



An
Bord
Pleanála

Inspector's Report PL 21.CH3315

Title of CPO	Irish Water Compulsory Purchase Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle Order, 2017
Scheme	Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle
Location	Tubbercurry, Co. Sligo.
Applicant	Irish Water
Local Authority	Sligo County Council
Objector	James Calvey
Date of Site Inspections	27 th April 2017 and 1 st June 2017
Date of Oral Hearing	2 nd June 2017
Inspector	Dolores McCague

1.0 Introduction

1.1. On the 17th February 2017 Irish Water made a Compulsory Purchase Order: Irish Water Compulsory Purchase Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle Order, 2017; in relation to various works to the wastewater system in Tubbercurry. This application to the Board is for confirmation of the order against which one objection has been received.

2.0 Sligo County Council obtained approval for the Scheme, Wastewater Treatment Works and associated works in the Townland of Rathscanlan, Tubbercurry, Co Sligo, from the Board (Bord Pleanála Reference Number: 21.JP0021) under section 177AE of the Planning and Development Act 2000, in accordance with plans and particulars, including a Natura Impact Statement, on the 28th January 2014.

2.1. This report refers to the objections received to the Compulsory Purchase Order.

3.0 Statutory Basis

3.1. The Order was made pursuant to the powers conferred on Irish Water by section 76 of the Housing Act, 1966, and the Third Schedule thereto, as extended by section 10 of the Local Government (No. 2) Act, 1960, (as substituted by section 86 of the Housing Act 1966), as amended by section 6 and the Second Schedule to the Roads Act, 1993, and the Planning and Development Acts 2000-2014 and as applied by Section 93 of the Water Services Act 2007, as amended. The Order was published on 21st February 2017.

3.2. The Order would, if confirmed, authorise Irish Water to acquire compulsorily the land described in the Schedule for the purposes of constructing and carrying out of all waste water works as defined in the Water Services Act 2007, all works, services, facilities and other things associated with the Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle in the County of Sligo, together with all associated underground sewerage pipework and ducting (as part of the above Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle) and such other works, services, structures as defined in the Water Services Act 2007, facilities and other things as

are necessary or expedient in relation thereto or form part of the Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle.

3.3. 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.

4.0 CPO

4.1. The CPO comprises a schedule and accompanying maps. The land is shown shaded on maps (Deposit Maps), entitled 'Irish Water Compulsory Purchase (Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle) Order, 2017' and numbered:

- IW/TGSB/CPO/00,
- IW/TGSB/CPO/01,
- IW/TGSB/CPO/02 and
- IW/TGSB/CPO/03.

4.2. The lands required comprise permanent wayleaves across 29 properties (Part 2 of the schedule); temporary working areas involving 56 properties (Part 3 of the schedule); and a Permanent Right of Way across 2 properties (Part 4 of the schedule). The properties are detailed in the Schedule, and identified on the deposited maps.

4.3. Irish Water applied to An Bord Pleanála for confirmation of the Order by letter dated 28th February 2017. One objection was received.

4.4. The landowner who has objected to the CPO owns the affected lands: plot 32 of the permanent wayleave and plots 31 and 33 of the temporary working areas.

4.5. An Oral Hearing in relation to the Order took place in Sligo Park Hotel, Co. Sligo on 2nd June 2017.

5.0 DESCRIPTION OF SCHEME AND PUBLIC INTEREST

5.1. The development proposed at Tubbercurry is part of an overall project, the Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle, which includes the

upgrade and expansion of the existing wastewater treatment plants at Tubbercurry, Grange, Strandhill and Ballinafad, construction of sewer pipelines at Tubbercurry and mechanical and electrical upgrade of the existing Caravan Park Pumping Station. The settlements referred to in the order are scattered throughout County Sligo. Only Tubbercurry is of relevance in relation to this CPO.

- 5.2. The European Court of Justice has taken a case against Ireland for breaches of European Directives regarding the unacceptable discharge of untreated sewage from 45 locations. The Tubbercurry waste treatment plant is connected to this breach.
- 5.3. The most recent EPA report on Urban Waste Water Treatment Compliance for the year 2014, published in 2015, highlights that Tubbercurry, with a population equivalent of 2,283, has a wastewater treatment plant with a capacity of 1,400 and has failed to reach the BOD, COD and TSS quality compliance set out in its discharge licence. The agglomeration is non-compliant with the Urban Waste Water Treatment Directive. The report also highlighted that the Tubbercurry River is classified as poor status or moderately polluted, which is attributed to discharges from the Tubbercurry agglomeration. Water quality must be brought up to at least good status (unpolluted) and meet the requirements of the Water Framework Directive.
- 5.4. A discharge licence for the Tubbercurry agglomeration, issued by the EPA on the 30th May 2014, requires, as part of the Specified Improvement Programme, the wastewater treatment plant to be upgraded and an outfall pumping station with rising main pipeline to the river Moy, to be constructed.
- 5.5. The project aims to provide secondary treatment to the agglomeration and a reduction in pollution to the Tubbercurry River through the development of the wastewater treatment plant, sewer collection network and outfall pipeline. The treatment plant in Tubbercurry is currently treating nearly twice the P.E. for which it was designed. In addition, an inlet sewer to the treatment plant is undersized for storm conditions, leading to regular spills from an upstream Combined Sewer Overflow (CSO) to the Tubbercurry River. The Tubbercurry River, the receiving water for the primary discharge, has a long history of pollution.

- 5.6. Under the project the primary discharge point will move from its current location, to a location on the Moy River approximately 5km to the west of the waste water treatment plant (WWTP).
- 5.7. The Tubbercurry, Grange, Strandhill and Ballinafad DBO Bundle project, is included in Irish Water's Capital Investment Plan 2017-2021. It provides for:
- upgraded secondary wastewater treatment for wastewater collected in the Tubbercurry agglomeration;
 - reduction of pollution in the Tubbercurry River, by moving the primary discharge point to the River Moy; and
 - reduction of spills to the Tubbercurry Stream from a network CSO by increasing the capacity of the inlet pipeline to the WWTP.
- 5.8. On completion Irish Water expects the Tubbercurry agglomeration to be in line with the requirements of the Urban Wastewater Treatment Directive and the Discharge Licence. In addition, there will be water quality improvements in the Tubbercurry River in line with the requirements of the Water Framework Directive.
- 5.9. The Sligo County Council scheme, approved by the Board, (An Bord Pleanála Reference Number: 21.JP0021), proposed to locate the outfall pipeline in the regional road R294. It later became evident that this was not feasible. The current location of the outfall includes private lands along the R294.
- 5.10. The CPO relates to lands for the inlet pipeline to the combined sewer overflow (CSO), outfall rising main to the River Moy and the right of way for access to the WWTP site. Certain lands and rights over lands are also required for construction of these pipelines. A routing report has been submitted in support of the CPO.
- 5.11. The areas and works proposed are:
- An area extending from Tubbercurry Town to the WWTP site, for Tubbercurry Inlet Gravity pipeline.
 - An accessway to the WWTP from the R294 Ballina road.
 - Lands adjacent to the R294 for part of the rising main outfall.
 - Lands for temporary wayleaves located adjacent to the permanent wayleaves, for construction work, and a temporary wayleave from the R294 to the inlet gravity pipeline.

6.0 Documents provided with the CPO confirmation application

6.1. The documents accompanying the confirmation application include:

- Compulsory purchase order
- Deposit maps – 4 sheets
- Copy of Sligo Champion newspaper, dated 21 February 2017, in which notice was published.
- Routing Report, dated September 2016, prepared by Nicholas O'Dwyer for Irish Water.
- Planning Report, dated September 2016, prepared by Nicholas O'Dwyer for Irish Water.
- Engineer's Report dated 6th February 2017
- Confirmation from the Managing Director of Irish Water that the lands in the Schedule are necessary for the implementation of the project.
- Sample letter and attachments sent out to each landowner or reputed landowner
- List of registered letters / certificate of service of notices.
- Cover letter to the Board.

6.2. Routing Report

6.3. The Routing Report includes:

There are currently two inlet pipelines to the Tubbercurry Wastewater Treatment Plant: one conveying flows from the west of the agglomeration and one conveying flows from the east; both convey foul water via gravity to the inlet pump station of the treatment plant.

6.4. Upgraded Inlet Pipeline:

There is an existing combined sewer overflow chamber approximately 770m upstream of the inlet works on the eastern inlet pipeline. Due to this inlet pipeline being undersized to handle the current flow volume in the pipeline, there are frequent spills from the CSO during storm events.

- 6.5. In order to reduce spills from the CSO, it is proposed to upgrade the inlet pipeline from 225mm to a 600mm gravity main. Additionally the CSO chamber will be upgraded with a mechanical screen. Ducting from the treatment plant to the chamber may be required for the electrical operation of the mechanical screen. This ducting would be laid in a shared trench with the gravity sewer.
- 6.6. Options were assessed for the upgraded pipeline and ducting:
- 6.7. Option 1 is in the vicinity of the existing sewer line, passing through public and private lands, including the rear of an industrial estate, the yard of a Builder's Providers, forested and agricultural land and a disused railway embankment. Constraints associated with this option include: crossing the railway embankment, poor ground conditions in the forested area and works in private property. This is the shortest route and shorter routes are beneficial. Longer involves greater depth of construction with increased cost and safety issues.
- 6.8. Option 2 is south along Circular Road, crossing the disused railway at the level crossing at the junction of Circular Road and Regional Road R294, before continuing west along the R294 and entering the WWTP from the R294 via a strip of land purchased by Sligo County Council. With the exception of the car park in which the existing CSO is located, this option avoids private land. It would require multiple diversions of existing utilities, extra pipeline construction and widespread traffic disruption. The topography, which increases in elevation from the CSO chamber to the railway crossing, would require deep construction and a possible redesign of the collection network. Alternatively, a pumping station and rising main would be required.
- 6.9. Option 3 is to the north, running parallel to the Tubbercurry Stream through forested land. This would require acquisition of a permanent wayleave, works for crossing under the disused railway embankment and construction in poor ground in the forested land. The route is longer than option 1, and would have more restricted access to works site, increased cost and much greater health & safety risks due to deeper construction, and requires more land acquisition.
- 6.10. Option 1 was selected. Discussions were carried out with affected landowners in August 2016, after which the route was adjusted as far north as possible to accommodate their requests.

- 6.11. Two temporary working areas are required to access the wayleave from the public road, to minimise the impact at the Cnoc Na Sí housing estate and to enable safe construction. A temporary access way is required on each side of the railway embankment.
- 6.12. New Outfall Rising Main:
- 6.13. The wastewater treatment plant discharges to the Tubbercurry River. Due to the low level of dilution available, a high level of treatment is required in order to provide compliance with the Surface Water Regulations. A design review report was carried out for the Tubbercurry, Grange, and Strandhill DBO Bundle in July 2013, by Nicholas O'Dwyer Ltd. A number of options were considered for the upgrade of the primary discharge point from the Tubbercurry agglomeration.
- 6.14. Two potential alternative discharge locations in the River Moy were identified. Option 1 is approximately 1.5km downstream of Annagh Bridge. Running initially along the R294 and then along a local road to south-west towards Tullanaglug. The final part of this outfall route would cross private land for approximately 40m, to a location downstream of the confluence of the River Moy and the Tubbercurry River. The final 40m would be constructed in wet grassland / marsh.
- 6.15. Option 2 is at Annagh Bridge. The route to this point is along the R294 regional road for approximately 5km to the west of the wastewater treatment plant. Road closures will not be permitted along the R294.
- 6.16. Option 3 is the retention of the current WWTP discharge point at the Tubbercurry River with a consideration for improvement of the effluent quality from the upgraded WWTP. Due to the poor level of dilution, the required effluent standards needed to achieve good status would be technically difficult to achieve on a consistent basis, and any non-compliance would have a significant negative impact, due to the low level of dilution available. The costs and technical difficulty over the lifetime of the treatment plant discounted this option.
- 6.17. The costs of options 1 and 2 are similar. Potentially higher ecological impact and greater accessibility of discharge location for option 2 led to the recommendation of option 2 for selection. Site investigations were carried out along the pipeline route. Very poor ground conditions underlying the existing R294 were discovered. The routing would likely necessitate construction by trenchless technology, as open

trench construction may lead to longitudinal cracking of the road. Even with trenchless construction significant residual risks to portions of the R294 remained in these sections. In addition, road closures will not be permitted. There are four major culverts along the R294 between the WWTP and the outfall, which will need to be crossed by the outfall rising main.

6.18. The risks identified for the works along the R294 are:

- Cracking of road surface due to drill diameter larger than pipe diameter;
- Cracking of road surface due to hydraulic pressure build up;
- Excavation of pits on the R294, risk of road failure;
- Culverts in poor condition and poor ground conditions;
- Road reinstatement may lead to high / low points in the road.

6.19. In order to mitigate these risks, sections of the works were selected to be constructed off-road. The reasons for moving these sections off-road were poor ground conditions, existing road condition (bog rampart road), deep drains either side of road, and poor culvert conditions. Moving these sections off-road reduces the risks listed and eases construction. Two of the culvert crossing works were moved off-road to avoid damage to the culverts.

Each section to be moved off-road was assessed to decide which side of the road should be chosen for the pipeline corridor. Factors included:

- Properties affected, works to avoid residential properties.
- Number of landowners affected.
- Depth of construction due to drains to be crossed.

6.20. Access to Wastewater Treatment Plant:

The access to the WWTP from the R294 was along a field boundary. By agreement, the access to the WWTP was adjusted when the Cnoc Na Sí housing was developed on lands between the WWTP and the R294, and access is now via a shared roadway within the estate. Although it was agreed that the developer would grant a Right of Way and that this would be regularised in the future, it did not happen. The new owner of the estate has agreed to sign a Right of Way but the land transfer has not as yet been regularised.

Options considered were to obtain a right of way along the shared roadway (Option 1) and construct a new roadway (Option 2). The adjacent lands have been designated in the Tubbercurry LAP for the proposed N17 bypass. The line, through lands owned by Sligo County Council (i.e. the former access), clashes with the estate access roadway. Use of the shared roadway is therefore considered the most feasible option, which requires a Right of Way.

6.21. Wayleave Requirements

The industry standard wayleave widths are sought for pipeline and ducting construction. The temporary width of 10m (normally on one side of the permanent wayleave, (here shown to either side in many cases)), and a permanent width of 10m.

6.22. **Engineer's Report**

6.23. The Engineer's Report, signed by the Infrastructure Programme Delivery Manager, Irish Water, Mr Michael Tinsley, includes:

6.24. Attempts have been made, in the period from April 2016 to date, to acquire permanent wayleaves, temporary wayleaves, temporary working areas and Rights of Ways by agreement. This has proved not to be possible for the following reasons:

- It could not be determined who the correct owners are.
- Some land transfers have not been finalised.
- Some landowners are incapable of signing legal agreements.
- It has not been possible to secure agreement from the landowners with Sligo County Council's / Irish Water's wayleave requests.

6.25. When it was determined, due to the reasons outlined, that it would not be possible to acquire these permanent wayleaves, temporary wayleaves, temporary working areas and Rights of Ways by agreement, it was decided to seek a Compulsory Purchase Order.

6.26. Mr Tinsley is satisfied that all reasonable alternatives have been fully considered and these lands and rights over land are necessary for the scheme and suitable for the purpose for which they are required. He is satisfied that Irish Water requires to invoke the Compulsory Purchase Order for the lands and rights over land required,

as it is unlikely that all could be acquired by agreement with the relevant landowners with full title or otherwise in a timely fashion.

- 6.27. He is also satisfied that sufficient resources are available to finance the proposed acquisition of these permanent wayleaves, temporary wayleaves, temporary working areas and Rights of Way and for the implementation of the DBO Bundle.

7.0 Policy Context

Development Plan

- 7.1. Sligo County Development Plan 2011-2017 is the operative plan. Policies and objectives in respect of wastewater support the project:

- 7.2. Relevant provisions contained in chapter 9: Environmental Infrastructure, include:

- 7.3. Strategic water, wastewater and storm water drainage objectives:

SO-W-1 Improve water and wastewater services in those areas of the county where deficiencies exist at present, subject to the availability of resources and appropriate statutory approvals.

SO-W-2 Carry out measures to address deficiencies in existing water and wastewater infrastructure, so as to ensure compliance with regulatory requirements and the objectives of the Water Framework Directive.

SO-W-3 Preserve and further develop water and wastewater infrastructure in order to facilitate the growth of settlements at an appropriate rate which is consistent with the Core Strategy and the Settlement Structure.

- 7.4. Proposed wastewater treatment plants and extensions in County Sligo, table 9B includes: Tobercurry where a new design for PE 5,000 is proposed.

- 7.5. Wastewater policies

P-WW-5 Strive to provide adequate wastewater treatment capacity to facilitate development in County Sligo. The provision of such infrastructure will only be pursued where the planning authority is satisfied that it is necessary and in accordance with the requirements of the Core Strategy and the Settlement Structure of the County.

P-WW-14 Ensure tertiary treatment (phosphorus removal) is provided in proposed upgrades to existing or new local authority wastewater treatment infrastructure.

7.6. Relevant objectives include:

O-WW-1 It is the objective of Sligo County Council to complete the construction of the new wastewater treatment plants at Tobercurry, Grange, Strandhill and Ballinafad.

O-WW-6 Achieve compliance with the Urban Wastewater Treatment (Amendment) Regulations 2004 with regard to wastewater collection, treatment and discharge and implement the relevant recommendations set out in the document *Urban Wastewater Discharges in Ireland for Population Equivalents Greater than 500 Persons – A Report for the Years 2006 and 2007* (EPA).

7.7. Draft Tubbercurry LAP

A draft local area plan has been prepared for Tubbercurry (Draft Tubbercurry LAP 2015-2021) which refers to the deficiency in wastewater treatment and the need to improve wastewater treatment and collection, move the discharge point to the River Moy, and improve stormwater management.

7.8. **Natural Heritage Designations**

7.9. The River Moy SAC Site Code 002298 receives the discharge from the treatment plant. It is a candidate SAC, selected for habitats and species.

habitats

- *active raised bogs*
- *degraded raised bogs*
- *alluvial wet woodlands*
- *old oak woodlands*
- *alkaline fens*
- *depressions on peat substrates of the rhynchosporion.*

and annex 2 species

- *white clawed crayfish*
- *sea lamprey*
- *local lamprey*
- *salmon*
- *otter*

8.0 Objections

8.1. Mr James Calvey has lodged an objection to the CPO in respect of plot nos. 31, 32 and 33. The objection is made on the following grounds:

8.2. Per letter of Mr Calvey to the Board, 30th March 2017: issues surrounding planning, environmental concerns and viewing of the order and deposited maps.

8.3. Per letter of Mr Richard Rea on behalf of James Calvey to the Board, 31st March 2017:

Restricted access to information as to what is proposed, proposal does not comply with proper standards of Environmental Law, proposals in relation to re-instatement are not specific to the affected property owner and are not legally binding.

8.4. Per letter of Mr Calvey to the Board, 19th April 2017:

Mr Calvey has plans to build an agricultural shed that would be located directly over the proposed pipe if installed. He has already been approved in principal for grant funding for the shed and expects to receive full approval in the coming weeks. He has a declaration of exemption from Sligo Co Co for the development and there are no restrictions other than the proposed new pipeline preventing the building. This project began in 2013 but the then round of grant funding ran out. Funding is now available again and he intends to proceed with the development. He has already incurred expenses in preparing for the build. He moved a large volume of topsoil to the site for use in ground-works in September 2015. This is still in place.

As a land owner downstream of the proposed discharge point he has concerns about the standard of treatment. The River Moy is an SAC and any waste water discharge should be treated to a very high standard. What provision has been made for industrial expansion in Tubbercurry. Can the plant process larger amounts of heavy metals in the WWS (BASTA Toot & Gauge etc).

The minimum depth of pipe is to be 1m below surface. This is totally unacceptable. Currently land drains in the field are 1,3m depth. The proposed pipe could have a very negative effect on the field drainage.

Mr Calvey has been unable to view the order or deposited maps as he works Mon - Fri in Cork and was unable to attend either Tubbercurry or Dublin during the hours of availability.

Other issues relating to line design and affect on current use which he can expand on further at a later stage if necessary.

8.5. Per letter of Mr Richard Rea on behalf of James Calvey to the Board, 27th April 2017:

With reference to the application not complying with Environmental Law, no appropriate assessment has been undertaken as part of this project.

8.6. Per letter of Mr Richard Rea on behalf of James Calvey to the Board, 2nd June 2017:

Irish Water are acting contrary to the AARHUS principles. The application by Irish Water is invalid. They will set out at the oral hearing why they consider the application invalid.

9.0 Board Correspondence

9.1. Among the various items of Board correspondence are included the following:

9.2. The Board wrote to Irish Water, dated 20th March 2017, requesting a list of documentation, and including that: it is noted that the public notice states that an EIS and NIS have been prepared, requesting confirmation if an EIS and NIS have been prepared and requesting clarification as to whether the NIS referred to in the notice is the NIS submitted under section 177AE in relation to JP0021.

9.3. Irish Water's response, dated 29th March 2017, confirms that an EIS and NIS were prepared in relation to the proposed development and states that the EIS is enclosed, and the NIS is that related to the previous application JP0021. A report titled Ecological Impact Assessment of Proposed Outfall Options is enclosed with the response and a copy of the Board's order on JP0021.

9.4. A further response from Irish Water, dated 3rd April 2017, confirms that no EIS was prepared and this was included in the public notice in error. The report provided on the 29th March 2017, is an EIS screening report.

9.5. The Board wrote to Irish Water, dated 2nd May 2017, stating that the documentation provided to the Board in connection with the application for confirmation of the

compulsory purchase order, (CH3315), indicates departures from the approved scheme: the route of the new gravity sewer differs from that approved and the route of the rising main also differs from that approved, and requested Irish Water to outline how they intend to build out the scheme as shown in the CPO documentation having regard to departures from the scheme as approved under section 177AE of the Planning and Development Act 2000, in accordance with plans and particulars, including a Natura Impact Statement.

- 9.6. Irish Water's response, dated 4th May 2017, states that Irish Water notes the departures in sewer and rising main routes from the approved scheme as outlined in the letter and advises that there is a need to complete the CPO process in order to acquire legal interest in the properties. The legal interests will be required should Irish Water need to apply for planning application for the noted departures.

10.0 The Oral Hearing

- 10.1. An oral hearing into the objections lodged to the Compulsory Purchase Order was commenced at 10.00am on Friday 2nd June 2017, in the Park Hotel Sligo. A recording of the hearing is on the Board's file. It comprises the formal record of the hearing. Parties in attendance at the hearing are listed in the attachments.

- 10.2. The following parties made oral submissions at the hearing:

- Irish Water:
 - Alan Dodd, BL.
 - Colm Claffey, Irish Water
 - Shane Cosgrove, Nicholas O'Dwyer Ltd
 - Áine Quigley, Mayson Hayes & Curran, Solicitors
- Sligo County Council:
 - James Melvin, Sligo County Council
- Objector:
 - Richard Rea, Agricultural Consultant
 - Peter Sweetman

- 10.3. Documents submitted to the Board in the course of the hearing are attached to this report.
- 10.4. The submission from Irish Water, which was a single bound document, mainly comprises documents previously provided to the Board.
- The evidence given by Mr Claffey is found at section C1, and that of Mr Cosgrove at section C2.
 - The submission includes additional drawings numbered 20574-TY-110 and 20574-TY-111 which include cross sections demonstrating the elevation of the road, R294, relative to adjoining land and roadside drains.
 - Some items of correspondence between Irish Water and Mr Calvey's representatives, which are not relevant to the Board's consideration of the application, are included.
- 10.5. A single item was submitted to the Hearing on behalf of Mr Calvey, which is a solicitor's letter stating that Mr Calvey is the person entitled to be registered as owner of the lands in Folio 26278F County Sligo, having purchased all the land in the folio from the current registered owner.
- 10.6. A summary of the Oral Hearing, focusing on contributions for which written text is not available, is attached as appendix 1.
- 10.7. Issues arising in the Oral Hearing are referred to in the following assessment.

11.0 **Assessment**

- 11.1. The proposed compulsory purchase relates to the acquisition of wayleaves and the use of land for temporary working areas, of land in private ownership. Consequently, the following matters are considered in this assessment:
- The community need to be met by the proposed land acquisition;
 - Suitability of the lands to meet the community need;
 - Whether the works to be carried out on the property accord with the Development Plan for the area, under the Planning Acts;

- Any alternative methods of meeting the community need that has been considered.

11.2. The other issues which arise are: the validity of the application process / public notice; and implementation of the project for which the CPO is required / legality of the CPO.

Community Need

11.3. The community need for the project has been described by Irish Water in the written documentation and at the Oral Hearing. Key arguments include:

- a. The current lack of compliance with the EPA's Wastewater Discharge Licence for Tubbercurry (D0092-01),
- b. The requirement for an upgraded secondary wastewater treatment for wastewater collected in the Tubbercurry agglomeration; (e.g. plant capacity 1,400, current population equivalent 2,283).
- c. Reduction of pollution in the Tubbercurry River, by moving the primary discharge point to the River Moy; and
- d. Reduction of spills to the Tubbercurry Stream from a network combined sewer overflow by increasing the capacity of the inlet pipeline to the WWTP.

11.4. The community need for the project has not been challenged in the course of this CPO. I am satisfied that the existing treatment plant is operating overcapacity, that there are excessive surcharges on the existing sewerage network, that the dilution available in the Tubbercurry Stream is inadequate to accept discharge from the treatment plant; and therefore that there a community need which the CPO would satisfy.

Suitability of the Lands to meet the Community Need

11.5. Irish Water have set out the manner in which the lands subject to the CPO would meet the identified community need. In particular that the need to compulsorily acquire lands along the R294 arises as a result of further investigations which were carried out by Irish Water following the Board's approval of the project (21.JP0021),

which found that running a pipe under the R294 was unsuitable because of the nature of the road, being a bog rampart road.

- 11.6. The objector contested evidence presented in this regard, based on the non-availability of borehole logs at the hearing, but in effect both of the objector's representatives accepted that to run a pipe along a bog rampart road would be an unsuitable proposal and indeed remarked that same should have been obvious from the outset.
- 11.7. The lands in question are agricultural lands, in use as pasture. On completion of the construction work, the land will be re-instated to use as pasture. Irish Water stated during the course of the Oral Hearing that the rising main could be placed 2m below the ground surface to facilitate agricultural use of the land. The temporary wayleave comprises two portions either side of the permanent wayleave, each 5m in width (0.0151 ha - plot 031 and 0.0176 ha – plot 033), and required only for the duration of the construction. The permanent wayleave, is 10m in width (0.0341 ha plot 032) and is the standard width Irish Water require as a permanent wayleave.
- 11.8. In effect the suitability of the lands to meet the community need has not been challenged in the course of this CPO. I am satisfied as to their suitability to meet the community need and that the lands as identified in the schedule accompanying the CPO are necessary and required to meet the need for the construction and maintenance of the pipeline.

Whether Works to be Carried out on the Property Accord with the Development Plan under the Planning Acts

- 11.9. Policies and objectives of the Sligo County Development Plan 2011-2017 support the project. There is a specific objective (O-WW-1) to complete the construction of the new wastewater treatment plant at Tobercurry; and a general objective (O-WW-6) to achieve compliance with the Urban Wastewater Treatment (Amendment) Regulations 2004 with regard to wastewater collection, treatment and discharge and to implement the relevant recommendations set out in the document *Urban Wastewater Discharges in Ireland for Population Equivalents Greater than 500 Persons – A Report for the Years 2006 and 2007* (EPA). Other relevant policies and objectives include: to strive to provide adequate wastewater treatment capacity to

facilitate development in the county where it is necessary and in accordance with the requirements of the Core Strategy and Settlement Structure (P-WW-5); and to carry out measures to address deficiencies in wastewater infrastructure, so as to ensure compliance with regulatory requirements and the objectives of the Water Framework Directive (SO-W-2).

11.10. Compliance with the Development Plan has not been challenged in the course of this CPO. I am satisfied that the proposed works are in accordance with the Development Plan for the area.

Any Alternative Methods of Meeting the Community Need

11.11. Alternative methods of providing the necessary infrastructure were part of the application made under JP0021 and were part of the Board's consideration of that application.

11.12. In their written submissions to the Board for confirmation of the CPO, and at the Oral Hearing, Irish Water have outlined that alternative methods of meeting the community need were considered, including treating the effluent so that it could continue to discharge to the Tubbercurry River. This was reassessed following the approval of the project, and the decision to rule out the provision of higher treatment standard was confirmed. In relation to the necessity to off-road construction of the rising main, which impacts on the objector, Irish Water outlined the route selection criteria - each section of pipe to be moved off road was assessed to decide which side of the road should be chosen based on:

- properties affected (avoid residential properties),
- amount of landowner's affected,
- depth of construction due to drains to be crossed (Health & Safety Impact).

11.13. A challenge to the standard of the proposed treatment and the quality of the effluent which will discharge to the River Moy and the SAC was mentioned on behalf of the objector but no specific deficiency was detailed. The Board adjudicated on this matter in 21.JP0021 and no change in circumstance has occurred since that time. In relation to this CPO confirmation application, the Board's jurisdiction is confined to determining whether to confirm or annul the CPO.

- 11.14. It was stated on behalf of Mr Calvey that he intended to build a shed on his land and that he has obtained an exemption certificate under Section 5 of the Planning Acts for the work. No details of the proposal were provided. Irish Water advised the hearing of the restrictions they would impose in relation to building work in a post CPO situation, and also referred to an existing wayleave for a watermain which currently crosses the site. They offered to engage with Mr Calvey further in relation to his proposed building and other matters, such as extending the depth at which the pipe would be placed within his landholding. Some of the matters raised are for post CPO consideration when compensation is being determined and are not relevant to the Board's consideration of this CPO approval request.
- 11.15. I accept that Irish Water have considered alternative means of meeting the community need and in particular that the methodology of selecting the route for the rising main, which impacts on the objector's landholding, was reasonable.
- 11.16. There is no apparent reason why the wayleave should preclude the use of these lands for agriculture. It is not apparent that a location within the wayleave should be preferable to other locations within the landholding for a farm-building. Any loss associated with the exempted development planned for the location can be dealt with by means of compensation.
- 11.17. I am satisfied that there is no preferable alternative method available of meeting the community need.

The Validity of the Application Process / Public Notice

- 11.18. The public notice contains, in error, reference to an EIS and a NIS. This matter was referred to by the Board, in correspondence to Irish Water. Neither an EIS or a NIS was required or produced in relation to this CPO. The approval for the project, 21.JP0021, required the Board to carry out a Natura Impact Assessment and a NIS was made available at that time. The Board's adjudication on the subject application which is for confirmation of the CPO, relates solely to the question of land acquisition and whether to confirm or annul the CPO having regard to the objections made to the CPO and other related matters.
- 11.19. A copy of a report titled 'Ecological Impact Assessment of Proposed Outfall Options' and containing a freshwater pearl mussel survey, was made available in response to

the Board's queries in relation to the public notice. This report was part of the documentation presented by Irish Water on 21.JP0021.

- 11.20. The case was made, on behalf of the objector, that the error in the public notice invalidates the process because of the high standard required from a process which will deprive the objector of his constitutional right to own property.
- 11.21. The objector made some attempt to show that he had difficulty finding out about this, because he had difficulty accessing the public file, and the history file. In this regard the AARHUS Convention was cited.
- 11.22. Previous CPO cases, where errors in public notices required remedy by further publication of notices, were cited.
- 11.23. Irish Water responded that each of these cases differed from the current case in that those landowners could have been prejudiced. In the current case the landowner was not prejudiced. He engaged in the process. The CPO documents did not contain the error. Any person who wanted access to the information could have attended at either of the two venues mentioned in the order, and found that there was no EIS. The issue wasn't raised by the objector prior to the oral hearing.
- 11.24. It is worth noting that the issue of invalidity was raised in the fifth and final written submission to the Board on the 2nd June 2017, the reason why it was considered invalid was not stated. The fourth letter dated 27th April objected that no appropriate assessment has been undertaken as part of this project. Since the error in the notices includes reference to an EIS and a NIS the non-availability of an EIS should have been apparent at the same time. From the contents of the five letters of objection submitted between the 30th March 2017 and 2nd June 2017, each appears to successively cast the net wider in relation to grounds of appeal.
- 11.25. The EIS and NIS referred to in error in the public notice and raised as grounds by the objector would be documents to accompany an application for development consent (permission/approval) for a project. The current procedure relates solely to land acquisition and an objection made to a CPO served by Irish Water. The Board's jurisdiction is limited to considering whether to confirm or annul the CPO and whether sufficient case has been made by Irish Water to support the proposed acquisition, in light of the objections made and other matters.

11.26. In my opinion Mr Calvey was not prejudiced by the error in the notices. I accept Irish Water's argument that the CPO documents did not contain the error; and that any person who, having read the public notices and wishing to access the information available at the two venues, would have found that there was no EIS and that the NIS referred to is that prepared in connection with the previous application, 21.JP0021.

11.27. Implementation of the Project for which the CPO is required / Legality of the CPO.

11.28. As referred to in the Board's letter to Irish Water of 2nd May 2017, the compulsory document indicates departures from the approved scheme: the routes of the new gravity sewer and of the rising main differ from that approved.

11.29. Irish Water's response, of 4th May 2017, acknowledges the departures in sewer and rising main routes from the approved scheme and states that it is their interpretation that there is a need to complete the CPO process in order to acquire legal interest in the properties. The legal interests will be required should Irish Water need to apply for planning application for the noted departures.

11.30. At the oral hearing it was stated that S146B of the Act provides for alterations to a scheme. However it should be noted that S146B refers to strategic infrastructure and 21.JP0021 was not a SID case, being made under S177AE (local authority development requiring AA).

11.31. Mr Dodd argued that the design/build contract, which is the type of contract involved here, has to allow for some flexibility. The need for planning permission is not a relevant issue.

11.32. Mr Sweetman on behalf of the objector pointed out that the notice doesn't refer to the deviations from the approved development; and that Irish Water, unlike a local authority, does not have any exempted development entitlements (e.g in relation to underground pipes), which puts Irish Water into a similar position to the IDA, who

sought to compulsorily acquire land to have a land bank, as part of their industrial development strategy, and were found¹ not to have the power to do so.

11.33. Mr Sweetman, on behalf of the objector, stated his conviction that the development is not exempted and that the objector may have to put in a section 5 query to let Irish Water prove to the Council or the Board that it is exempted.

11.34. In response it was stated that under S 213 of the Planning and Development Act, Irish Water has the power to acquire land for a particular purpose and that the purpose for which Irish Water need to acquire this land is clear. It was argued that the position therefore of the IDA, in the Thomas Reid v IDA case, was completely different to the position of Irish Water. It was further argued that the CPO process doesn't need to consider whether or not there is an issue in relation to planning permission. There is no requirement that planning permission or approval should be undertaken in advance of a CPO. It was stated and re-iterated several times that it is Irish Water's responsibility to satisfy itself that all of the necessary permits and consents are in place prior to commencing construction work. The complete design of the scheme will not commence until they have their contractor in place. As the design unfolds, if they feel it is not in compliance with planning, they will be obliged to regularise.

11.35. Irish Water were pressed by the objector as regards whether or not they consider that they are currently in a position to build out the development shown in the CPO documents, and their answers were not definitive.

11.36. Irish Water stated that they have a number of schemes in advancement where they are seeking to CPO lands in advance of planning, there is no requirement to have a parallel process in place, and the planning process is a completely separate process to the CPO process.

11.37. I note Irish Water's statement that it is their responsibility to satisfy themselves that all of the necessary permits and consents are in place prior to commencing construction work.

¹ Judgement by McKechnie J, in Reid v Industrial Development Agency & others, High Court Record Number 2013 16JR, delivered 05/11/2015

11.38. I am satisfied that Irish Water have demonstrated the need to acquire this land for a particular and specified purpose to the extent that would justify a recommendation to confirm the making of the order.

11.39. I consider the nature and extent of the lands sought to be reasonable.

12.0 Reasons and Considerations

Having considered the objections made to the compulsory purchase order and also having regard to the following;

- (a) The report and recommendation of the inspector.
- (b) The requirements of the Urban Wastewater Treatment Directive 1991 and the Urban Waste Water Treatment Regulations 2001-2010;
- (c) The policies and objectives of the Sligo County Development Plan 2011-2017.
- (d) The deficiencies in the existing wastewater infrastructure in Tubbercurry;
- (e) The purpose for which the lands are to be acquired as set out in the compulsory purchase order;
- (f) The community need, public interest served and overall benefits to be achieved from the proposed development; and
- (g) The submissions and observations made at the Oral Hearing held on 2nd June 2017

It is considered that the acquisition of lands, wayleaves, rights of way and temporary working areas by Irish Water is necessary for the purposes stated in the order and the objections cannot be sustained having regard to the said necessity.

Planning Inspector
11th July 2017

Appendix 1 Report of the Oral Hearing

Appendix 2 Extracts from the Sligo County Development Plan 2011-2017

Appendix 3 Extracts from the Environmental Report of the Sligo County
Development Plan 2011-2017 SEA

Appendix 4 Photograph of the land to which plot numbers 31, 32 and 33 refer.

Appendix 1 Report of the Oral Hearing

The presentations by Irish Water comprised an introduction by Mr Dodd, evidence by Mr Claffey and by Mr Cosgrove and an account of the documentation, which had been submitted to the hearing, by Ms Quigley.

At the outset the objector (O), (represented by Mr Sweetman) raises as an issue, that the public notice is incorrect, that the application is invalid and that that is the end of the hearing.

Irish Water (IW), (represented by Mr Dodd) responding agree that there is an error in the public notice, which was communicated to ABP. He is unaware of any prejudice to Mr Calvey. There was no requirement to have an EIS and Mr Calvey has been made aware of the fact that there is none. If there was an EIS and the public had not been made aware of it, that would be different. Irish Water submits that there was no requirement to have an Environmental Impact Statement, there is no prejudice to the objector and the objector has engaged in the process. Any person who wanted access to that information could have attended at any of the two places mentioned in the order venues, and found that there was no EIS. It hasn't been raised previously by the objector. It is a technical matter.

The content of the form that was downloaded, from a schedule to the Housing Act 1966, included an additional paragraph.

O - (Mr Sweetman) – Responds that here is a fundamental requirement that the public notice must be correct. Per Thos. Reid Supreme Court case; everything has to be 100% right. There is an error. That information was not made available to them. They looked for the information.

Once the newspaper notice is incorrect the development falls.

Regarding the large document submitted by IW which IW states contains documentation which was available prior to the hearing, the objector has not seen the letter concerning the error regarding the EIS, and had difficulty accessing the file, and was not allowed a full copy of the file.

1 Mr Dodd presents an overview of the project and the need for the CPO. His statement includes the items which the Board must consider:

- the community need to be met;
- the suitability of the lands to meet this need;
- whether the works accord with the Development Plan; and
- any alternative methods of meeting the need.

It is very difficult for someone to argue against the community need. It is clear from all the information before the Board that the treatment plant population is exceeded in double, the Tubbercurry stream receiving non-treated and poorly treated effluent is heavily polluted and has been for many years. The works are contained in the Development Plan and the Local Area Plan. From the original 1,400 the plant is now serving a population of in excess of 3,000.

As to the suitability of the lands in question – the original design specified that the outfall would discharge into the River Moy. It said that that pipeline would move to the west along the R294. This is a design and build operation. Following approval by An Bord Pleanála it was necessary to move the line to fields along the R294.

The field the objector owns is along that line. It isn't a field for which there are alternatives. There is 38m of pipeline across his lands, suitable to meet the needs.

The Sligo Development Plan specifically refers to the need to upgrade the agglomeration. The Irish Water programme specifically refers to the need for upgrades and there is finance available. The Board decision accepted that it was in accordance with the proper planning and sustainable development of the area.

The routing report will show that various routes were considered and this route involved the least amount of interference with the general public.

Re. the notice, no objection was made to the order, which was made available to Mr Calvey. They published and made available copies of the CPO. Regarding the objections raised, it has been beneficial to their engagement with Mr Calvey in narrowing down the issues.

2 Mr Claffey's evidence, largely following the text supplied, includes:

Reference to the transfer of powers to Irish Water, an account of the need for the project and CPO, the policy support for the project, the process so far, and the need for minor changes to the rising main route which are not considered to be alterations to the grant of permission.

Irish Water note and advise that the routing of the rising main through Mr Calvey's property is not a material change to the grant of planning permission by the Board. This is a planning matter and not a matter for this CPO process. Irish Water has satisfied itself that the proposed deviation to the route does not constitute a material change to the planning permission that is in place. It is Irish Water's responsibility to satisfy itself that all of the necessary permits and consents are in place prior to commencing construction work.

Irish Water has carried out an ecological and planning review of the proposed deviations and this review was informed by and assessed against the information contained within the NIS for the development, the ABP inspector's report and the ABP Planning Conditions.

Irish Water considers that the deviations proposed are in compliance with the conditions and undertakings of the NIS and the ABP planning conditions and that implementation of the measures and conditions will negate any potential adverse effects of the deviations.

No additional impacts or pathways for effect were identified, other than those already assessed in the NIS. It was determined that there would be no residual risk from the deviations and therefore no additional measures are deemed necessary.

The current approved project's environmental measures, and the planning conditions, cover the implementation of the deviations, and therefore the proposed deviations are unlikely to adversely affect the integrity of the River Moy SAC or any European Site.

The proposed minor changes to the rising main routes are not considered to be an alteration to the grant of planning.

In advance of the carrying out of works Irish Water will again review the application in its entirety to determine if the line of the network to be installed is materially compliant with the extant permission. Should further detailed analysis of the application conclude that the proposed line of the network is not compliant with the extant permission then Irish Water will seek any applicable planning permissions through the appropriate planning consent channels.

He responded to Mr Calvey's written objections:

Re. Mr Calvey's intention to construct an agricultural shed on the lands: Irish Water will require that the proposed location of the shed and the timing of its construction should be that:

- It will not be likely to cause damage to the existing potable water main that passes through the property.
- The proposed shed shall not be constructed over the area of the permanent wayleave.
- The proposed shed shall not be constructed over the area of the temporary wayleave until such time as Irish Water has constructed the proposed treated effluent rising main, reinstatement has been completed and works completed.

Re. Mr Calvey's concerns with respect to treatment standards, this is not a matter for the CPO process.

Re. Mr Calvey's concerns with respect to provision for industrial expansion and capacity of the proposed plant, this is not a matter for the CPO process. Irish Water is satisfied with the spare capacity.

Re. Mr Calvey's concerns about the proposed cover over the proposed pipe and possible damage to land drains. Irish Water will be required to reinstate the

property to a condition equivalent to its current position. Irish Water is happy to work with Mr Calvey to come up with an arrangement and a workable solution that will allay his concerns.

Re. Mr Calvey's stated difficulty in viewing the Order and deposited maps. The CPO notice was issued to Mr Calvey by registered letter dated 20 February 2017. Viewing and deposition of maps was completed in accordance with the statutory requirements. The order and maps were sent to Mr Calvey and put on public display in Tubbercurry and in Irish Waters Office in Talbot Street Dublin. Irish Water is satisfied that it complied with the Housing Act 1966, Sch 3, Art 4(a). with respect to displaying and issuing of notices.

Irish Water and its representatives have had considerable communications with Mr Calvey with a view to securing his agreement for the wayleave; a list of letters, e-mails and meetings is provided.

3 Mr Cosgrove's evidence, largely following the text supplied, includes: Their appointment by Sligo County Council and subsequently Irish Water in relation to the scheme.

Their duties including:

- to design based on specimen design level. The project is a DBO. The appointed contractor will complete the detailed design.
- ensure that the final design is based on Value Engineering principles.

Details of revisions to the original proposals, including:

Meeting Sligo County Council Road Dept. to discuss the scope of the proposed works for the scheme and the investigation works required to inform that design.

Sligo County Council Road Dept. had concerns with constructing a pipeline within the road. It could result in major damage to the road.

Large sections of the R294 is a bog rampart road, where the bog has been lowered on either side. It is an elevated road, which is small foundation over a bog substructure; at risk due to low sheer strength and high compressibility of the peat foundation. The roads authority have undertaken strengthening works, including

using mesh in the wearing course of the road structure to alleviate issues which had previously presented; there was damage from other work (broadband project). The consultants considered options including non-dig construction; Sligo Co Co had pointed out that open cut wouldn't be acceptable.

They looked at construction in adjacent fields.

They reviewed the potential to provide higher performance at the treatment plant.

The decision to rule out the provision of a higher treatment standard, as previously approved, was confirmed.

The option of using open cut along the entire route was not acceptable.

The decision to rule out the provision of higher treatment standards as previously approved still holds good. The factors which resulted in the decision to discharge at Annagh Bridge have not changed significantly.

They extended the scope of the site investigation by 10m either side; considering options of how they could construct along the R294; topographical survey; and height of the road in relation to adjacent drainage. They procured intrusive site investigation.

Sections of the R294 would be at risk, even if non-intrusive construction was used. Land drains aggravate the risk to the road, of land slippage. The road would have failed using the original scheme, which would have resulted in prolonged closure. The difference in elevation between the R294 and the plots in question is shown in drawing 20574-TY-110. Section BB shows the lands in question. It highlights the danger of open cut construction with potential for land slippage. Section CC shows where there are land drains.

The technology creates vibrations which poses risk in areas of peat ground; principally controlling the direction of the drill, such as where you have sections of peat and gravel. Controlling the direction is difficult, especially where there is a change of strata. The drill will always want to go the path of least resistance and the desired alignment may not be achieved.

Mr Sweetman requests bore hole logs, which are not available.

Mr Cosgrove states that the distance of drives will be shorter due to the high water content of peat, which increases the risk of blow back of drill fluid and makes the drive harder, creating further drive points and increasing the risk to the road.

Where the drill passes over culverts there is the risk that the culvert will collapse.

They concluded that there would be significant disruption to local communities.

He refers to the routing report September 2016. The proposed treatment standards at the Tubbercurry WWTP will meet the EPA effluent limit values, which are the same as the condition listed in the Approved Project (Ref: 21.JP0021). In relation to orthophosphate the plant will be designed to a more onerous standard than the condition listed in the approved project.

Route selection - each section to be moved off road was assessed to decide which side of the road should be chosen based on:

- properties affected (avoid residential properties),
- amount of landowner's affected,
- depth of construction due to drains to be crossed (Health & Safety Impact).

Design mitigation – following feedback from Mr Calvey consideration has been given to increasing the depth of the proposed pipeline to address the concerns raised in relation to land drains. There is already provision in the works contract to undertake advance investigations to identify services and repair any which are damaged as a result of the works to an equal or better condition. In the light of feedback the design can be adjusted to lower or higher elevation of the profile as per the request.

While not a matter for consideration at this CPO hearing, a desktop ecological review of the proposed deviations to JP0021 was carried out, which was informed by and assessed against the information contained within the NIS for the development, the An Bord Pleanála inspector's report and the An Bord Pleanála planning conditions; and it concluded that the deviations proposed are in compliance with the conditions and undertakings of the NIS and An Bord Pleanála planning conditions and that implementation of the measures and conditions (now key components of the approved project) will negate any potential adverse effects

of the deviations. No additional impacts or pathways for effect were identified other than those already assessed in the NIS. It was determined that there would be no residual risk from the deviations and therefore no additional measures are deemed necessary.

Objectors

4 Mr Rea states that Mr Calvey had sought a copy of the file (21.JP0021) from Sligo County Council and had been refused.

5 James Melvin, Sligo County Council, gives evidence confirming Mr Rea's statement that he had met Mr Calvey on the 15th May and that he requested a copy of the planning file JP0021, there wasn't one available, it hadn't gone through the planning office as it was a Part 8. He advised Mr Calvey that he was informed that it was a separate process, that it wasn't part of the CPO process, and that it was not available, but was available on the Board's website.

6 Mr Sweetman (largely) presents the case on behalf of Mr Calvey (O) mainly in the form of questions to Irish Water (IW) and are here referred to as questions and responses.

O - The public notice is invalid since there is reference to an EIS. There is a fundamental requirement in the Planning Acts that the public notice must be correct. It is even more important in compulsory purchase where the state body takes away Mr Calvey's rights under the constitution. There is an error, which was not made known to the objector.

Condition 1 of JP 21 states that the proposed development shall comply with the documents subject to the other conditions. The development is not complying with the permission.

IW – Irish Water is obliged to comply with the permission.

O - Citing Board Pleanala's letter and Irish Water's reply. They need to apply for planning permission. In another answer they are confident they have planning permission.

IW – (Mr Dodd) These are matters which do not need to be considered as part of the CPO. The design build contract necessarily involves some amount of flexibility. The information which has been provided is in response to the Board's letter. Mr Cosgrove has set out the departures and why that was required and how that will be done. The inspector can take into account the four issues without having to deal with why there was alteration and whether or not planning permission is required.

O- Questions whether or not planning permission would be applied for?

IW - The Act sets out that alteration of consent can be applied for: S146B of the Act provides for alterations².

O - Cites Thomas Reid v the IDA which found that the IDA was not entitled to have land banks.

IW - Responds that that case was completely different to the position of Irish Water. The CPO doesn't need to consider whether or not there is an issue in relation to planning permission. There is not a requirement that the planning permission or approval should be undertaken in advance of a CPO.

S 213 of the Planning and Development Act provides for Irish Water to acquire land for a particular purpose. It is clear the purpose that Irish Water have to acquire the land for.

O - Where in the public notice does it state the purpose for which the acquisition is made, per their response to the Board of the 17th May?

² Alteration by Board of strategic infrastructure development on request made of it. 146B.—(1) Subject to subsections (2) to (8) and section 146C, the Board may, on the request of any person who is carrying out or intending to carry out a strategic infrastructure development, alter the terms of the development the subject of a planning permission, approval or other consent granted under this Act. 21.JP0021 was not a SID case.

IW - It is for the purpose of carrying out construction, operation, upgrading the existing pipes etc, there is clearly a purpose for which Irish Water has sought to acquire it.

Referring to their letter of the 4th May, they need to acquire legal interest in the properties should Irish Water need to apply for planning application for the noted departures.

O - Refers to tab 21, querying where in the notice is it stated that Irish Water are going to depart from the permitted development? There is no permission to deviate from the line. They are landbanking.

IW - Reply that they do not require planning permission. They are not landbanking.

O – Queries if they do have a certificate of exemption?

IW - Reply that they do not have a certificate of exemption

O - The original application was made by Sligo County Council which was for the certification of an exempted development relevant to the requirement of appropriate assessment.

This application is being made by Irish Water which is not exempt from planning.

Objector queries how Irish Water can be exempt from planning for this deviation?

JP21 is actually the Habitats Directive.

IW - State that they are allowed to compulsorily acquire land under section S213 of the Planning and Development Act. This allows a planning authority, and now Irish Water (referenced in S93 of the Water Services Act, which specifically states that Irish Water can use that provision) to compulsorily acquire land for a particular purpose.

O - States that Irish Water cannot apply for a CPO for development for which they do not have planning permission. The two should have been put together. The objector is convinced it is not exempt and the objector may have to put in a section 5 query to let them prove to the Council or the Board that it is exempted.

IW – Respond in relation to the requirement to have the necessary permits and consents in place at the time of construction. Irish Water state that they are obliged to have the permits in place prior to construction. They have a number of schemes

in advancement where they are seeking to CPO lands in advance of planning. There is no requirement to have a parallel process in place. The planning process is a completely separate process to the CPO process. If the objector has an issue with the planning that is in place, he should raise the issue with the planning authority when or before they are to commence construction.

O – Refers to the judgement of Mr Justice Humphreys in *Holohane v ABP* case³, which has put 11 questions to the European Court, one question will state whether a design and build contract, capable of having an effect on an SAC is or is not legal in European law. Objector says it is not legal, as, to make a decision, which the Board had to do in JP21, they had to know what is being proposed.

Refers to the Water Framework Directive and Water Pollution Act which, since 1984, requires that waterways should not be polluted and states that the secondary treatment proposed is not the optimum treatment for effluent discharging to a SAC.

Refers to the statement that the river has adequate assimilative capacity and queries what adequate assimilative capacity is for a SAC?

Queries where the site notice was placed, in relation to JP21? The objector states that the notice was inadequate and did not alert the objector that planning permission was being sought over his land.

It is now proposed to amend a development which was assessed for appropriate assessment only: trying to amend a planning permission which does not exist.

From the description of the development in JP21, an application by Sligo County Council, the only thing that was approved was the discharge to the Moy. The pipeline going down the road was never applied for. There is no permission and Irish Water are trying to amend a non-permission. They need a new permission.

IW – Cite the Inspector's report on JP21, page 4, 3rd paragraph: 'the exact size and position of the units proposed and exact processes involved in the wastewater treatment system and the exact position of the outfall pipe will be decided by the

³ 2014 No 476 JR, Mr Justice Humphreys judgement of 4th May 2017, An Bord Pleanála were one of the respondents in the case.

contractor at the design stage'. The inspector and the Board foresaw at tender stage that there would be amendments, adjustments to the submission that was put in. Irish Water will have planning in place before going to construction.

O – Reiterates that there is no permission to vary; only a discharge to the SAC. Once they are deviating from the project in any form, they require planning permission, they have no exemption.

The public notice was fundamentally flawed, it stated that there was an EIS and no attempt was made to change it.

Re. the statement that the changes to the rising main are not a material change to the grant of planning permission; it is not a planning permission. The change from down the road to Mr Calvey's land is a fundamental change.

Re. the statement that the approval covers the changes; condition 1 states that it should be in accordance with the documents submitted.

Queries do you consider it to be exempted development or are you going to apply for planning permission? Both have been stated. Which is it?

IW – In the event that they require any further consents or permissions they will be obtained. In the context of the CPO this is not a matter to be considered.

The complete design of the scheme will not be commence until they have their contractor in place. As the design unfolds, if they feel it is not in compliance with planning they will be obliged to regularise it.

O – Queries if they have presented Mr Calvey with a map showing where the watermain going through the land is?

IW - If Mr Calvey had seen through his conveyancing he would have that map. They are happy to engage with Mr Calvey regarding the building of his shed.

O – Could he start building his shed tomorrow, for which he has a S5?

IW - He could. An arbitrator could take into account work carried out after the notice to treat has been served.

O – You don't have a permanent wayleave, Mr Calvey has a permission and Irish Water is trying to put conditions on him. What gives you the entitlement to put those conditions down at this stage?

IW – That is a post CPO issue, in circumstances where the CPO has been confirmed, Sec 104 of the Water Services Act prevents people from building within certain distances.

O – Re. the statements regarding re-instatement of the land. Mr Calvey wants to start building now.

IW - Irish Water is prepared to engage with Mr Calvey now.

O – Refers to Mr Calvey's difficulty in viewing files, querying whether Irish Water are satisfied that it complies with the AARHUS convention.

IW – The local authority made available, prior to the 177AE application, all the documentation. They have provided Mr Calvey with all the necessary documentation and there has been no breach of the AARHUS convention. It might be helpful if the objector pointed out what sections were breached.

O – Regulations implementing the access to information aspect of the AARHUS convention include as a schedule the actual Directive. The Directive has full status in law. Mr Rea has made numerous attempts to get the full information relevant to this. The letters to Mr O'Buachalla show this.

(Mr Rea) – Refers to correspondence, dated 12th May, (tab 23), (responding to his earlier letter), which states that no environmental statement had been prepared, and is not subject to review. This is contrary to the public notice. No EIS was ever prepared in respect to his client's land. Re. the statement that a NIS was prepared; it was completed as part of the planning process. As environmental reports are not part of the CPO they were not put on display and are not subject to adjudication by the Board; and Mr O'Buachalla declined the request to make it available to the objector. The objector considers that it should have been supplied to him. It was up to him to decide whether or not it is relevant, especially when it was specifically referred to in the public notice.

IW – The NIS was part of the 177AE application. It was made available at the time. It is a public document. The regulations, at art. 61B - the request for the information, must state that it is a request pursuant to the regulations. The information must be environmental information. The information was available to

the public. What Mr Rea was looking for was a copy of the full file which is not required in the regulations. The period within which it is to be made available is stated as one month. The request does not need to be complied with if the information is available to someone by another means. Irish Water rejects that there has been any breach.

O – Refers to the Directive. This information is not available on the Bord Pleanála website. They had to chase the Board for a copy of the file.

Inspector queries how long it had taken for the Board to produce a copy of the file?

O – It took about three weeks. Regulations state a maximum time limit of one month taking account of the requirements of the applicant. Applicant (objector) obviously needed it in advance of the hearing. The new Directive which came into force on the 14th of May, places much more responsibility on Irish Water.

O – In relation to the existence of a wayleave for a watermain, Mr Rea is acting for someone else adjoining and he has requested the location of the wayleave. He has the folios for the adjoining land on the town site and on this land, no wayleave is shown.

IW – Questions if Mr Calvey is denying that there is a wayleave there?

O – Reads a letter regarding the transfer of land to Mr Calvey.

IW – Re. the position of the current wayleave. They will work with Mr Calvey in respect of any work that he wishes to carry out.

O – (Mr Rea) Has a draft deed of easement, (re. existing watermain wayleave). Re. engagement and substantial correspondence. Engagement has to be a two-way process. They had a meeting with Irish Water on the 18th May. Mr Rea wrote a letter on the 25th May to Mr O'Boyle (of O'Buchalla's), he made reference to issues like the CoP that he wasn't happy with, the proposed depth of the pipeline (they didn't say that they could go to 2m), they asked questions in relation to vents, inspection chambers and surface items on their property; they asked whether it was open trench or drilling; they had an issue with the indemnification clause, they will be requesting that the same type of indemnification, similar to that used by the NRA, be used, which refers to lands outside the wayleave which may be a risk;

there has to be an accommodation works agreement. There is a deficiency in the CoP as there is no reference to a property condition survey. These are serious issues and they have had no reply. The information they are looking for is basic. The NRA/TII provide such information.

In relation to the planning, the Board approved of a whole lot of things; the pipe hasn't been approved for any planning. They are not entitled to acquire something by CPO for something which might occur.

They are not entitled to move the pipe. In a road case the road can't be moved. Objector (Mr Sweetman) has no submission in relation to the four items referred to by IW: community need etc. as there is no valid legal submission.

Also there is no wastewater discharge licence, the licence has expired.

IW – The licence has not expired. It has a lifespan of 5 years and is due to expire in 2018. The period for complying with the terms of the licence has expired. This supports their 'community need' argument. The EPA does not licence the construction of infrastructure. They set out limit values which the infrastructure must comply with.

O – (Mr Rea) Refers to two further court cases, and that any effect requires a NIA. It will have a positive effect. The question is, is it the ultimate effect.

O – (Mr Sweetman) No evidence was produced as to why they could not go down the road with the pipeline; although objector agrees that such would not be appropriate which anyone could have told them. (Mr Rea) If they had put on wellingtons and walked the fields they would have known.

(Mr Sweetman) It is essential that, in a process which denies the objector his constitutional right to own land, every 'i' is dotted and every 't' is crossed and this has not been done. They have failed at every hurdle.

(Mr Rea) Re. invalid notice, an example in Sligo is cited; where the notice may not have included all the landowners, which had to be re-published; and a further example is cited of a motorway in Cork (where the advertisement was carried in a supplement and did not have a date on it).

IW - Refers to Inspector's report on JP0027, which refers to the benefit of the project.

IW Summing up - The reference to the notices in the case where not all landowners were included, would have prejudiced a landowner. Mr Calvey was not prejudiced. He engaged in the process. The CPO documents did not contain that error. In circumstances where there was an EIS and the notice did not mention the fact, it would have been different.

There hasn't been any evidence in relation to community need, the suitability of the lands, compliance with policy, or alternative methods in meeting the community need. The landowner's constitutional rights are acknowledged but no constitutional right is absolute. There is a greater public interest in the works to improve the wastewater.

Irish Water has engaged with the landowner and has shown their willingness to engage. Irish Water is in a position that they can adapt in order to suit the landowner.

Evidence has been heard in relation to the deviations.

Re. access to information, there has been no breach by Sligo County Council or Irish Water of their obligations.