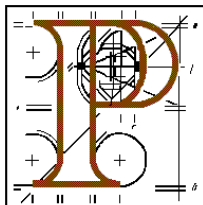


An Bord Pleanála



Inspector's Report

Compulsory Purchase Order:	Irish Water Compulsory Purchase (Rush Wastewater Collection Scheme) Order 2016
Public Authority:	Irish Water
Objectors:	Andrew and Dorothea Donohue Christopher Murtagh
Date of Site Inspection:	21st April & 3 rd May 2016
Date of Hearing:	29 th April 2016
Inspector:	Una Crosse

1. INTRODUCTION

This is an application by Irish Water for confirmation by the Board of a Compulsory Purchase Order entitled Irish Water Compulsory Purchase (Rush Wastewater Collection Scheme) Order 2016 made under section 76 and the Third Schedule to the Housing Act 1966 as extended by Section 10 of the Local Government Act (No 2) Act 1960 (as substituted by section 86 of the Housing Act 1966) as amended by Section 6 and the Second Schedule to the Road Act 1993 and the Planning and Development Acts 2000 to 2014 and as applied by Section 93 of the Water Services Act 2007 as amended.

Irish Water, pursuant to Section 7 of the Water Services (No. 2) Act, 2013 is carrying out the functions of a Water Services Authority for the purposes of the Water Services Act, 2007.

The purpose of the CPO as outlined in the documentation received is to progress the Portrane, Donabate, Rush and Lusk Waste Water Treatment Scheme (WWTS) and in particular to undertake the upgrade and rehabilitation of the existing waste water collection networks within the community of Rush including construction of new pumping stations at North Beach, East Shore and South Shore. This element of the overall scheme is known as the Rush Waste Water Collection Network (WWCN).

Two objections were received to the CPO. An oral hearing to consider these objections was held on the 29th April 2016 at the Offices of An Bord Pleanála, 64 Marlborough Street, Dublin 1.

2. DETAILS OF THE CPO

As noted above, the development comprises the upgrade and rehabilitation of the existing waste water collection networks within the community of Rush including the construction of 3 new pumping stations at North Beach, East Shore and South Shore. This element of the overall scheme is known as the Rush Waste Water Collection Network (WWCN) (Scheme).

The land to be acquired comprises 65 separate plots involving a multiplicity of landowners and illustrated on drawings prepared and published by Irish Water which are numbered as follows:

- IW/10001483/CPO/001;
- IW/10001483/CPO/002;
- IW/10001483/CPO/003;
- IW/10001483/CPO/004.

The documents submitted by Irish Water in support of the CPO included the CPO Schedule, Form of Notice, the drawings as outlined above and the Newspaper Notice dated 3rd February 2016 which was re-advertised on 10th February due to an error in the format in the first publication.

An **Engineers Report** was submitted which may be summarized as follows;

The purpose of the CPO as outlined is to progress the Portrane, Donabate, Rush and Lusk Waste Water Treatment Scheme (WWTS). Three elements of the scheme have been completely to date. These are a new waste water treatment plant together with a marine outfall at Portrane; a waste water pumping station at Whitestown in Rush to transfer waste water from Rush and Lusk to the Portrane Plant; and a waste water pumping station along the R126 in Portrane to transfer waste water from Portrane and Donabate to the Portrane plant. One of the two remaining elements includes the upgrading and rehabilitation of the existing waste water collection networks within Portrane and Donabate with 4 pumping stations.

The second of the two remaining elements outlined is the subject development which the report outlines. It is stated that the Rush WWCN consists of the construction of three new pumping stations as detailed above, decommissioning of two existing pumping stations and the installation of new rising mains and gravity sewers. The works are stated to be required so as to comply with the Urban Waste Water Directive, is necessary and in the common good. The planning history is outlined (see section 5 below).

It is stated that during the preliminary design process numerous pipe route corridors were examined with the proposed network considered to be the most feasible but it was determined that lands not in the ownership of Fingal County Council/Irish Water would be required. The lands are required for permanent land acquisitions, permanent wayleaves and temporary working areas. It is stated that attempts were made to acquire the lands, permanent wayleaves and temporary working areas by agreement but it was not possible for a number of reasons set out as follows:

- Part of the lands concerned are unregistered and correct owners could not be determined in some cases;
- Some land transfers not been finalized;
- Landowners unwilling to engage with wayleave requests;

The report notes at section 5 that Irish Water is satisfied that all reasonable alternatives have been fully considered and these lands and rights over land are necessary for this scheme and suitable for the purpose for which they are required. It is stated that it is required to invoke the CPO procedure for the lands and rights over land required as it is unlikely that the land could be acquired by agreement in a timely manner. At section 6 it states that Irish Water are satisfied that the proposed CPO is in order from a sustainable development perspective and is in the community interest and is required to assist Irish Water in fulfilling its duties and functions under the Water Services Act 2007.

Additional documentation was received from Fingal County Council on 6th April 2016 providing documentation related to the Part VIII procedures for Ref. F594/06 and Ref. F456/13 the East and South Pumping Stations and the North Pumping Station respectively.

3. GROUNDS OF OBJECTION RECEIVED BY THE BOARD

Two objections were received by the Board. The grounds of objection received by the Board may be summarized as follows:

- 1) Andrew and Dorothea Donohue represented by Dermot McNamara & Company Solicitors – reference to plots 065 & 066 - state:
 - Plot 066 is already owned by Fingal County Council and not the objectors.
 - Understand that Irish Water seeking acquisition of Plot 065 merely to improve access to the site with permanent acquisition not necessary in these circumstances.
 - Objectors have no objection to giving temporary wayleaves/licenses in order to facilitate the construction work.
- 2) Christopher Murtagh's objection – reference to Plot 032 - states;
 - Loss of amenity of a very substantial part of the property;
 - Loss of visual amenity of a very substantial part of the property;
 - Loss of development potential of substantial 1 acre site;
 - Potential environmental issues (e.g. odour) and potential impact on property value;
 - General impact on property value;

4. POLICY FRAMEWORK

The Fingal County Development Plan 2011-2017 refers to Water Services at Section 4.2. It is stated that a major investment programme is continuing to upgrade these wastewater plants and to construct new ones in urban areas in order to comply with the requirements of the Urban Waste Water Treatment Directive and to provide for new development in a phased and sustainable manner. A treatment plant is stated to be under construction in Portrane which will serve a p.e. of 65,000 and is due to be operational in 2012.

Objective WT01 seeks to develop and expand, in an environmentally sustainable manner which accords with the urban settlement hierarchy, the drainage systems for the County, in order to ensure the supply of serviced land for residential, commercial and industrial development.

Table WT01 sets out the foul drainage and wastewater schemes in the Fingal Area. Scheme No. 2 is Portrane/Donabate/Rush/Lusk WWT Scheme

Objective WT02 seeks to facilitate the provision of wastewater treatment systems in order to ensure compliance with the Water Framework Directive and the Urban Waste Water Directive.

Objective AA1 seeks to ensure that all plans and projects in the County which could, either individually or in combination with other plans and projects, have a significant effect on a Natura 2000 site (or sites) will be subject to Appropriate Assessment Screening.

Zoning Objectives on Lands

Plots 1-30 - located in a mix of zones 'RS' Residential and 'HA' high Amenity.

Plots 31-33 – located on lands zoned 'HA' – high amenity;

Plots 34-61 – located on a mix of lands zoned 'OS' open space, 'RA' residential area and 'RS' Residential.

Plots 62-63 – located on lands zoned 'TC' town centre and district centre;

Plots 64-66 – located on a mix of land zoned 'RS' residential and 'HA' high amenity.

Rush Kenure Local Area Plan 2009-2019

This LAP applies to lands in the vicinity of Kenure Park with Plots 034-061 located within the boundary of the LAP. There are a number of objectives on the site including a proposed pedestrian crossing on Palmer (Park) Road and a proposed pedestrian/cycle route along the southern bank of the Brook Stream.

5. HISTORY

The Planning Authority have provided a very detailed planning history report of the entire lands subject of this CPO. It is attached to the file. For ease of reference the following applications and reports are considered to be of relevance and are provided chronologically.

- **Ref. EF06F.EF2004** - An Environmental Impact Statement was submitted to An Bord Pleanála for the Portrane Waste Water Treatment Plant, marine outfall and pumping stations in Portrane and Donabate and was approved in April 2003.
- Preliminary Report on Rush and Lusk Waste Water Scheme, 2004;
- Portrane, Donabate, Rush & Lusk Waste Water Treatment Scheme Design Review Report May 2006 notes the difficulty with using some of the existing sewer pipes and the need for an alternative solution. The requirement for 3 pumping stations is also set out at section 3.7.3.
- **Ref. F/594/06** - Planning consent was sought by Fingal County Council for the East Shore and South Shore pumping stations in 2006 under Part 8 of the Planning and Development Regulations 2001-2013. Consent was given in September 2006. (Planning Report for this proposal is on file). Two screening reports for Appropriate Assessment dated April 2016 have been submitted for the Proposed Waste Water pumping stations at East Shore and South Shore in Rush.
- **Ref. F/456/13** – Fingal County Council gave consent in September 2013 for the North Beach pumping station following a Part 8 public consultation process. A planning report for this proposed is included on file. This report contains a screening for appropriate assessment.

6. DESCRIPTION OF THE LANDS

For ease of reference I have divided the lands which are the subject of this CPO into 4 separate areas. I have aerial photographs of each of the 4 sections in the photos attached with the areas indicated.

The first area is a small area of ground comprising plots 062 & 063 located adjacent to the Tesco Store on Whitestown Road comprising a paved open area of ground leading to the store entrance.

The second area is a linear area of green space which runs from Palmer (Park) Road to the Skerries Road and comprises Plots 034 to 061. These plots comprise lands adjacent to and to the south of the Brook stream and some of the Plots are within the boundary of Kenure Park, a public amenity maintained by the Local Authority. To the east, plots 048-061 are located adjacent to the Golden Ridge housing development and are adjacent to a privately operated wastewater treatment plant.

The third area of ground comprises a number of parcels of land in close proximity to each other. It includes Plot 001 a strip of open ground fronting onto South Shore Road opposite the Caravan Park. The next area comprises Plot 002 & 003 and is an area of ground between the end of South Shore Road and the beach car park. The next area comprises Plots 005-020 and includes part of the South Beach Car Park and the green area behind same including the site of the existing South Shore pumping station which also includes public toilet facilities. The remainder of this area comprises tracts of land addressing the lane running parallel to the sea and traversed by Bawn Road and Old Barrack Road. These include Plots 021-030.

The fourth area is an area of ground from Tower Street to the edge of the coastline north of the Martello Tower and comprises Plots 031-033 and Plots 064-066. This area of land is located for the most part to the rear of existing properties addressing Tower Street with an open plot of ground between two properties directly addressing Tower Street.

7. REPORT OF THE ORAL HEARING

The oral hearing opened at 11am on the 29th April 2016 in the Offices of An Bord Pleanála and concluded at 14.20. The following is a summary of the submissions, questions and closings. A recording of the hearing has been made.

Irish Water Submission

Carol O'Farrell, BL representing Irish Water provided an overview of the scheme and the need for the compulsory purchase of the lands.

Michael Tinsley of Irish Water provided an overview of the CPO process to date. He also outlined the need for the scheme in the context of the Urban Waste Water Treatment Directive and the terms of the Discharge License. The written submission is included in the pouch.

Bryan Harrington of JB Barry & Partners responded to matters arising in the objection of Mr Donohue relating to Plot 65. The process to date in respect of the East Shore pumping station was outlined. Since the Part 8 process, it was stated that development of the design has resulted in a requirement to acquire plot 65. The issues which have arisen include: 1. The need to ensure adequate vehicle access to the pumping station site; 2. The need to ensure the ability to maintain sewers located in the access and, 3. The need to avoid a significant vertical drop between adjacent properties. The written submission is included in the pouch.

Gordon Barry of JB Barry & Partners provided an outline of the project and design development and the existing collection network. He also provided an overview of the scheme design and how the scheme has progressed to date. He then outlined the land acquisition requirements in respect of the overall scheme. In respect of Mr Murtaghs property (Plots 031, 032 & 033) the existing situation on the property was outlined as was the need for the wayleave. The matter of odour on Mr. Murtaghs property was also addressed. The written submission is included in the pouch.

Fingal County Council

Mr **Peter Byrne**, Senior Planner and Ms **Philippa Joyce**, A/SEP presented the hearing with a report which provided a description of the plots included in the CPO, planning history of the 65 plots which are outlined in maps and zoning maps, extracts from the CDP and extracts from landuse zonings and extracts from most recent LAP for Rush the Kenure Rush LAP which has been extended to 2019. This report is attached in the pouch. **Questions** were put to **Fingal County Council** from the objectors. These included the current development potential of lands owned by the objectors, an extant permission on the Murtagh property (Ref. F07A/1289) and the principle of development on this site. The use of interim temporary treatment systems and site size to facilitate same. Fingal County Council outlined their policy in relation to interim temporary treatment systems. The Inspector asked about the current capacity constraints in Rush and the schemes compliance with Development Plan policy.

The Objectors

Mr **Christopher Murtagh** and his son **Rory** were represented by Mr. **Joe Corr** who provided an oral submission to the hearing. The matters raised included the grounds included in the objection. Mr Corr expressed concern at the length of time it has taken to develop the scheme which has led to uncertainty for Mr. Murtagh. The principle of

the project is supported. The alternative consideration for removing the existing sewer from Mr Murtaghs property and taking it down Tower Street removing the need for Mr Murtaghs property was outlined.

Mr **Andrew Donohue** was represented by Mr. **Mark Kelly**, Architect who provided an oral submission to the hearing. The matters raised included the acquisition of Plot 066 from the Donohues by Fingal County Council with Plot 065 provided to them in exchange with the intention to develop a dwellinghouse on the site. It was stated that it was considered that there was not a necessity for acquisition of the land with a wayleave considered more appropriate. This had been the position until the party was contacted in recent weeks and informed that acquisition rather than a wayleave was now proposed. Alternatives, it was stated, were available and suggestions have been put forward to Irish Water with a way achievable to provide a limited acquisition/wayleave. Possible width of wayleaves for the infrastructure proposed outlined with alternatives outlined. Less than 5m wayleave would be acceptable.

Questions of Irish Water

Mr. Corr's questions related to the existing sewer on site and whether the alternative of running this sewer along Tower Street and into the new pumping station and eliminating the need to use Mr. Murtaghs land was considered. Irish Water stated that this alternative route was addressed but the position of a number of terraced houses on Tower Street so close to the road and risk associated with same made the proposed option more appropriate. Mr. Corr requested a copy of the report which stated this was not an alternative. Such a report was stated not to exist. Mr. Barry outlined further details of the discussions undertaken to investigate this option and Mr. Tinsley noted that this sewer is an existing sewer. Mr. Corr reiterated that no wayleave would be required if this sewer was rerouted. The delivery of the scheme and the time taken was questioned. Irish Water responded to state that since they took over in 2014 that they have prioritized the scheme.

Mr. Kelly's question related to the alternatives they put to Irish Water in respect of amending Plot 065. Irish Water responded regarding the risk scenarios considered and attendant decision to seek acquisition. Irish Water stated that the wayleaves suggested by Mr. Kelly were tight. Mr. Kelly outlined his considerations. Irish Water stated that the move to acquire the property has come from design considerations. Mr. Kelly stated it was unfortunate that this requirement should have been raised when the matter of Plot 066 was being considered. Mr. Tinsley of Irish Water outlined the standards Irish Water are seeking to set out

and the 10m wayleave they are seeking to create. The widths Mr. Kelly outlined, he stated, would not be seen on new build schemes and he outlined that the wayleave for a trunk sewer and other critical infrastructure and widths should not be compromised. Mr. Kelly asked whether the discussions would continue in respect of alternatives and Irish Water decided not to respond. The Inspector asked questions of the Objectors including ownership of plots, reference to plots, the poisoning of lands by the HSE, access to lands.

Questions of the Objectors

Irish Water sought clarification from Mr. Kelly on the exchange of Plot 065 and 066. The Inspector clarified a number of matters relating the reference to plots, access to lands, and ownership of Plot 066.

Closing Statements

Ms. O'Farrell summed up for Irish Water reprising some of the points already made.

8. ASSESSMENT

In addition to addressing the matters raised in the objections as outlined in Section 8.5, the following are the matters which are 4 tests considered to be relevant in relation to the consideration of the CPO.

- (1) The community need to be met by the proposed land acquisition;
- (2) Suitability of property to meet the community need;
- (3) Works to be carried out on the property accord with the development Plan under the Planning Acts;
- (4) Any alternative methods of meeting the community needs have been considered but are not available.

8.1 The community need to be met by the proposed land acquisition

The Rush wastewater collection network is part of the wider Portrane Donabate, Rush and Lusk Wastewater Treatment scheme which is being delivered in phases and provides for the treatment of wastewater from these towns. The Rush wastewater collection scheme is one element of the scheme but one which all parties agree is essential for the future development of Rush. During the oral hearing it was clear that the landowners involved did not object to the Wastewater collection network in principle, but raised matters of concern which I will address in the following sections. Currently, untreated effluent from a large part of the urban area of Rush is discharging directly to the Irish Sea via an outfall on the shore to the rear of properties on Tower Street.

The Urban Waste Water Treatment Regulations 2001-2010 give effect in Ireland to the requirements of the Urban Wastewater Treatment Directive 1991. As noted by Mr. Tinsley of Irish Water in his brief of evidence to the hearing, the most recent EPA report on Urban Waste Water Treatment Compliance for 2014 highlighted that Rush, with the current situation of direct discharge of untreated sewage, is non-compliant with the Directive giving rise to the potential of prosecution.

A discharge license issued under the Waste Water Discharge (Authorisation) Regulation's 2007 by the EPA to Fingal County Council (transferred in 2014 to Irish Water) for Rush in September 2010 is currently non-compliant. The discharge license requires that the primary discharge (SW1 near the Martello Tower) should have ceased on or before 21st December 2014. Reference was also made to the EPA published Bathing Water in Ireland Report for 2015 which recorded the bathing water quality at Rush South Beach as poor with episodic pollution arising.

Therefore to remedy these breaches of the Directive and to comply with the license the Rush Wastewater collection network project is being advanced which, as stated by Irish Water in Mr. Tinsley's evidence, upon completion will bring Rush into compliance with the Directive and License and will remove the threat to bathing waters and public health. The scheme duration is anticipated as being 24-30 months until completion.

I would suggest to the Board that the community need and public interest served by the proposed land acquisition is both clear and definitive. It is considered therefore that the case for the community need for the proposed wastewater collection network has been established and can be justified in the interest of the common good.

8.2 Suitability of property to meet the community need

I will address the matter of suitability of the property to meet community need in broadly the same format as I address alternatives in Section 8.4 below. This follows the format used by Mr. Gordon Barry in his brief of evidence to the hearing and allows some continuity for the Board in assessing the matters in respect of the plots of land. I would note that the matter of compliance with development plan policy is addressed separately in the next section.

Plots 001-003 and Plots 005-020

It was stated that Plots 001-003 are required to facilitate the South Shore Rising Main and the South Shore Sewer West with both

pipelines to be laid adjacent to each other where additional land is required. It is stated that the location of the existing sewer requiring upgrade effectively determined the route for the associated rising main. Plots 005-020 are required for the provision of the South Shore pumping station. This element focused around the convergence of the southern catchment sewers from the north and west at the site of the existing pumping station with any new site required to be proximate to the existing to avoid having to extend existing sewers. These sites are, in my opinion, suitable for the development having regard to their location, appropriate topography for the construction required, existing use in the case of the pumping station site, and the absence of sensitive designations on the sites particularly having regard to their proximity to sensitive areas.

Plots 021-030

These plots provide for the construction of the East Shore Rising Main which is proposed to pump flows from the East Shore pumping station to the South Shore pumping station. The location of the pipeline primarily in public roads other than a few locations where the road narrows provides these sites are suitable to meet the community need.

Plots 034-055 and Plots 056-061

The two pipelines are proposed to be laid adjacent to each other in Plots 034-055. The North Beach Rising Main is required to transfer flows from the North Beach pumping station to the western catchment sewer at the junction of Whitestown Road and Chapel Green. The route is along the southern bank of the Brook Stream onto Palmer Road. The lands are zoned open space and it is considered that given the location of the infrastructure below ground that the sites which are flat and undeveloped would be suitable to meet the need. It is not considered that the development would impact on any proposals to develop a cycle/pedestrian route overground. Plots 056-061 are required to provide the North Beach Pumping Station. The lands are undeveloped currently with a bridge over the stream adjacent to the site of the pumping station. This bridge and any pedestrian route would not be compromised by the pumping station which is a small scale structure.

Plots 062-063

It is stated that the Whitestown Road Sewer connection provides for an adjustment of an existing sewer on private lands to avoid the creation of a hairpin bend in the network. The lands while paved do not accommodate any type of development and therefore they would be suitable for the need proposed.

In respect of the lands which are the subject of the two objections I will address each in turn.

Plots 031-033 and Plots 064-066

The plots above are required to permit the provision of the East Shore pumping station. Plots 064, 065 & 066 are required to be permanently acquired in order to construct the pumping station and access road. A permanent wayleave is required on Plot 031 for the connection to the existing sewer and the existing sewer and marine outfall which is to be utilised for storm water overflows. Plots 032 and 033 are required for temporary working space. The lands at 031-033 are located adjacent to the shore and zoned high amenity. The ground is relatively flat and does not accommodate any existing development. Equally plots 064-066 do not accommodate any existing development, are relatively flat although there is a level change between the public road on Tower Street and the site of the proposed pumping station. The lands, are in my opinion, suitable to meet the need outlined.

8.3 Works to be carried out on the property accord with the Development Plan under the Planning Acts

The Development Plan which applies to the area is the current Fingal County Development Plan 2011 – 2017. In respect of strategic planning policy, in the Fingal Settlement Strategy, Rush is identified as a moderate Sustainable Growth Town. The Fingal County Council submission to the hearing stated at page 4 (section 5.1) that the core strategy envisages that the potential capacity of zoned lands is 2,503 no. residential units, 1,721 of which were constrained due to infrastructural issues. I would note that Mr. Peter Byrne, Senior Planner Fingal County Council stated at the hearing that without the scheme that the Rush Core Strategy cannot be met and the upgrades are required as speedily as possible. The core strategy is a central element of the Development Plan policy for the area and therefore the scheme would appear to be critical to meeting strategic development plan policy for the area.

I would also refer, as noted by Ms. Phillipa Joyce, Fingal County Council at the hearing that there is a specific objective set out in the Development Plan supporting the scheme. Objective WT01 seeks to develop and expand, in an environmentally sustainable manner, which accords with the urban settlement hierarchy, the drainage systems for the County, in order to ensure the supply of serviced land for residential, commercial and industrial development. Table WT01 sets out the foul drainage and wastewater schemes in the Fingal Area. Scheme No. 2 is Portrane/Donabate/Rush/Lusk WWT Scheme. Therefore I would suggest to the Board that the scheme is supported by a specific objective of the Development Plan.

The submission provided by Fingal County Council to the hearing provides a very useful tool in identifying the land use zonings for each of the plots. I would note that the only structures visible above ground are the three proposed pumping stations. The remainder of the scheme is below ground and therefore not visible and would therefore accord with the zoning objectives which vary from residential, high amenity, town centre to open space as they have no material impact on the objectives of these zones. In respect of the three pumping stations, both the South Shore pumping station, which is effectively a replacement structure, and the East Shore structures are proposed within an area of high amenity and an ecological buffer zone. While these areas would be sensitive both visually and environmentally, it is considered that given the limited scale of these structures that they would not impact on the zoning objectives. The North Beach pumping station is located on lands zoned for open space and therefore the limited scale of the structure would not, in my opinion, impact on the objectives of this zone.

There are a number of provisions in the Kenure Rush LAP 2009-2019 which apply to lands which are subject of the CPO. The lands within with Plots 034-061 are zoned open space. The use of the lands for a sewer and a pumping station (North Beach) would in my opinion comply with the zoning objective. The pumping station is the only visible structure and it is not of a scale or design that would be visually obtrusive. There is an objective to provide a pedestrian and cycle route along the southern bank of the stream and I would consider that this objective would not be compromised by the development.

8.4 Any alternative methods of meeting the community needs have been considered but are not available

Firstly, I would note that Section 3.5.3 of the Design Review Report dated May 2006 and prepared by Barry & Partners notes that the Preliminary Report (Preliminary Report on Rush and Lusk Waste Water Scheme 2004) stated that one of the principal sewers to be upgraded runs along the back of houses on the southern side of Main Street. The route was, because of this, considered to be effectively inaccessible due to the amount of development which had been carried out over the pipeline. It was therefore considered that the proposals in the Preliminary Review to upgrade the sewer were not considered feasible and an alternative solution would be required to progress the scheme. This appears to have dictated the scheme now proposed.

The evidence provided by Mr. Gordon Barry at the hearing sought to address the issues of alternatives. I will address them in the format that was provided by Mr. Barry for ease of reference.

Plots 001-003 (South Shore Rising Main & South Shore Sewer West)

It was stated that these plots are required to facilitate the South Shore Rising Main and the South Shore Sewer West with both pipelines to be laid adjacent to each other where additional land is required. The South Shore Rising Main (350mm diameter) transfers pumped flows from the South Shore pumping station to the western catchment sewer at the junction of Channel Road and Corr's Lane. The South Shore Sewer West is a capacity upgrade of an existing sewer which discharges into the South Shore pumping station. While the majority of the pipeline is in the public road additional space is required at two locations (Plot 1 and Plots 2&3). The location of the existing sewer requiring upgrade effectively determined the route for the associated rising main. It is stated that no other reasonable alternatives were identified. I consider that the option proposed is appropriate with no reasonable alternatives.

Plots 005-020 (South Shore Pumping Station)

The plots outlined above are required for the provision of the South Shore pumping station. It is stated that the assessment of reasonable alternatives for this element focused around the convergence of the southern catchment sewers from the north and west at the site of the existing pumping station with any new site required to be proximate to the existing to avoid having to extend existing sewers. Topography and sensitive sites in the adjoining area also dictated the location. I consider that the arguments provided are reasonable.

Plots 021-030 (East Shore Rising Main)

These plots provide for the construction of the East Shore Rising Main which is proposed to pump flows from the East Shore pumping station to the South Shore pumping station. It is stated that the pipeline is primarily in public roads other than a few locations where the road narrows. Given the purpose of the Rising Main and its location within the public roads and the requirement for extra space to facilitate construction I do not consider that any reasonable alternatives exist are evident.

Plots 034-055 (North Beach Rising Main & Sewer)

The two pipelines are proposed to be laid adjacent to each other. The North Beach Rising Main is required to transfer flows from the North Beach pumping station to the western catchment sewer at the junction of Whitestown Road and Chapel Green. The route is along the southern bank of the Brook Stream onto Palmer Road. The proposed sewer is a new sewer discharging into the South Shore pumping station serving lands to the west. It is stated that the majority of the lands are in private ownership and that a viable alternative using public

roads could not be identified as the route along the Skerries Road onto Main Street was considered to be too disruptive. Having regard to the topography, the extent of development along the public roads and the shorter route through the private lands I consider that the route option proposed is the most appropriate and that there are no reasonable more preferable alternatives.

Plots 056-061 (North Beach Pumping Station)

These plots are required to provide the North Beach Pumping Station. It is noted that the plots for the pumping station and right of way to same are to be located in a permanent wayleave and permanent right of way. The assessment of reasonable alternatives, it is stated, was largely driven by the convergence of the new sewer and the Skerries Road sewer at the Golden Ridge location. The sites chosen were selected, it is stated, for reasons of availability and access. I consider that the arguments provided are reasonable particularly having regard to the location and reason for the location of the North Beach Rising Main and Sewer as outlined above.

Plots 062-063 (Whitestown Road Sewer Connection)

It is stated that the Whitestown Road Sewer connection provides for an adjustment of an existing sewer on private lands to avoid the creation of a hairpin bend in the network. This is considered reasonable and given the location of the existing sewer it is not considered an alternative location or option would be feasible.

I consider that the all realistic and feasible alternatives were considered in respect of the plots outlined above.

In respect of the lands which are the subject of the two objections I will address each in turn.

Plots 031-033 and Plots 064-066 East Shore Pumping Station

In his evidence to the hearing Mr Barry stated that the plots above are required to permit the provision of the East Shore pumping station. A permanent wayleave is required on Plot 031 for the connection to the existing sewer and the existing sewer and outfall which is to be utilized for storm water overflows. Plots 032 and 033 are required for temporary working space. Plots 064, 065 & 066 are required to be permanently acquired in order to construct the pumping station. It is stated that the assessment of reasonable alternatives was focused around the interception of the raw sewage discharge and need to provide a pumping station at that location. The presence of an undeveloped site in the vicinity of the discharge provided an option

which minimised impact on adjoining properties and no further alternatives were identified.

In respect of alternatives, Mr Corr representing Mr. Murtagh questioned Mr. Barry in respect of the existing sewer which traverses Mr Murtaghs land coming from the north west discharging to the marine outfall. It is proposed to intercept this sewer on Mr. Muraghs land and link it into the pumping station. In addition, it is proposed to connect an overflow pipe (stormwater) from the pumping station back out to the remainder of existing sewer and into the marine outfall. Mr. Corr's proposed alternative was that the existing sewer could be re-routed along Tower Street and access the pumping station via the proposed new site entrance. This would, in his opinion, obviate the need to use Mr. Murtaghs land. It is noted that this existing gravity sewer does not have a wayleave. Mr. Barry for Irish Water stated that this had been investigated but that the proximity of the terraced houses along Tower Street to the north of Mr. Muraghs property created too much of a risk in respect of the construction phase. It was also stated that this sewer is an existing sewer and it is not proposed to reroute it as part of the scheme. I would note that the existing marine outfall is located on Mr. Mutaghs property and any proposal to re-route this sewer could require a new outfall location. While I acknowledge the concerns raised by the Murtaghs in respect of the permanent wayleave proposed, having regard to the location of the existing sewer, the marine outfall and the narrow width of the public road at Tower Street at the terrace of dwellings, it is my opinion that the option proposed in scheme is the most appropriate solution.

In respect of the proposal to develop the East Shore pumping station and access having regard to the location of the existing sewer and marine outfall, the location of the pumping station and associated infrastructure it is not considered that a more appropriate alternative is available.

8.5 Response to Objections

At the hearing, Mr. Kelly representing the Donohue's made the case for and questioned Irish Water in relation to the alternative of providing a wayleave on Plot 065 rather than seeking to permanently acquire it. This gap site (Plots 064 & 065 were previously owned by Fingal County Council with Mr. Donohue the owner of Plot 066 located to the rear of his dwelling. Following the Part 8 procedure for the East Shore pumping station, Fingal acquired Plot 066 and Mr. Donohue acquired Plot 065. Plot 065 is zoned for residential use with Mr. Kelly referring to the owners intention to build a residential property on the site. It was

stated that it was the Donohues understanding that the site would be required for a wayleave rather than there being a requirement for permanent acquisition. In this regard, it was stated by Mr. Kelly that a wayleave would be an appropriate alternative to the permanent acquisition of the land.

As outlined by Mr. Harrington in his brief of evidence at the Hearing since the Part 8 process, it was stated that development of the design for the East Shore pumping station has resulted in a requirement to acquire plot 65. The issues which have arisen include: 1. The need to ensure adequate vehicle access to the pumping station site; 2. The need to ensure the ability to maintain sewers located in the access and, 3. The need to avoid a significant vertical drop between adjacent properties. While I acknowledge the requirement by Irish Water to ensure appropriate vehicular access to the pumping station and also the requirement to avoid a vertical drop, it may be possible to design the entrance and the access road so that a wayleave might be sufficient in respect of Plot 065. However, I am less convinced that a wayleave would be sufficient when it comes to the need to protect the proposed infrastructure particularly this sewer. There was some discussion at the hearing about appropriate wayleave width and what might be an acceptable derivation from existing Local Authority standards and setbacks and setbacks which Irish Water are seeking to establish as detailed by Mr. Tinsley.

While I note that the lands proposed to accommodate the North beach Pumping Station are proposed for permanent wayleave and permanent right of way, these lands are zoned open space. Plot 065 is zoned for residential use with the intention to deliver a house on the site. Such a proposal would, in my opinion, require that a very narrow wayleave would be available for the trunk sewer in particular and the other infrastructure coming from the pumping station. In this regard I consider that the zoning of the land for residential use would dictate that a permanent wayleave would not be appropriate in this instance, in my opinion.

In relation to the Murtagh objection, there are a number of points which were raised which have not been addressed in respect of the 4 criteria outlined above. In respect of the concern regarding the loss of amenity and the loss of visual amenity are likely to be limited as the development on the Murtagh property will be underground and will not be visible other than the manholes which will be flush with the levelled ground. In relation to the loss of development potential, I would note that the area of the Murtagh property upon which the acquisition is

proposed is zoned High Amenity, is within an ecological buffer zone and is outside of the development boundary. Therefore it is arguable that the development potential of the lands are limited. In respect of the potential environmental issues raised and in particular the reference to odour, I would refer to the evidence provided by Mr. Barry which states that while municipal wastewater has an odour but that situations where that odour is of such a level to cause nuisance are rare especially as the pipe is flowing underground. In relation to general impact I do not see any reasonable cause of impact from the development when completed.

9. CONCLUSION AND RECOMMENDATION

I am satisfied that the process and procedures undertaken by Irish Water have been fair and reasonable and that Irish Water 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 Fingal County Council Development Plan 2011-2017.

10. DECISION

I recommend that the Board CONFIRM the above Compulsory Purchase Order without modifications, based on the reasons and considerations set out in the DRAFT ORDER 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 requirements of the Urban Wastewater Treatment Directive 1991 and the Urban Waste Water Treatment Regulations 2001-2010;
- (b) The policies and objectives of the Fingal County Development Plan 2011-2017, including Objectives WT01 & WT02;
- (c) The serious deficiencies in the existing wastewater infrastructure in Rush;
- (d) the community need, public interest served and overall benefits to be achieved from the proposed road development; and
- (e) The submissions and observations made at the Oral Hearing held on 29th April 2016;

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

Una Crosse
Senior Planning Inspector
May 2016