection in the form of landscape or heritage designations. Ms Grier, Senior Planner noted that the development plan policies were framed in the context of "where feasible" or "in

appropriate circumstances” or “are encouraged”. She noted that each of the policies noted by Mr Corr were not binding, or mandatory or prescriptive. That all development proposals were assessed on their own merits within their own locational context and where safety or traffic hazards arose, all de-exemptions were removed.

9.7.7 I am satisfied that the issue is one which can be addressed after confirmation of the CPO. The Council have reiterated that domestic boundaries will be replaced on a like-for-like basis. Therefore, this does not rule out the provision or reinstatement of the existing stone walls. Mr Corr confirmed that his clients objections were to the removal of the stone walls outside his clients dwellings and not on their agricultural lands, therefore the construction of stock proof fencing (the agricultural land option) at the dwelling houses is not a foregone conclusion. Indeed, Mr Flanagan on behalf of RCC noted that much negotiation occurs prior to conveyancing and during arbitration if necessary. The options for a resolution to the objection lie outside the remit of the CPO before the Board and therefore I am satisfied that the issue is not one which would justify the exclusion of the lands from the schedule of the CPO.

**9.8.0 Access**

9.8.1 As noted in section 9.6.0 above, access to retained properties was amended on request by and with the consent of the landowners.

**9.9.0 Drainage**

9.9.1 The issue of drainage of the lands affected by the proposed development was addressed during the course of the oral hearing in the brief of evidence of the project engineer. Mr Mulryan stated that all existing land drains severed by the road development will be culverted under the new road or will be incorporated into the propose drainage system. The road drainage proposals are stated to be in accordance with the DMRB and the NRA HD33/15 Drainage Systems for National Roads. The proposed route drains to the Killinraghty Stream via the Carrowgarve Stream and to Smaghrann River via the Emlagh Stream. Both of which flow in a southerly direction to the River Suck. The Smaghrann River includes the site of a disused quarry which serves as a natural attenuation area during periods of winter flooding. It is proposed to attenuate and outfall the road pavement to an improved drainage channel at ch2+840 and provide a high level pipe overflow from the quarry area to the road drainage system. The overflow is designed for the upper end of extreme flood events, approx. less than once



in ten years. Surface water run-off from the road adjoining Mr. Gunning's property currently runs into the adjacent verges and indirectly discharges to the Killinraghty Stream. Two surface water drainage outfalls are proposed: at the western end discharging to Killinraghty Stream and at ch2+840 where the existing road culvert will be replaced and upgraded. The proposed drainage system comprises filter drains constructed at the edge of the road pavement which ultimately discharge to the Killinraghty Stream. Consent under S50 of the Arterial Drainage Act 1945 has been received.

9.9.2 I am satisfied that the proposed development will regularise and improve the current regime and is in accordance with national policy.

**10.0.0 CONCLUSION AND RECOMMENDATION**

I am satisfied that the process and procedures undertaken by the Local Authority have been fair and reasonable and that Roscommon County Council have demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable. I consider that the proposed acquisition of these lands would be in the public interest and the common good and would be consistent with the policies and objectives of the Roscommon County Council Development Plan 2014-2020.

**11.0.0 DECISION**

I recommend that the Board CONFIRM the above Compulsory Purchase Order, subject to the modifications as set out in the Schedule below and based on the reasons and considerations set out below.

**REASONS AND CONSIDERATIONS**

Having considered the objections made to the compulsory purchase order and not withdrawn, the report of the person who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the compulsory purchase order and also having regard to the following;

- (a) the provisions of the National Spatial Strategy for Ireland 2002 - 2020 and Smarter Travel - A Sustainable Transport Future - A New Transport Policy for Ireland 2009 - 2020,
- (b) the policies and objectives of the Roscommon County Development Plan 2014-2020, including Objectives 4.22, 4.23 and 4.28
- (c) the serious deficiencies in geometric alignment of the existing N60 between Fearaghafin to Roscommon, as noted in the National Secondary Roads Needs Study – West Region 2011, and the identification of the Ballymoe to Roscommon section of the N60 as a priority 2 scheme in the same policy document,
- (d) the provisions of the Regional Planning Guidelines for the West Region 2010-2022 including Objective IO5 which seeks to upgrade and improve all national secondary roads including the N60
- (e) the community need, public interest served and overall benefits to be achieved from the proposed road development
- (e) the design and alignment of the proposed road, constituting a design response that is proportionate to the identified need,
- (f) The submissions and observations made at the Oral Hearing held on 23<sup>rd</sup> March 2016 in Roscommon;

It is considered that, the permanent and temporary acquisition by the Local Authority of the land in question and the extinguishment of public rights of way, as set out in the order, schedules as amended and on the deposited maps, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

### **SCHEDULE**

1. The compulsory purchase order shall be modified to incorporate the Schedule Part IB as amended, as submitted by Roscommon County Council to An Bord Pleanála at the oral hearing on the 23<sup>rd</sup> day of March 2016.  
Reason: To take account of landowners requests and updated information made available.

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**Gillian Kane**  
**Planning Inspector**  
**29/04/16**

## **APPENDIX 1 ORAL HEARING SUMMARY**

**Oral Hearing:** CH3253

**Development:** Realignment of N60 Oran Road Project Compulsory Purchase Order for lands at Oran, County Roscommon. (CPO no. 1, 2015)

**Venue of Oral Hearing:** Abbey Court Hotel. Roscommon, Co. Roscommon

**Date:** Wednesday 23<sup>rd</sup> March 2016

### **Parties in attendance at the Hearing**

#### Planning Authority- Roscommon County Council

Dermot Flanagan – Senior Counsel

Dermot McDermott – Solc. RCC

Alan Mulryan – Project Engineer

Mary Grier – Senior Planner RCC

Tony Cawley RCC

Shane Kelly RCC

Martin Curley RCC

#### Third Party

Tom Corr acting for Dominic Gunning and Bovale Developments

The hearing was opened at 10.00. Following a request from the agent for the third parties and with the consent of RCC, the hearing was adjourned for approx. 30 minutes.

Following the adjournment, the agent for Mary Gunning advised the hearing of the withdrawal of her objection to the CPO. A signed letter to that fact was submitted to the hearing.

Mr Corr on behalf of Michael Bailey of Bovale Development, requested that the hearing be postponed. He stated that his client is particularly annoyed about a letter that has come out recently from RCC. The letter is dated 16th March 2016 and headed "Subject Matter Boundary Treatment". The letter discusses the IFA / NRA (now TII) agreement. Mr Corr said that his client is incensed as he is representing himself and has no involvement with the IFA. Mr Bailey has requested that the hearing be postponed to a later date.

In response, Dermot Flanagan SC instructed by Roscommon County Council (RCC) the acquiring authority, stated that they opposed the adjournment for the reason that the letter arises during the exchanges and is based on the objection of Bovale to the acquisition of the land. He stated that these objections can be raised and responded to in the hearing. The Board can consider in its report and its deliberations whether or not the objection of Bovale is sustainable. The letter for the County Council is a response to their objection. It is up to Mr Corr to advance on behalf of his client, the fundamental reasons for his objection and why his clients land could be excluded. Mr Flanagan stated that his view is whether or not the arguments

put forward can be ventilated during the course of the OH. And whether or not the adjournment serves a purpose in allowing anything else to be said. Notwithstanding that Mr Corr is well capable of articulating the view of his client, Mr Flanagan will address the issue. Mr Flanagan stated that while the letter refers to an agreement, Bovale may well wish to argue that something else may apply. He stated that that this part of the process. He noted that there are four main areas of objection with the principle one being the acquisition and its effects. Mr Flanagan stated that certain of those matters may well be to do with compensation. Therefore he opposed an adjournment, stating that RCC would like to articulate the reasons for the acquisition of the land.

Inspector addresses. Cannot postpone. Notes that there are two objectors live on the file and that they have the right to be heard today. The issues that have been raised are issues that can be discussed during Mr Corr's submission and questioning. The Inspector noted that the hearing could not take any further written submission but any oral evidence will be taken into account.

### **Submission of RCC**

Mr Flanagan stated that he would deal with any of the legal issues and the purpose underlying the acquisition. He invited the project engineer to begin the process.

### **Alan Mulryan – statement of evidence.**

Outlined his professional qualifications. Background: In 2010 the NRA road safety section carried out a detailed safety analysis of the national road network. N60 at Oran was identified as being in the top 50 worst bends from a road safety perspective. The evidence identified the context of the road in the wider road network. The road section in question commences approx. 10km northwest of Roscommon Town and travels for approx. 3.6km all of which is in a rural area with a maximum permitted speed of 100kph. The proposed road at 3.4km is 0.2km shorter than the existing road. The evidence noted the presence of the national monument RMP no. RO034:81, the remains of a medieval church & towers situated within the cemetery at Oran. Access to the cemetery is at a particularly poorly aligned section of the existing road with little parking. The existing N60 is sub-standard single carriageway road, typically 5.5m to 6.5m in paved width. Road alignment is characterised by a series of sharp bends and relatively steep gradients. There are 4 lightly trafficked local roads within the project area: L-1622 Carrowgarve Road, L-1625 Ballinaheglish Road, L-1629 Donamon Road and the L-6670 Oran Road. Mr Mulryan stated that the purpose of the proposed road project is to provide a safer stretch of road that is fit for purpose by addressing the serious deficiencies in sight distance, cross section, alignment and visibility, helping to achieve a reduction in accident severity and improve local accessibility.

Regarding the need for the scheme, Mr Mulryan's evidence stated that the proposed project is supported by a number of policy documents:

- The proposed development is in accordance with The Infrastructure and Capital Investment Programme 2012-2016, as the programme stated that “the NRA will progress a limited number of improvement schemes, including some relatively low cost targeted improvements on the national secondary network where road safety is an issue”
- The proposed road project is consistent with the Building on Recovery: Infrastructure and Capital Investment 2016- 2021 and the first and third priorities of the Strategic Investment Framework for Land Transport in relation to improvement in efficiency and safety of existing transport networks.
- National Secondary Road Needs Study. The improvement of the Ballymoe to Roscommon section of the N60 is included in the Priority 2 list of schemes in the West Region.

The brief of evidence stated that the existing road is deficient as follows:

- **alignment** – the horizontal and vertical alignments do not allow safe stopping and passing distances for the permitted speed limit. Horizontal alignment consists of twenty curves ranging in radii from 100m to 2040m, six of which are less than 255m radii. Horizontal curve of 255m is minimum for a design speed of 50kph. Vertical alignment consists of 18 vertical curves, 12 of which are below the minimum requirement. Only 10% of the road meets the full stopping sight distance SSD of 215m. Part of the route achieves only 90m. There are no safe overtaking opportunities between Fearaghafin / Carrowgarve and Clooneenbaun, with a continuous white centre line. The DMRB requires 30% overtaking value. The junctions with local roads are of poor standard in respect of road layout, width, visibility. There is a high frequency of private entrances giving rise to a conflict of slow and fast moving vehicles which is exacerbated by the substandard cross section. It is concluded that the existing road characteristics correspond to a road with a design speed of just 60kph in respect of geometric alignment and visibility.
- **Cross-Section** – existing road has a paved width of 5.5 to 6.5m with no hard shoulders. Grass verges where present are less than 1m wide. The brief stated that the in relation to collisions, the road boundary incorporates non-forgiving features such as stone walls, trees and ditches. It stated that this section of road poses a safety risk to all road users, particularly vulnerable road users.
- **Junctions** – All four at-grade priority junctions are substandard in relation to alignment and/or layout geometry. None meet the minimum visibility requirements. There are 66 no. direct accesses from houses, farms, business, commercial premises etc. along the route, all with substandard visibility due to deficiencies in horizontal and vertical alignment and cross section.
- **Accident History** – the accident rate on the road is over twice the national average for rural single carriageway roads. 22 no. accidents recorded from 1995 to 2013, half of which were single vehicle accidents. The conclusion is that drivers were unable to respond to the road layout.

In relation to land acquisition, the brief notes that the lands identified for acquisition do not include dwelling houses or buildings. The total area of land

covered by the Order is 15.949ha of which 2.997ha is public road. There are 28 no. landowners involved. The CPO schedule is amended with the subdivision of five roadbed plots: 105c1, 110a.01, 125a.01, 155b.01 and 200h.01. The recessed entrance portion of the identified plots is changed from permanent to temporary acquisition.

Four public rights of way will be extinguished, three of which will be re-created in their current location. The fourth will be accessible using alternative routes following the project completion.

### **Consideration of alternatives**

Three alternative route options were identified and assessed during the Part 8 process (RN118015-13-25001 N60 Oran Road realignment Route Selection Options in Appendix C refers): a route to the north of the existing N60 (option 1), a predominantly online route (option 2) and a route to the south of the existing N60 (option 3). Assessing the **safety and engineering** of each option, the brief notes that the route with the least number of direct accesses is preferred. Option 2 with 70 no. accesses and restrictions placed by the number of adjoining premises results in limited safe overtaking opportunities. Option 3 will result in 5 no. new junctions, one of which is relatively complex. Option 1 has four junctions and a simple mid-section junction and is also 200m shorter than options 2 and 3. Option 1 proposes an off-line section for the most deficient central section and has the least impact in terms of earthworks. In terms of **property and land** Option 2 would require the acquisition of four occupied properties and the land in the curtilage of seven other properties. Option 3 would require the acquisition of one house, lands in the curtilage of two houses, the provision of accommodation tracks to access severed land and has the most significant impact on agricultural land due to severance. Option 1 does not require the acquisition of any dwelling house and has only a slight impact on the curtilage of two dwellings. The third criteria assessed was **archaeology**. Options 2 and 3 have significant impacts on the national monument complex at Oran Cemetery and Ballydooley Lodge respectively. Option 1 has the least impact on the complex and removes approx. 85% of traffic away from the complex. In summary, the brief of evidence stated that Option 1 is the preferred option.

The brief provides a detailed description of the proposed works to which the CPO relates, under the following headings: general, horizontal and vertical alignment, road type and cross-section, junctions, accesses, road drainage, earthworks, haulage of materials and signage. The proposed development is described as follows:

- Route Commences at ch0+0 and travels in an easterly direction to ch0+900. At this point the road is widened on-line and a new at-grade priority junction is proposed at ch0+860 to connect to the L-1622 Carrowgarve Road.
- The alignment deviates from the existing road at ch0+900. A new at-grade priority junction is proposed at ch0+920 to connect back to the old road / the severed N60.
- The proposed route continues in an easterly direction across agricultural lands (ch1+1000 to ch1+600). Following the topography of

the land the route is at grade from ch0+900 to ch1+100 and thereafter in-cut up to approx. 3m to ch1+600.

- At ch1+600 the proposed route turns southwards across the agricultural lands up to ch2+120 where it crosses the existing local road L-1625 Ballinaheglish road. A new at-grade priority junction with right turning provision is proposed to connect to the local road. The existing L-1625 to the south will be severed forming a cul-de-sac for local access only.
- The proposed route continues in a southerly direction, on embankment to ch2+450. To the north of the route at this location is proposed an attenuation pond, to the immediate west of the existing disused quarry.
- At ch2+450, a new at-grade priority junction to the south, with right turning provision is proposed to connect to the severed N60. The proposed route ties in to the existing N60 at ch2+600.
- At ch2+600 the route follows on-line to ch3+420, crossing over an existing culvert at ch2+840.

The proposed road is a type 1 single carriageway cross-section of 7.3m wide with a 2.5m wide paved hard shoulder and a 3m wide verge on each side. At the western end tie-in, the existing N60 has two 3.5m wide lanes, two 2m wide hard shoulders and two 2m verges. The proposed route involves the re-establishment of 7 no. house access and field access on the on-line sections and at tie-ins. The proposed development involves four junctions

1. Side road 1 an at-grade priority junction to serve L-1622 Carrowgarve Road
2. Side road 2 an at-grade priority junction to connect to the existing N60
3. Side road 3 an at-grade priority junction (ghost island) to serve local road L-1625 Ballinaheglish road and
4. Side road 4 an at-grade priority junction (ghost island) to connect the existing N60.

The brief of evidence outlined the road drainage proposals, which are stated to be in accordance with the DMRB and the NRA HD33/15 Drainage Systems for National Roads. The proposed route drains to the Killinraghty Stream via the Carrowgarve Stream and to Smaghrann River via the Emlagh Stream. Both of which flow in a southerly direction to the River Suck. The Smaghrann River includes the site of a disused quarry which serves as a natural attenuation area during periods of winter flooding. The brief notes that flooding at the quarry threatened the nearby house in 2009. It is proposed to attenuate and outfall the road pavement to an improved drainage channel at ch2+840 and provide a high level pipe overflow from the quarry area to the road drainage system. The overflow is designed for the upper end of extreme flood events, approx. less than once in ten years. Two surface water drainage outfalls are proposed: at the western end discharging to Killinraghty Stream and at ch2+840 where the existing road culvert will be replaced and upgraded. Consent under s50 of the Arterial Drainage Act 1945 has been received. The proposed drainage system is in accordance with SuDS. Cut-off drains are proposed at cut points where the cut slopes towards the road and at the top of embankment slopes.



Regarding earthworks the brief stated that detailed ground investigations have been carried out, finding the ground conditions to comprise firm or stiff cohesive glacial till overlying limestone bedrock. Excavated material will be reused within the project with little or no importation required. Imported material shall be required for road capping and road pavement layers. Surplus material shall be disposed of as non-engineering fill. If material is removed off site it shall be in accordance with relevant legislation. Approx. 12,000m<sup>3</sup> topsoil, 34,000m<sup>3</sup> acceptable material and 6,000m<sup>3</sup> of unacceptable material will be excavated. Imported material from authorised local quarries shall be approx. 6,200m<sup>3</sup> granular material and 13,000m<sup>3</sup> of bituminous material.

To minimise traffic impacts, construction traffic for haulage of materials shall be limited to the N60 and the use of the local road network will be limited to construction traffic for local roads. Earthworks and pavement operations are expected to last 36 months, generating up to 44 vehicular movements per day (1% increase in traffic levels). Signage will be in accordance with DoT Traffic Signs Manual.

Regarding project commitments the brief outlines the following:

**Boundary treatments:** at domestic properties replacement of existing boundaries will be on a like for like basis, subject to safety considerations or will be treated as a compensation issue. Permanent fencing through agricultural lands will be timber post and rail fence with chain-link wire mesh in accordance with the NRA road construction drawing no. RCD/300/1. Where fencing is erected on the boundary of the national road, it will be maintained by the Local Authority, where it is erected on non-national roads it will be the landowners responsibility.

**Archaeology:** Consultation with the National Monuments service took place during the Part 8 process. The proposed development will be overseen by a project Archaeologist. The Council will comply with the Code of Practice agreed between the Minister for Arts, Heritage, Gaeltacht and the Islands and the NRA. Consent of the Minister for Arts, Heritage, Gaeltacht and the Islands has been granted in accordance with s14 of the National Monuments Act 1930, as amended.

**Access:** Reasonable access will be maintained during the construction phase. Permanent access to severed lands retained by landowners will be provided where required.

**Liaison:** Each landowner shall be kept fully informed of the progress of works.

**Drainage:** All existing land drains severed by the road development will be culverted under the new road or will be incorporated into the proposed drainage system. Any **redundant roads** will be ripped up, soiled over and landscaped / grassed and made unsuitable for parking unless prior agreement is reached. Any **services** interfered with will be repaired / replaced and restored. Where required, ducting will take water supply and electric fencing under the proposed road, with locations agreed with the landowners in advance. **Vehicular turning facilities** shall be incorporated at the termination of L-1625/ Access no. 3 and at access no. 4 / severed portion of N60.

In conclusion the brief stated that the proposed development will significantly improve road safety, is fit for purpose, minimises the impact on the

environment, land and property owners and is in accordance with national, regional and local policy. Mr Mulryan stated that the lands identified for acquisition are necessary, suitable and sufficient for the proposed road development and that the extinguishment of the public rights of way is appropriate and adequate measures have been put in place to provide for alternative means of access.

The brief of evidence has the following Appendices:

### **Appendix A Responses to objections.**

Dominic Gunning:

**Acquisition Area** – The Council appear to be acquiring on a permanent basis more land than is necessary for the scheme.

- All lands included in the CPO are necessary and sufficient for the construction, operation and maintenance of the project. There are no surplus lands.

**Boundary Treatment:** Client is dissatisfied with proposed boundary treatment.

- At domestic properties replacement of existing boundaries will be on a like for like basis, subject to safety considerations or will be treated as a compensation issue. Permanent fencing through agricultural lands will be timber post and rail fence with chain-link wire mesh in accordance with the NRA road construction drainage no. RCD/300/1. This standard and specified fence type is used on all national road projects through agricultural lands. The fence type has and continues to be used throughout the country on similar road projects. The manufacture of the fence is to an appropriate detailed specification which has proven to be a robust stock proof fence type.
- As a national road project, the terms of the 2016 agreement between the Irish Farmers Association (IFA), the Dept. of Transport, Tourism and Sport (DoTTS) and Transport Infrastructure Ireland (TII) will apply to the acquisition of agricultural lands within the CPO. The agreement provides that *“Local Authorities will provide and maintain stock proof fencing on all new motorways, dual-carriageways and national roads provided on or over land to which the agreement applies”*. On lands to which the agreement does not apply, the maintenance of roadside boundaries rests with the landowner.
- It is in the national interest that a consistent approach is adopted in relation to the treatment of boundary fencing along the entire network. In terms of future maintenance, it is reasonable to provide a consistent boundary type.
- The presence of stone walls adjacent to national roads is not preferred on safety grounds, as such walls present an unforgiving roadside to road users in the event of a collision. Stone walls are recognized as an avoidable hazard.
- Where fencing is erected on the boundary of the national road, it will be maintained by the Local Authority, where it is erected on non-national roads it will be the landowners responsibility

**Access:** Issues with access to the retained property arise as a consequence of the scheme

- The proposed acquisition of Mr. Gunning's lands is along the N60 and does not create any severance of the landholding. Mr. Gunning has three accesses (two field gates, one dwelling house) off the existing road, all of which will be incorporated into the proposed road boundary treatment. It is respectfully submitted that there are no access issues arising as a consequence of the scheme.
- **Drainage:** Drainage issues are a concern and the proposed drainage design may cause issues for the retained land.
  - All existing land drains severed by the road development will be culverted under the new road / side road realignments or will be incorporated into the proposed drainage system. The proposed scheme has been designed in accordance with the NRA HD33/15 Drainage Systems for National Roads, and SuDS. The scheme will maintain the existing drainage in the area and not exacerbate flooding. Surface water run-off from the road adjoining Mr. Gunning's property runs into the adjacent verges and indirectly discharges to the Killinraghty Stream. The proposed drainage system comprises filter drains constructed at the edge of the road pavement which ultimately discharge to the Killinraghty Stream, thereby regularising and improving the current regime.

### **Bovale Developments**

**Acquisition Area** – The Council appear to be acquiring on a permanent basis more land than is necessary for the scheme.

- All lands included in the CPO are necessary and sufficient for the construction, operation and maintenance of the project. There are no surplus lands.

**Boundary Treatment:** Client is dissatisfied with proposed boundary treatment.

- Permanent fencing through agricultural lands will be timber post and rail fence with chain-link wire mesh in accordance with the NRA road construction drainage no. RCD/300/1. This standard and specified fence type is used on all national road projects through agricultural lands. The fence type has and continues to be used throughout the country on similar road projects. The manufacture of the fence is to an appropriate detailed specification which has proven to be a robust stock proof fence type.
- As a national road project, the terms of the 2016 agreement between the Irish Farmers Association (IFA), the Dept. of Transport, Tourism and Sport (DoTTS) and Transport Infrastructure Ireland (TII) will apply to the acquisition of agricultural lands within the CPO. The agreement provides that "Local Authorities will provide and maintain stock proof fencing on all new motorways, dual-carriageways and national roads provided on or over land to which the agreement applies". On lands to which the agreement does not apply, the maintenance of roadside boundaries rests with the landowner.
- It is in the national interest that a consistent approach is adopted in relation to the treatment of boundary fencing along the entire network. In terms of maintenance, it is reasonable to provide a consistent boundary type.

- The presence of stone walls adjacent to national roads is not preferred on safety grounds, as such walls present an unforgiving roadside to road users in the event of a collision. Stone walls are recognized as an avoidable hazard.
- Where fencing is erected on the boundary of the national road, it will be maintained by the Local Authority, where it is erected on non-national roads it will be the landowners responsibility

**Access:** Issues with access to the retained property arise as a consequence of the scheme

- The proposed acquisition from Bovale Developments is primarily along the N60 and does not create any severance of the landholding. Bovale Developments has two field accesses off the N60. These will be incorporated into the proposed new road boundary treatment. It is respectfully submitted that there are no access issues arising as a consequence of the scheme.

**Drainage:** Drainage issues are a concern and the proposed drainage design may cause issues for the retained land.

- All existing land drains severed by the road development will be culverted under the new road / side road realignments or will be incorporated into the proposed drainage system. The proposed scheme has been designed in accordance with the NRA HD33/15 Drainage Systems for National Roads, and SuDs. The Scheme will maintain the existing drainage in the area and not exacerbate flooding. Surface water run-off from the road runs into the adjacent verges and indirectly discharges to the Emlagh Stream. The proposed drainage system comprises grass surface water channels or filter drains constructed at the edge of the road pavement which ultimately discharge to the Emlagh Stream, thereby regularising and improving the current regime.

### **Appendix B drawings**

- RCD/300/1 NRA Road Construction Details Timber Post and Rail Fence
  - Dermot Flanagan stated that this drawing provides details of agricultural land fencing. He questions Mr Mulryan who stated that it is correct that the drawing shows the standard type of fencing on all national road projects. Mr Mulryan stated that is a national standard and specification which has been used all over the country. In relation to the IFA agreement, Mr Flanagan stated that this is to do with the maintenance of fencing once provided. The specification derives from the drawing. Mr Flanagan notes that there was a lack of clarity prior to the agreement as to who would maintain fencing that was provided by the Local Authority . He stated that reference to the agreement is to note that maintenance is now the response of the road authority. The 2016 agreement is not about specification. Mr Mulryan confirms this.
- RN118015-13-24804 Geometric Design, Layouts 1, 2 and 3
  - Dermot Flanagan requested Mr Mulryan to explain the drawings. Mr Mulryan said the three drawings show the that the first 900m of road project consists of online widening. He stated that details of this

work incorporate what has been approved at the part 8 process. In relation to Sheet 2, Mr Mulryan stated that the scheme runs offline at ch900, travels through agricultural lands and comes back out to meet the existing Ballinaheglish road at ch2150 with a new junction to connect to the Ballinaheglish road to the north. He stated that the proposed route continues on low embankment through agricultural lands up to ch2450 where the development provides a junction to the right and re-establishes the connection to the existing N60. Sheet 3: Route continues to ch2600 crossing an existing private access road, re-establishing access by means of a junction. Back online at ch2700. Runs to end at ch3420 mostly online widening at the eastern end.

- RN118015-13-25001 N60 Oran Road realignment Route Selection Options considered during the Part 8 process.

### **Appendix C Photographs. Concludes the evidence of Mr Mulryan.**

#### **Ms Mary Grier Senior Planner**

Outlined her professional qualifications. Stated that the proposed development to which the CPO relates was subject of a Part XI of the Planning and Development Acts and Part 8 of the Planning and Development Regulations. Development was approved at a meeting of RCC on 22<sup>nd</sup> July 2013. EIA screening was undertaken and it was determined that the proposed development was not likely to have significant effects on the environment and that an EIA was not required. AA screening was also undertaken and concluded that significant effects on European sites were either individually or in combination with other plans could be excluded.

The proposed development was assessed under the following policy documents:

- National Spatial Strategy: the NSS provides for regional accessibility through advanced communications infrastructure, by road and public transport, providing a link, i.e. strategic radial corridor through the Midlands gateway of Athlone to Castlebar/ Ballina through infrastructure improvements. Map 10 of the NSS identifies towns and villages e.g. Roscommon, Boyle, Ballaghaderreen and Castlerea which play a key roles in delivering services in physically remote and peripheral areas.
- Regional Planning Guidelines for the West Region 2010 -2022: Preferred strategic option for the west is the development of Galway gateway, Tuam hub and Castlebar-Ballina linked hub supported by the development of the Athlone (Midlands) gateway and key towns encouraging the development of other settlements centres and appropriate development in the rural areas in the region. The guidelines provide policies and objectives for transport infrastructure and state that the preferred strategic development option is ensuring that all routes identified for construction and upgrading the in the RPGs be progressed as soon as possible to facilitate the implementation of the NSS and promote balanced regional development. The RPGs recommend that the National Transport Routes N61 and N60 Athlone

to Castlebar via Roscommon should be reclassified to National Primary Status and upgraded accordingly (Objective IO5).

- Roscommon County Development Plan 2008-2014 was the plan in effect at the time of the Part 8 process and Ms Grier stated that the proposed development was in consistent with the policies and objectives of the plan. Ms Grier confirmed that she was the author of the planning report prepared at that time.

In relation to the Roscommon County Development Plan 2014-2020, Ms Grier stated that the aims and objectives of the 2014 plan in so far as relevant to the proposed realignment project remain consistent with the policies and objectives of the 2008 plan. The proposed road development is consistent with chapter 4 of the development plan which seeks to “develop a safer more efficient and integrated transport system that will improve the road network and particularly alternative forms of transport to serve the urban and rural population of Roscommon” and “ensure that the transport system is sustainably developed and upgraded to a level that can support increased economic, social and cultural development of the county”. Section 4.1.3 of the plan is relevant to the propose development as is policy 4.11 “provide a safe and modern road network throughout the county, having regard to National and Regional policies and guidelines as well as liaising with national agencies” and Objective 4.222 “facilitate the programmed improvements to the National Road Network as per table of National Road priorities in section 4.1.3 of the County Development Plan”. Table 4.2 of the plan lists the N60 Roscommon – Castlebar as a planned national secondary road project for 2014-2020.

In relation to Built Heritage, policy 6.1 of the development plan seeks to “identify and protect the architectural heritage of the county and to manage any change to that heritage in such a way as to retain its character and special interest”. Policy 6.9 and Objectives 6.21 and 6.22 are also noted as highlighting the special and unique nature of the built heritage. Ms Grier noted that there are two protected structures adjacent to the route: Ballydooley Lodge (RPS no. 03400066), a country house and Oran Round Tower (RPS 03400067), ruins of a round tower. Ms Grier’s evidence stated that there will be no impact on the curtilage or setting of the structures, that the project will not result in any loss of character or special interest or any protected structure and therefore the proposed development is consistent with the relevant objectives of the development plan.

In relation to archaeological heritage, Ms Grier noted that as there are a significant number of surviving monuments in the vicinity of the proposed road project, a number of meetings were held with the National Monuments Service. These ultimately assisted in informing the route selection. Consent of the Minister for Arts, Heritage and the Gaeltacht has been received under s14 of the National Monuments Acts 1930. The proposed development will be overseen by a project Archaeologist. The Council will comply with the Code of Practice agreed between the Minister for Arts, Heritage, Gaeltacht and the Islands and the NRA. Ms Grier stated that it is her opinion that the project

accords with the planning policies and objectives pertaining to Archaeological Heritage of the development plan.

In relation to landscaper, visual amenity and nature conservation, policy 7.1 and objectives 7.1, 7.5, 7.15 and 7.18 were outlined as being relevant to the proposed development.

In relation to landscape character assessment. Ms Grier noted that the project fell within two landscape character areas (LCA's): area 30 Oran undulating open farmland and LCA 11 Castlerea and Upper Suck Valley. The key characteristics of each area were outlined. Ms Grier stated that the character of the LCAs will not be unduly affected as each area already displays significant evidence of built development, including the existing N60. Each LCA requires that development be undertaken in a manner which limits the impact on the landscape. The proposed development is stated to accord with this principle subject to mitigation being undertaken to compensate for the removal of mature vegetation at a number of locations. Mr Flanagan noted that it is proposed to plant a roadside hedge adjacent to the post and rail fence subject to safety considerations or if otherwise agreed with the landowners. Where possible existing hedging will be retained. Mr Flanagan noted that Mr Corr is aware of these plans. Mr Flanagan noted that landscaping will be carried out in accordance with NRA guidelines. Ms Grier noted that there are no scenic routes or views in the vicinity of the proposed project.

Ms Grier's evidence noted that the road realignment area is not within any Nature 2000 sites. The River Suck Callows SPA is 6.5km to the south and the Corliska/ Trien / Cloonfelliv Bog SAC is 8.5km to the north-west. Other Natura 2000 sites within 15km of the road are Kilsallagh Bog SAC, Mullygollan Turlough SAC, Camderry Bog SAC, Lough Ree SAC, Corbo Bog SAC and Lough Lurgan Bog / Glenamaddy Turlough SAC. AA screening undertaken in 2012 concluded that the project would not give rise to any significant effect on any European site, either individually or in combination with other plans or projects.

Ms Grier stated that there are no tree preservation orders within the area of the project. In relation to the planning history of the area 12 no. applications were identified by Ms Grier. Mr Flanagan noted that none of the planning references relate to any objection raised, only that these are a planning history for the area. Acquisition may involve some compensation issues but Ms Grier noted that none of the properties would be directly affected but there would be minor impacts on some garden curtilage. Following a question from the Inspector Ms Grier confirmed that permission had been granted on development at PD/15/398. Ms Grier later confirmed that as of 22/03/2016 a final grant had issued and that this permission had not been appealed.

In conclusion, Ms Grier stated that the proposed development was supported by the relevant policy documents, that the proposed road would provide a safer road network in an area where records indicate a high concentration of traffic accidents on the existing road. The proposed development is consistent

with the 2008 and the 2014 County Development Plans, national regional and local plans.

Following Ms Grier's evidence, Mr Flanagan advised that the schedule of the Order was amended. He noted that within schedule part 1B there are 5 landowners where the extent of the permanent and the temporary acquisition in each case is being changed. He stated that they would be asking the Board to confirm the order with the proposed amendments. The intention is to minimise the land take of 5 landowners. Where possible we can make a temporary acquisition in order to construct works, boundary treatment may need some land inside the boundary. To minimise the permanent acquisition but to allow sufficient working space. The land would be returned to the landowner. These are all by agreement with the landowners.

Mr Alan Mulryan Project engineer submitted Amendments to the CPO Schedule. Schedule Part IB changes listed lands from a permanent acquisition to a combination of permanent and temporary acquisition. Each plot is subdivide in order to facilitate the request of the landowner after the making of the CPO, to show permanent acquisition of the roadbed and the temporary acquisition of the recessed entrance.

**Plot 105c.01** Michael Cuddy landowner, will be subdivided as follows:

105c.01 permanent acquisition of part of a public road

105f.01 temporary acquisition of entrance

105g.01 temporary acquisition of entrance

**Plot 110a.01** landowner Brigid Tighe will be subdivided as follows:

110a.01 permanent acquisition of part of a public road

110b.01 temporary acquisition of entrance

**Plot 125a.01** landowner Tomas Connelly will be subdivided as follows:

125a.01 permanent acquisition of part of a public road

125b.01 temporary acquisition of entrance

**Plot 155b.01** landowner Bridie Connaughton will be subdivided as follows:

155b.01 permanent acquisition of part of a public road

155d.01 temporary acquisition of entrance

**Plot 200h.01** landowner James Lawless will be subdivided as follows:

200h.01 permanent acquisition of part of a public road

200m.01 temporary acquisition of entrance

For completeness have included the map that was served on the landowner. The original CPO map was sent to the landowner. The landowner requested the changes. The amended map date is Oct 2015. Date of amendment map is 08.02.2016.

That concluded the presentation of evidence of the acquiring authority Council.



Mr Flanagan then outlined some of the legal arguments he wished to be brought to the attention of the hearing. He stated that the hearing was solely in relation to the rights of RCC as a Local Authority to compulsorily acquire land. He noted that right was expressly provided for in s11(7) of the Local Government Act 2001. This section confirms the general power of a Local Authority to acquire and dispose of land. He then noted s212 of the Planning and Development Act 2000 in which a Local Authority may in order to carry out its functions powers and duties, carry out forms of development and in so doing a Local Authority is entitled to use CPO powers. Mr Flanagan stated that s212 is important because it confirms the general power of Local Authority to carry out development including road development and while any people are aware of the provisions of 213 which talks about the CPO of land, s212(1) is relevant as it refers to development by a Planning Authority. He noted that s212(1) says that a Planning Authority may development or secure or facilitate the development of land and may do one or more of the following (a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving; (b) develop any land in the vicinity of any road or public transport facility which it is proposed to improve or construct; (c) provide areas with roads, infrastructure facilitating public transport and such services and works as may be needed for development.

Section 212(2) stated that a Planning Authority may provide or arrange for the provision of (c) transport facilities, including public and air transport facilities, and (d) any services which it considers ancillary to anything which is referred to in *paragraph (a), (b) or (c)*. Section 212(4) stated that a Planning Authority may use any of the powers available to it under any enactment, including any powers in relation to the compulsory acquisition of land, in relation to its functions under this section and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land.

Mr Flanagan quoted s213(1)(i) of the act, in terms of land acquisition, the power conferred on a Local Authority under any enactment to acquire land shall be construed in accordance with this section to acquire land, permanently or temporarily, by agreement or compulsorily. Mr Flanagan noted that under s212(1) the power conferred on a Local Authority is to be constructed in accordance with 213(4). Mr Flanagan referred to s213(2)a) of the act which stated that a Local Authority may, for the purposes of performing any of its functions including giving effect to or facilitating the implementation of its development plan. He stated that regard the proposed development was for a clearly identified purpose, that was approved in the Part process. He stated that the board was not being asked to approve "the works". The works have already been approved under a public consultation process. All of the parties have had an opportunity to make representations during the course of the part 8 process in relation to the works themselves. Mr Flanagan stated that Mr Corr's clients are exercised by some "works" and noted again that those had already been approved in 2013. Mr Flanagan stated that therefore, the question was whether or not any of the objections were sustainable not having regard to the works that are already approved.

Referring to the test by which An Bord Pleanála will confirm a compulsory acquisition which is a different test to that of a normal planning appeal. Mr Flanagan stated that there was within the Part 8 process a consideration of the works included in the proposed development, noting the references in the Managers report to consideration of the environment, built heritage and the National Monuments Service. He noted that the approved development as part of the Part 8 process had incorporated various guidelines such as the NRA Landscape & Visual Assessment guidelines and the Noise & Vibration guidelines. He noted that the approved works were screened for EIA and AA. In reference to the Managers Report carried out as part of the Part 8 process, Mr Flanagan noted that matters of boundary treatment / fencing had been raised and addressed in the planning report as had the NRA guidance on drainage. Noting that the matters had been approved by the elected representatives of the Council, he stated that the “works” of the proposed development had been considered through the process of public engagement and had been approved of themselves.

Regarding the general principles, Mr Flanagan stated that unquestionably the purpose of public need had been met – that the proposed development was primarily to address the safety of the road and its use by all users, particularly vulnerable road users. He stated that there was also a local and regional context of allowing people to move in comfort and safety on an intra and inter regional road which was an important national route. Regarding the consideration of alternatives and noting that this consideration was not akin to EIA alternatives but only alternative land acquisition, the subject development was stated to be the preferred option.

The final legal argument raised by Mr Flanagan was the power of the Board under s217(c) to confirm a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof. He stated that conditions could only relate to matters such as the temporary or permanent acquisition or where surplus land was identified. The imposition of work is not something the board could consider. Mr Flanagan stated that the remaining objections appeared to relate to the works themselves as distinct to the meeting of the public need and therefore they were not grounds for not confirming the Order. They were not sustainable grounds for any change to the order as presented to the Board. Mr Flanagan stated that RCC as a road authority say that they have satisfied the legal test and ask that order be confirmed as proposed with the amended schedule.

Concludes the councils evidence.

Re-opening of the hearing.

Mr Corr requested that he be given permission to question the Council based on their evidence this morning. Regarding the argument of RCC that the objections related only to works, he noted the precedent set in the Ballaghadereen by-pass case where his client’s similar argument was accepted as a sustainable ground of objection by the Board.

Mr Corr noted that the current development plan 2014-2020, page 223, section 9 second paragraph, stated that it is an objective of the Council to ensure that planning permissions granted are consistent with the policies and objectives set out in the CDP and the proper planning and sustainable development of the area. He referred to section 9.5.2 of the plan which deals with roadside boundaries, which stated that the following roadside boundary treatments are encouraged - where hedgerows or stone walls are removed to facilitate a new development or upgrade a new development the replacement boundary treatment should endeavour to replicate the removed or disturbed boundary. Replacement stone walls should endeavour to utilise salvaged stone from existing walls and attempt to visually integrate new construction with established patterns in the immediate vicinity. The wall that would go back would be very similar to the wall that was taken down. He put it to RCC that it is in their own development plan that they are seeking to reconstruct similar boundaries where possible.

Ms Grier referred to chapter 9, 9.5.2 which deals with roadside boundaries. She said that the first sentence is key – “are encouraged in appropriate circumstances” they are not mandatory. The policy and objectives which refer to stone wall walls. The instances in which stone walls would be required to be replaced would be where the structure was protected, or if it was in an architectural conservation area or of the stone walls had been identified as being part of an important wildlife corridor. None of those circumstances existed in this instance. This is a new development, it is not the replacement of walls/ stone walls. It is advice that is provided, it isn't prescriptive, there is scope for consideration to be given to appropriate circumstances. The policy refers to “if intact and worthy of preservation for aesthetic and ecological reasons”

Mr Corr moved on to pg. 6, section 5.2.3 objective 7.5 – the plan stated to protect and promote the conservation of biodiversity outside of designated sites while allowing for appropriate development, access and recreational activity. Mr Corr said a stone wall provides a particular type of biodiversity and is a particular type of habitat in itself. He stated that the focus has been on hedgerows and a stone wall is a different habitat to a hedge and should it not be given serious consideration given the biodiversity commitment?

Inspector interrupted – is this a general objection or a particular plot? Two clients both have one single major objection and that is that the Council is not intending to replace the stone wall.

Ms Grier responded – objective 7.5 is a general reference to protect biodiversity. It isn't prescriptive. Hedgerows are mentioned as they are a key feature of the proposal, they themselves are important in encouraging biodiversity but assessment of development needs to be looked at within a whole suite of policies.

Mr Corr moved on to objective 7.9: retain where feasible and enhance important landscape features such as stone walls, hedgerows etc. which form wildlife corridors and link habitats. He asked the Council to comment. Ms Grier

responded – “retain where feasible” no suggestion that there are important wildlife corridors in this particular area. It is not a designated site, for any particular species. Suggested that this objective does not pertain to this development. Mr Corr suggested that it is actually feasible to retain in this scenario. Alan Mulryan stated that a post & rail fence with a hedge is proposed, noting the safety concerns when replacing boundary treatments. The outcome in relation to collisions with stone walls are far more severe. He stated that the Council would not be advocating the replacement of stone walls on that basis.

Mr Corr, noting built heritage in 7.5.2.2 of Ms Grier's statement. He put it to RCC that stone walls are widespread in the west of Ireland part of the built heritage. Ms Grier confirmed, yes they are part of the built heritage, these walls are local features, aren't identified as being any way unique, are not protected, are part of the local vernacular.

Mr Corr asked if a farmer decided that he would take out all of the stone walls in his property and along the road frontage, would that create a problem for RCC? Ms Greir responded there are certain boundary works that can be undertaken as exempted development. In the event that they create a traffic hazard the exemption is removed, so all proposals must be dealt with on a case by case basis. Ms Grier recommended that a section 5 declaration be sought.

Mr Corr asked “If a farmer that he would take out the roadside boundary himself, would he have to apply for pp and what would the attitude be”? Ms Grier responded- it gives rise to a traffic hazard, it is de-exempted. Mr Corr asked - If the farmer was going to put in the RCD3001 fence, RCC would not have a problem with him taking out all his walls? Ms Grier responded it would be a case of determining the proposal. Would there be any circumstances that the council would reuse the request? Inspector interrupt and asked Mr Corr to move on to his next issue.

Mr Corr asked: in relation to planning what is the Council's policy where stone wall is removed for the building of a new dwelling house? Does the council promote a stone wall boundary replacement? Ms Grier responded – our policy on reinstatement is “it is encouraged”. Variety of treatments proposed, the Council consider each on a case by case basis based on locational circumstances

Mr Mulryan advised that the proposed development has a distinction between boundary treatments for agricultural land and existing dwellings houses. As outlined in the brief of evidence, in relation boundary treatment in front of houses is on a like-for-like basis and for agricultural land the boundary treatment is timber post and rail in accordance with RCD3001.

Mr Corr asked: in the case of domestic boundaries it is okay to have boundary walls to be replaced? Mr Mulryan responded: Yes on a like for like basis. Mr Corr asked - Why does the council not prohibit the building of stone walls for safety reason as mentioned earlier? Mr Mulryan noted that in front of a house

is a very short section 20/30m in front of a house. That's referred to in section 6.1.2 subject to safety considerations.

Mr Corr asked - In relation to the existing boundary before any works are done, who is responsible currently for maintenance of the roadside boundary? Mr Mulryan - the responsibility lies with the landowner. Mr Corr asked - Has there been any issue with the maintenance of the boundary with the two landowners.? Mr Mulryan - No, walls are reasonably maintained. Mr Corr - My clients are quite happy to take on the maintenance of the walls if the Council would construct them. They are happy to drop the TII agreement which requires the Council to maintain. RCC have honed in on the maintenance but in both clients they would maintain the wall themselves. The council have had no problems with either landowner.

Mr Corr referred to the letter dated 16 march 2016 which refers to IFA / TII agreement. He asked RCC what is the status of the agreement legally? Mr Flanagan – in 2000 there was an agreement between the IFA and TII which various commitments were given to advance projects where agricultural land was concerned. It's an agreement to be honoured in the legal sense. It is not binding on An Bord Pleanála in that it is agreement between the TII and the IFA. It relates to their proposals for the maintenance of stick proof fencing. If the effected landowner that can be a matter for negotiation. In the past the landowners complained that stick proof fencing wasn't being maintained. Not to be forced upon on a landowner.

Mr Corr posed a question to RCC- Does a landowner have to accept accommodation works proposed by a Local Authority? Mr Flanagan – there is a distinction – there are works which are to be done within the CPO land take which are works to which the compulsory acquisition relates, those are commitments that are given & funded by the road scheme. If those works are implemented on the land acquired they are within land under the control of the acquiring authority. If we have a confirmed CPO there are negotiations in relation to compensation issues. There can be a situation in relation to the retained lands and in lieu of monetary compensation, the acquiring authority can agree to do works within the retained lands or on the border. That is solely by agreement by the parties and these are in compensation terms known as accommodation works are as they are done in lieu of compensation. There are scheme works and works as part of the compensation package. Mr Corr – in relation to Dominic Gunning, he has made it very clear that he will build a stone all himself on the lands he still owns and it is nonsense that an expensive fence paid for by taxpayers money. Doesn't make sense to see the fence and immediately inside it a stone wall. Mr Corr asked the Council would they not consider putting up a temporary stock proof fence along the line of the fence which could then be removed and saving of taxpayers money, could be given to my client to help the fund the wall that he will build. Mr Flanagan responded - these are matters that may require planning permission. Each party will have to consider the safety considerations and this is for another day.

Mr Corr asked RCC: on non-national roads where TII is not involved do the Council ever construct stone walls where they have removed them?. Mr Mulryan – non-national roads that are not associated with TII there are instance where the Local Authority would in agreement with the landowner build a stone wall. In this instance the safety considerations of the national road apply.

Mr Corr suggested that the Council are being dictated to by TII and effectively the boundaries that they are proposing are not in keeping with their own CDP.

Mr Corr stated that the Council have said already that a landowner can opt of the IFA agreement. Mr Flanagan responded – yes, it is an agreement between the IFA. He noted that the fencing they were proposing will be within inside the CPO acquired lands. The Council are maintaining a fence that will be within their control. That's the context in which the agreement has arisen. He stated that this is a positive commitment that it will remain stock proof and remain durable. Mr Corr stated that a landowner can opt out of the agreement if he chooses. Both landowners will take on the maintenance themselves. He suggests that the IFA would agree and would support that position.

Mr Corr concludes his statement: Stone walls are a very positive landscape feature in the west of Ireland. Many are in existence for 100s of years and the ones in this particular instance have been in existence for 100s of years. These form a national heritage and positive environmental legacy handed down by previous generations. They are meticulously maintained by landowners and are in meticulous intact condition, to be passed on to the next generation. Roscommon CDP page 228 section 9.5.2 stated that where hedgerows or stone walls are removed to facilitate a new development or upgrade an existing development, that the following roadside boundary treatments are encouraged - where hedgerows or stone walls are removed to facilitate a new development or upgrade a new development the replacement boundary treatment should endeavour to replicate the removed or disturbed boundary. Replacement stone walls should endeavour to utilise salvaged stone from existing walls and attempt to visually integrate new construction with established patterns in the immediate vicinity.

Mr Corr suggested therefore that the proposal to not replace the stone wall boundaries was out of line with the aspiration with the development plan. He stated that in relation to his two clients, they both have built stone walls extensively, both are very attached to the rural landscape and all its features. He stated that this was a matter of principle, not of compensation. Stone walls provide excellent shelter for sheep and in particular young lambs and ewes this is very relevant as both are in sheep. The land does not suit the growing of hedges and that is why stone walls have become such a major feature of the landscape in this area. He noted the high lime content, low moisture content and unsuitable depth of soil. He stated that in the UK there is better regard for the reinstatement of existing farm boundaries, and hedges are planted on top of clay & stone banks. They consider the reinstatement of these boundaries as good planning policy. TII does not take the same attitude. The TII are the funding authority. Their policy is like for like but in fact

they do not do this in practice. They do not put back stone walls. Their policy is to construct the fencing. There was a precedent set where landowners were given compensation equal to the cost of reinstating stone walls. This was a recognition of the importance of stone walls in Galway. From a road safety perspective, both stretches are long and straight and the new carriageway will be significantly wider with a hard shoulder and grass verge. In addition the wall is a dry stone wall with no mortar or cement. This is unlike walls on national roads which would arguably pose a bigger traffic hazard as they are less yielding.

Mr Corr noted the desire of Bovale to comment on the IFA agreement- the IFA agreement only applies where a landowner wishes it to apply. It is not obligatory, it is non statutory. The provision of stock proof boundaries can be taken on by both clients,. They do not need the Councils commitment. Both individuals are competent and will be able to maintain the walls. The council have confirmed there are no past problems. The existing walls are closer to cars than will be under the new road development. The maintenance clause is being used incorrectly and unfairly. The IFA have not been consulted on the use of this clause, to help justify the council to enforce the removal of the walls. It is suggested that the IFA would be disappointed to see that the agreement is effectively assisting the council in their argument that they should not be reinstating the stone wall. The practice of not reinstating existing boundary types has always been a source of annoyance and discontent for landowners. Just because it has built up does not mean it is correct. Consistent approach to boundary treatments is not necessarily the correct approach from the council. It will be very monotonous to drive along and see no difference in the boundary. Well-constructed stone walls appearing periodically would be a positive from a visual perspective. If the landowners agree to maintain the boundaries they should be facilitated.

Mr Corr stated that at dwelling houses, walls are replaced on a like for like basis. These walls are not refused for house owners. He stated that there was no basis to reconstruct stone walls on maintenance or safety grounds. Bord Gais another state body does build boundaries on a like for like basis on all road developments. The clay stone banks with hedge on top or they will rebuild a stone wall. That concluded his submission.

#### Inspector Questions:

1. Inspector asked Mr Mulryan if the route options formed part of the public consultation of the Part 8 Process. Mr Mulryan stated that the options informed the process but the three options were not put to the public during the process.
2. In relation to plot 225a.01 permanent acquisition of parcel of agricultural land Bovale Developments, the Inspector asked about the extent of the land take. Mr Mulryan confirmed that the plot formed part of the drainage channel.
3. In relation to the amendments to the schedule submitted during the hearing, the Inspector asked the Council to confirm that this was being done with the consent of the landowners. Mr Corr stated that he had made representations on behalf of those landowners he represented

and requested that the recessed entrances be made on a temporary basis. He noted that the permanent acquisition of recessed entrances can create problems at a later date if the council own a wedge of land into private property. He stated that the use of temporary acquisition of recessed entrances should be the norm in all CPO's. Mr Mulryan, responding for the Council stated that the measure was to facilitate the 5 no. landowners who had requested it. In response to the Inspectors comment that this benefit should have been extended to all landowners and not just those who had objected to the scheme, Mr Flanagan stated that during the construction phase, if a notice to treat is served on a landowner, there can be negotiations as to how the ultimate conveyance will be. As a general proposition once the construction works are done at the conveyancing stage the land take can be reduced, that formalisation of the agreement has happened prior to the confirmation of the CPO but it can occur prior to conveyancing

Closing submission – Mr Corr: general comment the was instructed to make: even if An Bord Pleanála approve the scheme as is, his client has taken legal advice and will take a JR to the European court.

Closing submission RCC: Mr Flanagan – as far as policy considerations are concerned be they local regional or national, under s143 of the act the Board has to have regard to policy at different levels. He stated that one has to “have regard to” policy and that doesn't mean slavish adherence. He invited the Board to consider policy in the round, noting that there are a number of different objectives in a plan dealing with transportation and pure planning. He asked that the Board look at all of the different policies. He stated that RCC have looked at all policies and overall the safety implications of this road. The words to be interpreted are “to encourage” and “where feasible” and this means where there are competing policies the decision maker has to have regard to the importance to be attached in the individual circumstances. He stated that when you look at those there isn't any binding obligation in relation to the retention of walls. He noted s9 of the development management guidelines and stated that these relate to applications for private planning permission. The subject development is a public project and is strictly speaking exempted development subject to the part 8 procedure.

To summarise the question remains to be asked whether or not any of the points made give rise to sustainable grounds for exclusion of their lands from the compulsory acquisition schedule. In the option of RCC, they are not sustainable grounds in the legal sense. Mr Flanagan reaffirmed that there are 3 consents already in place, the part 8 approval, the section 50 consent from the OPW and the s14 consent under the national monuments act. Asked that the board confirm the compulsory acquisition in accordance with the amended schedule.

**Inspector closed the Hearing.**



## APPENDIX 2 PHOTOGRAPHS