# Inspector's Report
# ABP303877-19

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| **Development** | Compulsory Acquisition of Lands. |
| **Location** | Whitegate, Aghada and Rostellan and Ballytigeen, County Cork. |
| **Planning Authority** | Cork County Council. |
| **Applicant** | Irish Water. |
| **Type of Application** | Notice of Compulsory Purchase Order under Water Services Act 2007-2013, Planning and Development Act 2000 (as amended) and the Housing Act 1966. |
| **Objectors** | (1) [redacted]<br>(2) |
| **Date of Site Inspection** | 2nd July, 2019. |
| **Inspector** | Paul Caprani. |

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# 1.0 Introduction

## 1.1. Overview

1.1.1. Irish Water is seeking confirmation by the Board of a CPO entitled “Irish Water Compulsory Purchase (Whitegate/Aghada Sewage Scheme) Order 2019.

1.1.2. The Compulsory Purchase Order relates to the compulsory acquisition of rights over land including permanent acquisition of lands, wayleaves over land, temporary working rights and rights of way in various parcels of land in the townlands of Lower Aghada, Ballytigeen, Ballynafarsid, Whitegate and Glanagow. The confirmation of the CPO is made pursuant of the powers conferred on Irish Water, which is designated as the Water Services Authority under the provisions of Section 31, 32 and 93 of the Water Services Act 2007, as amended.

1.1.3. Two objections were received in respect of the CPO. The objections were received from [redacted] This report considers the issues raised in the objections submitted to the Board and more generally, the application to acquire lands.

## 1.2. Purpose of the CPO

1.2.1. According to the documentation submitted with the application, the purpose of the CPO is to:

- Eliminate untreated wastewater discharge from the agglomerations of Whitegate and Aghada into Cork Harbour.
- To provide a level of treatment that complies with general environmental regulations pertaining to wastewater and to ensure that any wastewater treatment facility can cater for the increase in loading arising from the future expansion of the Whitegate/Aghada agglomeration.

- To more effectively manage fluctuations in flow during storm events in order to comply with current guidelines and best practice in relation to stormwater flows.
- Finally, the improvement in wastewater treatment derived from the proposal will improve water quality in the Lower Cork Harbour Area.

## 1.3. Accompanying Documents

1.3.1. The application was accompanied by the following documentation:

- The Compulsory Purchase Order signed and sealed by the managing director and the company secretary of Irish Water dated 21st February, 2019.
- The CPO maps comprising of five sheets indicating the lands to be acquired for:
    - Permanent acquisition.
    - Permanent wayleaves.
    - Permanent wayleaves and rights of ways.
    - Temporary working areas.
- An engineer's report detailing the proposal and stating that it is in accordance with local planning policy and that the acquisition of the lands is suitable and necessary for the purpose of the CPO.
- Public notices published in the East Cork Journal dated 28th February, 2019.
- A Route and Site Selection report.
- Sample copy of the notices sent to various landowners.
- Certificate of Service of CPO notices.

## 1.4. Format of CPO Schedule

1.4.1. Part 1 of the Schedule specifically sets out the lands to be the subject of permanent acquisition. It involves three separate plots (Plots 4, 10 and 22).

1.4.2. Part 2 of the Schedule sets out lands to be acquired for permanent wayleaves; It involves a total of 15 plots (Plots 1 7, 9, 11, 13, 15, 17, 19, 20, 22. 25, 27, 29, 30, 33 and 34).

1.4.3. Part 4 sets out the requirements for rights of way. A total of two plots are required for this purpose (Plots 27 and 29).

1.4.4. Part 4 sets out details of the proposed temporary works areas required to facilitate the works. A total of 12 separate plots are required (Plots 5, 8, 12, 14, 16, 18, 21, 23, 24, 28, 31 and 32).

## 2.0 Site Location and Description

2.1. The lands to be acquired by Irish Water relate to five separate areas located between the small settlement of Rostellan to the east of Cork Harbour and the townland of Glanagow approximately 3 kilometres (as the crow flies) to the south-west of Rostellan. The townland of Ballytigeen, where the proposed wastewater treatment plant is to be located, is situated between Whitegate Oil Refinery and Roches Point at the entrance to Cork Harbour. The plots of land to be acquired under the CPO are clustered along the R630 at Rostellan, Aghada Lower and Whitegate. The proposed wastewater treatment plant is to be located on agricultural lands approximately 1.5 kilometres to the south-west of the village of Whitegate to the immediate south of the Whitegate Oil Refinery. Effluent from the wastewater treatment plant will be discharged via new marine outfall located at Whitebeach c.1 kilometre south of the wastewater treatment plant.

2.2. The areas in which the individual plots of land to be acquired under the current application are described in more detail below.

<u>Lands at Rostellan</u>

Three separate plots of contiguous lands are required for a permanent wayleave and a right of way at Rostellan. The lands in question form part of a memorial garden laid out on the northern side of the R630 and to the immediate west of a local road which runs northwards to Rostellan Bridge. The lands comprise of grassed areas surrounded by a low wall and chainlinked bollards. A seating area, a sculpture and a 1916 memorial is located within the park. A footpath runs along the southern

boundary of the site and mudflats and sand/shingle area which forms part of the Rostellan Estuary/Cork Harbour area is located along the western and northern boundary of the site. The three plots amount to 0.059 hectares (590 square metres). In Rostellan it is proposed to provide:

- A wastewater pumping station with a capacity of 56 cubic metres.
- 1,413 metres of rising main to convey wastewater generated in Rostellan to the Lower Aghada network further west.

Lands at Lower Aghada

The lands at Lower Aghada which are sought to be acquired relate to seven separate plots of land primarily located in an area of shrubland to the south-west of Aghada Pier. The permanent acquisition of lands is sought for two of the plots (Plot No. 4 and Plot No. 22) amounting to an area of c.0.3 hectares (3,000 square metres). The remainder of the plots (Plots 5, 20, 21, 23 and 30) relate to the acquisition of permanent wayleaves and temporary working areas. These areas are all located between the roadway (the R630) which runs along the southern boundary of the site, and plots to the north which are to be the subject of a permanent acquisition.

The lands in question are bounded to the south by the R630 and to the east by the junction of Aghada Pier and the R630. A small petrol station, shop and vehicle repairs garage are located on the western side of the pier, to the immediate north-east of the lands in question. The shoreline of East Cork Harbour is located to the north and west of the lands.

At Lower Aghada it is proposed to provide:

- A wastewater pumping station with a capacity of 85 cubic metres.
- 685 metres of rising main to convey the combined effluent generated at Rostellan and Lower Aghada to the Upper Aghada – Whitegate network.

The Upper Aghada/Whitegate Site

The lands sought to be acquired in Whitegate Village amount to six plots all of which are located either within or contiguous to an area of open space located in the centre of the village. The area comprises of a small landscaped area with seating

surrounded by public roads and on-street perpendicular car parking. The plots in question are all located on the eastern side of the R630. There are two plots to the immediate north of the area of central open space to be acquired: Plot No. 33 (permanent wayleave sought) and Plot No. 32 (a temporary working area). These plots occupy a strip of amenity grassland and a hard surface area adjacent to the roadway respectively. The remainder of the sites located within the central area of open space are to be acquired as either permanent wayleaves or temporary working areas. The total area of land to be acquired in Whitegate Village amounts to 0.099 hectares (990 square metres).

Within this area it is proposed to provide 535 metres of gravity sewer to transfer the sewage from the Ardnabourkey Estate which is located on a local road c.1 kilometre to the south-east of the central Whitegate Village to the Upper Aghada/Whitegate network.

- A terminal pumping station with 304 cubic metres of storage.
- A 1.91 kilometre rising main to convey all flows to the proposed wastewater treatment plant to the south-west.

<u>The lands sought to be acquired to facilitate the provision of a new wastewater treatment plant include the following:</u>

Confirmation is sought for a permanent wayleave and permanent right of way (Plot No. 7) along a laneway to the rear (south) of Whitegate Oil Refinery which branches of the R630 opposite Paddock Wood, approximately 1 kilometre south of Whitegate Village. This laneway currently provides access to a number of fields and also access to a telecommunication mast and compound. It is also to provide access to the proposed wastewater treatment plant (Plot 10). Existing telecommunication cables are  The lands that are to be permanently acquired for the wastewater treatment plant and rectangular in shape. The lands to be permanently acquired amount to 0.628 hectares in size (6,280 square metres). The laneway leading to the wastewater treatment plant continues past the northern boundary of the proposed plant but deteriorates rapidly beyond the proposed site. The proposed wastewater treatment plant is located 600 metres south-west of the junction with the R630 and approximately 220 metres of south of the Whitegate Oil Refinery.

Irish Water also seek the confirmation of a wayleave to extend beyond the proposed wastewater treatment plant along with a temporary work area on either side of the wayleave to the coast at Whitegate Beach. The proposed permanent wayleave extends beyond the wastewater treatment plant to the shoreline at White's Bay, a distance of approximately 850 metres. The wayleave extends beyond the high water mark into the bay for a distance of approximately 190 metres to facilitate a new marine outfall for the wastewater treatment plant. The wastewater treatment plant and permanent wayleave traverse agricultural fields between the R630 and the coast.

The CPO of the lands in question seek to facilitate the following:

- The wastewater treatment plant to provide preliminary and primary treatment (an area is also reserved within the site for secondary treatment, if required).
- 835 metres of gravity sewer sized to convey treated effluent flow to the marine outfall.
- The provision of a marine outfall 190 metres beyond the high-water mark.

## 3.0 Planning History

There is no reference to the documentation submitted with the CPO to any relevant planning history relating to the lands in question.

## 4.0 Planning Policy Context

4.1. The lands to which the CPO relate are governed by the policies and provisions contained in the Cork County Development Plan 2014-2020. The plan contains a number of policies and objectives relating to the provision of infrastructure and these are set out below.

4.2. In terms of water services, a key aim of the plan is to prioritise the delivery of water services infrastructure, in consultation with Irish Water, to ensure that the aims and objectives of the plan can be delivered in a timely and efficient manner.

4.3. The plan goes on to state that the challenge will be to match water services infrastructure provision in the main towns to the population targets identified for them so that the planned growth and development is not inhibited by any lack of adequate water services infrastructure.

4.4. In general, water supply and wastewater facilities need to be improved throughout the county both to serve the existing communities and to accommodate planned growth.

4.5. Policy WS2-1 seeks to prioritise the provision of water services infrastructure in the gateway hub and main towns to complement the overall strategy for economic and population growth while ensuring appropriate protection of the environment.

4.6. All settlements where services are not meeting current needs are failing to meet existing licensed conditions, and where these deficiencies are either (a) interfering with the Council's ability to meet the requirements of the Water Framework Directive or (b) having negative impacts on Natura 2000 sites; development may only proceed where appropriate wastewater treatment is available which meets the requirements of environmental legislation, the Water Framework Directive and requirements of the Habitats Directive.

4.7. Policy WS3-1 specifically relates to wastewater disposal. It requires that all development in main settlements connect to public wastewater treatment facilities subject to sufficient capacity being available which does not interfere with the Council's ability to meet the requirements of the Water Framework Directive and Habitats Directive. In settlements where no public wastewater system is either available or proposed, or where a design, capacity or licensing issues have been identified in existing plants, new developments will be unable to proceed unless adequate wastewater infrastructure is provided.

4.8. **East Cork Development Plan 2017**

4.8.1. Whitegate and Aghada are listed as key villages in the above plan. The overall strategic aims for Whitegate and Aghada are to promote its role as a location for storage and processing of strategic energy resources, consolidating its industrial and harbour related roles within the sensitive coastal setting with limited expansion of residential uses.

4.8.2. Section 4.6.10 notes that the Whitegate Regional Water Supply S,cheme is operating at full capacity pumping up to about 20 hours per day. The Cloyne/Aghada Scheme is operating at close to full capacity.

4.8.3. The existing sewage scheme is a combined sewage scheme that discharges without treatment to the lower harbour at a number of locations though primarily at Long Point. The provision of a new foul sewer system and a new wastewater treatment plant is required prior to any further development taking place in Whitegate and Aghada.

4.8.4. It is envisaged that the settlement should grow by an additional 190 units which is consistent with the policy to limit housing development. It is considered that the bulk of this housing will be provided around the existing housing and community facilities available at Upper Aghada with the expansion of industrial lands to south of the villages. Opportunities for residential development in Whitegate Village itself will be limited.

4.8.5. The lands on which the wastewater treatment plant is to be located are zoned WGI-04 – 'Industry', which seeks the provision for the extension of the adjoining established industry area including new port related activities and bulk liquid storage. Special attention will be paid both to the design and siting of large structures or buildings and the provision of an appropriate structural landscaping. Proposals for the development of this site shall include proposals for the provision of long-term structural landscaping on site.

4.8.6. WG-O-16 relates to designated open space to the south and east of the subject site.

## 5.0 **Objections**

5.1. Submissions were received by two objectors in relation to the proposed CPO.

5.2. <u>Objection on behalf of</u> [redacted]

5.3. Two separate letters were received on behalf of [redacted] It specifically relates to Plot Ref. No. 27. The first letter received by the Board and dated 25th March, 2019 (prepared by Martin and Rea Consultants and Agriculture Valuers) state that [redacted] formally objects to the proposed acquisition of the permanent wayleave and permanent rights

of way over his client's property. It is stated that the CPO is being served on [redacted] to service the property owned by a third party. A subsequent letter dated 4th April, 2019 on behalf of [redacted] by the same agent states that Irish Water have purchased or are in the process of purchasing a site on lands located to the south of [redacted]. It is not warranted that access to the site should be compulsorily acquired from [redacted] when access should be properly obtained from the owner of the site[1].

5.4. **Objection from [redacted]**

5.4.1. This objection was received on behalf of [redacted] by T-Plan Planning Consultants. The concerns raised in the objection relate to the acquisition of lands for the Wastewater Treatment Plant.

5.4.2. It is argued that the proposed permanent and temporary land take will have a detrimental effect on [redacted] lands as it will effectively divide the landholding therefore potentially affecting the development options available for the objectors. It is noted that the land in question is currently zoned for industrial use.

5.4.3. The objection goes on to set out the planning policy relating to the lands in question making specific references to various statements contained in the East Cork Local Area Plan 2017 (please see above). The proposal which traverses the objector's landholdings has the potential to limit the proper development of the lands in question.

5.4.4. It is noted that the industrially zoned landbank is limited in area due to the fact that it is surrounded by designated open space.

5.4.5. It is also noted that there is a special policy area located to the east of the industrial lands in question WG-X-01. The development plan notes that this area has the potential for major largescale energy and renewable energy related development including port related activity and bulk storage and processing activities. It is suggested that Irish Water's proposal would be more properly located in this area which has the specific objective for the upgrading of water supply and wastewater infrastructure to serve and cater for the needs of this area.

[1] See proceedings of oral hearing in Appendix 1 of this report for further elaboration of Mr. Day's concerns.

## 6.0 Oral Hearing

6.1. An Oral Hearing was held in respect of the application to confirm the CPO and the Midleton Hotel, Midleton, County Cork. Unfortunately, due to technical problems experienced after the hearing was concluded, the digital sound recording of the proceedings of the Oral Hearing was damaged and is not available. Copies of all the submissions read into the record of the hearing are contained on file. A summary of the proceedings of the oral hearing is included as Appendix 1 of this report.

## 7.0 Assessment

### 7.1. Overview

For the Board to confirm the subject CPO it must be satisfied that Irish Water has demonstrated that the CPOIs clearly justified by the “common good”. Case law has determined that, in order to satisfy the above phrase, the following minimum criteria are required to be satisfied.

- There is a community need that is to be met by the acquisition of the site in question.
- The particular site is suitable to meet the community need.
- Any alternative method of meeting the community need have been considered but are not demonstrably preferable.
- The works to be carried out should accord or at least not be in material contravention of the policy and objectives contained in the statutory development plan relating to the area.

The proposed development is assessed in the context of the tests set out above prior to addressing the specific issues raised in the objections lodged.

### 7.2. Community Need

7.2.1. The community need for the project was set out by Irish Water in the documentation submitted with the CPO and also with the witness statements at the oral hearing and can be summarised as follows:

7.2.2. Currently Rostellan Aghada, Whitegate agglomeration is one of 44 agglomerations in the State that does not have the benefit of adequate wastewater treatment prior to discharge of effluent into East Cork Harbour.

7.2.3. There is a requirement under the Water Framework Directive and the Urban Wastewater Treatment Directive that any wastewater being discharged into receiving waters be the subject of appropriate treatment. In the case of agglomerations of less than 10,000 persons primary treatment of effluent, as a minimum requirement, must be provided (as per Article 7(a) of S.I. 254 of 2001). There is a legal requirement therefore that wastewater treatment is required at least to primary level in order to comply with legal requirements set out in the Urban Wastewater Treatment Regulations. The specific level of treatment required for any discharge of effluent into receiving waters will be further determined by way of a planning application to ensure that any wastewater treatment facility complies with other relevant legislation including the surface water Regulations (S.I. 272 of 2009). Any such compliance will be the subject of subsequent assessment is not a matter for this CPO application. For the purposes of confirming the CPO or otherwise, the Board however should be cognisant of the legal requirements set out under the Urban Wastewater Treatment Regulations which necessitates some form of treatment prior to discharge. The provision of a wastewater treatment plant and associated infrastructure therefore constitutes a legal requirement which must be adhered to.

7.2.4. There are designated Shellfish Waters in proximity to existing outfalls, particularly the existing outfalls at Rostellan and Lower Aghada (see paragraph 9, page 6 of statement of evidence at the oral hearing by Seamus Glynn). The provision of appropriate treatment will greatly reduce pollution risk to receiving waters of Cork Harbour thereby increasing the potential for biodiversity and enhancing the amenity of East Cork Harbour.

7.2.5. It is noted that large tracks of land are zoned for development, primarily industrial development in and around the Whitegate/Aghada area. The provision of an appropriate wastewater treatment plant and associated infrastructure can facilitate the potential social, economic, residential and industrial growth of the area in accordance with the policies and provisions of the development plan. The provision of appropriate wastewater treatment will facilitate future potential development of the area and attract new industry, residential and employment opportunities.

7.2.6. Finally, in relation to the community need test, I note that the objectors did not challenge the confirmation of the CPO on the basis of community need. The concerns raised were primarily in respect of route selection and the impact on the development potential of lands. It is noted that the evidence presented on behalf of [redacted] at the oral hearing stated at the outset that there was no objection to the principle of a wastewater treatment plant serving the agglomeration in question.

7.2.7. Having reviewed the information submitted and having conducted an oral hearing, I am satisfied that there is a need for a wastewater treatment plant to meet existing and future demand in the Whitegate, Aghada, Rostellan agglomeration in order to improve water quality and satisfy legal requirements in respect of wastewater treatment. I am therefore satisfied that Irish Water have demonstrated a clear and pressing community need that would be met by the project and would be facilitated by the acquisition of rights over the lands in question, should the Board consider it appropriate to confirm the CPO.

### 7.3. Suitability of Lands to Serve Community Need

7.3.1. The Board will note, that of the 34 plots lands which are subject to the CPO only three plots (Plot 10, Plot 4 and Plot 22) are to be permanently acquired. Plot 10 is sought to facilitate the wastewater treatment plant whereas Plots 4 and 22 are sought to facilitate the pumping station and storage tank. All other plots are for the purposes of permanent wayleaves, permanent rights of way and temporary working areas.

7.3.2. The land which is sought to be acquired in the form of permanent acquisition, wayleaves rights and rights of way etc. comprise of distinct and discreet clusters which are located within the settlements of Rostellan, Aghada and Whitegate. Additional lands are also being sought to cater for the wastewater treatment plant and these are currently under agricultural use but are zoned for industrial use.

7.3.3. The lands at Rostellan are currently occupied by a Memorial Park, which incorporates a picturesque setting and provides a good amenity area for the village. Three permanent wayleaves/right of ways are sought in this area to provide access for pipe laying and maintenance. The works to be undertaken at this location will not

result in any permanent loss of amenity area as the lands will be restored post-construction.

7.3.4. With regard to the lands at Aghada, the lands to be permanently acquired currently comprise of scrubland adjacent to the west side of Aghada Pier. These lands do not accommodate any use and are somewhat unsightly in their present state. The lands in question are not sensitive in terms of development plan designations or ecological designations. The lands are not governed by any specific zoning objective in the development plan.

7.3.5. With regard to the lands in the village of Whitegate, all the lands in question appear to be under the ownership of Cork County Council and the plots in question primarily comprise of amenity open space at the centre of the village. Furthermore, it is not sought to permanently acquire the lands in question. The CPO seeks the acquisition of permanent wayleaves and temporary working areas in the village of Whitegate only. The lands in question will be reinstated after the requisite works are carried out. Subsequent to the completion of the works, the lands will not be adversely affected by the proposal.

7.3.6. The Board will note that no objections were received in relation to any of the plots sought to be acquired by Irish Water at either Rostellan, Aghada or Whitegate.

7.3.7. The rising main from the R630 to the wastewater treatment plant is proposed to be located along an existing laneway to the rear of the Whitegate Oil Refinery which serves the agricultural lands in question and also access to a telecommunications mast. This laneway is under the occupancy of [redacted] one of the objectors of the proposal. Irish Water seek a permanent wayleave and a right of way along this laneway. Specific details in relation to the objection lodged by [redacted] is dealt with further below in my report. The plot on which it is proposed to permanently acquire for the wastewater treatment plant is located within an agricultural field. The proposed wastewater treatment plant is located topographically at an elevated level in order to facilitate a gravity sewer to serve the marine outfall. While currently under agricultural use, the proposed wastewater treatment plant is located within an area which is zoned for industrial use. In terms of suitability, I note that the wastewater treatment plant could be consisted to be compatible with industrially zoned land, as it is not unusual that utility infrastructure would be located amongst industrial uses.

The lands to which the CPO relates is located in an area designated as an area of high landscape value. However, it should be noted that the entire coastal area around County Cork attracts such a designation. It would not be feasibly possible in my opinion to locate a wastewater treatment plant in proximity to the area intended to be served without locating such a treatment plant within an area designated as high landscape value. The area in which it is proposed to locate the wastewater treatment plant is very sparsely populated. The nearest residential dwelling is c.600 metres to the south of the site to be acquired for the wastewater treatment plant.

7.3.8. As referred to above with regard to land use zoning objectives, there is no land use zoning matrix indicating which uses are permissible or not permissible set out under the Cork County Development Plan or the East Cork Municipal District Local Area Plan. However, as the evidence of a [redacted] submitted at the oral hearing indicates Objective ZU2-3 in the county development plan states that "where lands have not be explicitly zoned, in either the adopted Local Area Plan or the adopted Special Local Area Plans, the specific zoning shall be deemed to be that of the existing use of the lands. In the case of the lands sought to be acquired at Rostellan, Lower Aghada and Whitegate, the proposed works to be undertaken as part of the CPO would not result in a material change of the use of the lands in question.

7.3.9. With regard to the proposed wastewater treatment plant the land use zoning maps for Whitegate and Aghada show that the identified site for the wastewater treatment plant and the majority of the gravity sewer from the wastewater treatment plant are located in an area zoned for industry. While there is no explicit land use zoning matrix for the industrially zoned land contained in the development plan, I consider that the provision of a wastewater treatment plant is generally compatible with industrial uses including any new port related activities envisaged under the zoning objective.

7.3.10. The proposal also seeks to where possible place pipelines within the existing road network. It is likely that the existing alignments are already burdened with public infrastructure and cabling etc. and it is appropriate that any further pipework would be placed within the confines of the existing road alignment.

7.3.11. Thus, having regard to the nature of existing uses on the lands sought to be acquired, together with the zoning objectives relating to the lands and the proposal to

lay pipelines where possible within the existing public road network, I am satisfied that the lands which are the subject of the CPO, are suitable to meet the aforementioned community need.

7.4. **Compliance with Development Plan**

7.4.1. As outlined in the section above entitled “Development Plan Policy”, the Cork County Development Plan and the East Cork District Local Area Plan contain numerous policy statements which support the provision of improved infrastructure, including water services infrastructure, in order to facilitate the development in the county and in the local area. The various policies and objectives which support the generality of the proposal are referred to in the original documentation submitted with the CPO application as well as the statement of evidence of Ms. Olwen James at the oral hearing.

7.4.2. The core strategy in Section 2.2.33 of the County Development Plan notes that the critical issue in securing the level of development set out in the development plan in the coming decade concerns the delivery of essential transport and water services infrastructure. The strategy notes the nature conservation objectives for Natura 2000 sites in Cork Harbour and the need to prioritise and upgrade wastewater treatment plants discharging into the harbour. Therefore, the County Development Plan has prioritised the upgrading of these plants, and the Council will work with Irish Water to ensure that these works are implemented in a timely manner if delays to planned development are to be avoided.

7.4.3. With regard to relevant policies contained in the East Cork District Local Area Plan, Section 4.6.11 notes that the existing sewage scheme serving the area is primarily a combined sewage scheme that discharges without treatment into the lower harbour at a number of locations although primarily at Long Point. Provision for a new foul sewer system and new wastewater treatment plant is required prior to any further development taking place within Whitegate and Aghada.

7.4.4. Objective DB-02 seeks to provide appropriate and sustainable water and wastewater infrastructure, that secures the objectives of the Water Framework Directive and the Great Island Channel/Cork Harbour Special Area of Conservation and the Cork Harbour Special Protection Area, must be provided and be operational in advance of

the commencement of any discharges from development. Wastewater infrastructure must be capable of treating discharges to ensure that water quality in the receiving water does not fall below legally required levels.

7.4.5. On the basis of the explicit and unambiguous statements contained in the development plan, and specifically the requirement that all future development within the Whitegate/Aghada agglomeration is predicated on the improvement in wastewater infrastructure in order to improve and protect water quality and Natura 2000 sites in Cork Harbour, it is my conclusion that the CPO fully accords with the policies and provisions contained in the county and local development plan.

## 7.5. Consideration of Alternatives

7.5.1. Irish Water has submitted with the CPO application a route and site selection report. Alternatives were considered in relation to:

- The location of a wastewater treatment plant.
- The location of the outfall.
- The location of the various pumping stations.
- The selection and wayleave route.

<u>Wastewater Treatment Plant Location</u>

Irish Water identified potentially suitable land parcels on which to locate a wastewater treatment plant. The potential land parcels were identified based on constraints mapping which included:

- Ecological designations.
- Buffer zones around dwellings.
- Flooding extent.
- Land use zoning objectives.
- Topographic constraints.

Each of the wastewater treatment plant locations were assessed with regard to planning policy, environmental impact, sustainability and energy use and cost. Technical requirements included health and safety, constructability and land

requirements, and these were also taken into consideration when assessing alternatives.

Five sites were initially identified. Two in the vicinity of Upper Aghada and three to the south and south-west of Whitegate. A key consideration identifying a suitable site involved pin-pointing suitable lands were gravity flow of effluent to the outfall location could be achieved. It was also a requirement that the wastewater treatment plant should be located in close proximity to the proposed outfall.

In terms of evaluating outfall locations, four alternative locations were considered, including the two existing outfalls at Lower Aghada and Whitegate. Two additional outfalls were considered at Roches Point and White's Bay (preferred location). The Scottish Environmental Protection Agency (SEPA) Guidance on Discharge to Coastal Areas was used to assess the optimum dilution rates. Assimilative capacity calculations were then carried out to assess the level of treatment required in order to comply with the Urban Wastewater Treatment Directive and other relevant water quality Regulations. The results of these calculations are presented in Figure 6 of the Report. On the basis of the calculations undertaken, it is concluded that primary treatment is only required to comply with the provisions of the Urban Wastewater Treatment Directive. The analysis also results in the conclusion that the existing outfalls at Whitegate or Aghada meet the discharge requirements. Location C, White Bay meets the standards while resulting in the smallest outfall length[2].

Thus, on the basis of the evaluation carried out, it was considered that a site at Ballytigeen, directly to the rear of Whitegate Oil Refinery with an outfall into White's Bay is the preferred option for the wastewater treatment plant and outfall.

Pumping Stations

With regard to the pumping stations, it is noted that in the case of Rostellan and Lower Aghada, any such pumping station is required to be located between the existing manhole on the R630 which acts as a collection point for the sub-catchment of both settlements and the existing outfalls. In the case of Rostellan, the most

[2] The assimilative capacity of the receiving waters to ensure compliance with legislative requirements will be the subject will be the subject of a separate assessment on foot of a planning application for the a WWTP on the site.

obvious location for any such development would be within the vicinity of the Memorial Park and in the case of Aghada, the most appropriate location would be in close proximity to the Pier. Furthermore, providing pumping stations at these locations is considered to be the lowest cost option, according to the information submitted.

In the case of the Whitegate Pumping Station, there is an existing pumping station serving the agglomeration. However, it is considered to be too small to cater for future anticipated flows. Two options were considered, the preferred option and a second option approximately 425 metres to the south of the village. The latter option would require the provision of an intermediate station and therefore it is considered to have higher operational and construction costs.

Wayleaves

With regard to wayleaves, where such rising mains and gravity sewers are proposed to run through private lands, a wayleave is required to allow Irish Water to maintain access to its infrastructure. It is noted that the location of the wastewater treatment plan is located on private lands at Ballytigeen and is to be accessed via a private roadway/access lane. For this reason, a permanent wayleave and right of way is required at this location. A permanent wayleave is also required along the outfall route. The wayleave in question, provides the most optimum and straight route from the R630 to the proposed wastewater treatment plant and from the wastewater treatment plant to White's Bay. Vehicles assessing the wastewater treatment plant can avail of an existing surfaced access road/laneway directly to the wastewater treatment plant, and as indicated during the course of the oral hearing, this roadway is already burdened with existing infrastructure in the form of telecommunication cables. For the above reasons the proposed wayleaves and rights of way were deemed to be the preferred option. This issue is dealt with in more detail under a separate heading below relating to local objections. It is sufficient for the Board to note at this juncture that alternative wayleave alignments were considered as part of the overall consideration of alternatives.

I am satisfied that Irish Water have appropriately considered alternatives for the location of the wastewater treatment plant, outfall and pumping stations and an optimum location for such infrastructure have been identified in the studies

undertaken. Furthermore, I am satisfied that the wayleaves sought represent logical alignments to link the various elements wastewater infrastructure referred to.

On this basis, I consider that the location of the proposed infrastructure represents a reasonable and proportionate proposal to address a community need. I further consider that a relatively robust and comprehensive route selection process was undertaken by Irish Water taking into consideration the numerous constraints in relation to environmental, technical and cost related matters.

7.6. **Proportionality and Necessity for the Level of Acquisition Proposed**

7.6.1. Irish Water did not address this issue adequately in my opinion in the original documentation submitted as part of the CPO application. On foot of this, the Board specifically requested that Irish Water demonstrate that the land take required to facilitate the works in question were proportionate to its needs at the presentation at the oral hearing. The brief of evidence presented at the oral hearing by [redacted] deals with the issue of proportionality.

7.6.2. One of the tests as set out in '*Planning and Development Law*' (Garrett Simons – Second Edition) requires consideration of whether the measures proposed under a compulsory purchase order will have an excessive or disproportionate effect on the interests of the affected persons. Irish Water have indicated that the plot areas have been kept to the minimum required to construct and operate the proposed pumping stations and associated infrastructure. In the case of the Lower Aghada Pumping Station, the evidence of Mr. Kevin O'Sullivan presented at the oral hearing (see page 6 of statement of evidence) states that consideration was given to requiring the minimum land area required to construct and operate the proposed pumping station; but given the irregular shape of the site and the requirement to position the proposed pumping station adjacent to the existing access roads towards the middle of the site, the unacquired lands would consist of two small irregularly shaped plots which would be landlocked. Therefore, it was considered that the acquisition of the site and its entirety would be preferable. Irish Water also note that the landowners in the case of the pumping stations (Cork Co Council) have indicated a preference towards granting wayleaves and rights of way rather than the outright acquisition of the plots in question in relation to the wayleaves and temporary working area associated with the proposed Whitegate Pumping Station. It is stated that the plot areas have been

kept to a minimum required to construct and operate the proposed pumping station. The majority of the wayleave area proposed at this site is required to construct and operate the pumping station. A further wayleave at Plot 33 is also required to facilitate the proposed control kiosk and associated electrical and communications ducting.

7.6.3. In relation to the wastewater treatment plant, a schematic layout of the plant is indicated for Plot 10 in the witness statement submitted at the oral hearing by Mr. Kevin O'Sullivan. It is noted that the majority of the infrastructure proposed within the eastern part of the plot accommodates the proposed primary treatment facilities and associated access road, parking area and control kiosk. Irish Water have indicated that in event where the EPA, as part of any waste discharge license conditions. impose more stringent emission limit values (ELVs), Irish Water proposes to secure sufficient lands to accommodate secondary treatment infrastructure in the western part of the plot should the need arise. This in my view represents an expedient and appropriate precaution so as to ensure that further acquisition of lands is not necessary in the event that secondary treatment is required in the longer term in order to cater for the ultimate capacity of 3,700 PE.

7.6.4. Having reviewed the information submitted by Irish Water and in particular the argument set out by Irish Water during the proceedings of the oral hearing, I am satisfied that the overall size and scale of the proposed lands to be acquired permanently, for wayleaves, for rights of way and for temporary working areas are necessary and proportionate in the context of meeting the identified community need.

7.7. **Additional Issues Raised by the Objectors**

7.8. <u>Objection by</u> [redacted]

7.8.1. This objection states that the site chosen to accommodate the wastewater treatment plant is capable of having an independent access without having to encroach on [redacted] property. While Irish Water argue that the cost of building a new road would be excessive, the objector argues that these are not proper considerations for the Board or the Planning Code generally. It is also argued that the proposed development will result in an unacceptable intensification of the roadway which is owned by [redacted]

The laneway linking the R630 Regional Road to the proposed wastewater treatment plant is, according to the information contained on file, under the ownership of [redacted] The lands on the northern side of this access road/lane are also under the ownership of [redacted] (please see Attachment 1 of Statement of Evidence) submitted on behalf of [redacted] at the oral hearing for details of his entire landholding.

7.8.2. Irish Water are not seeking to acquire ownership of the laneway but merely to obtain a permanent wayleave and permanent right of way over this access road[3].

7.8.3. The applicant has in my opinion provided the most optimum route in linking the proposed pipeline from the R630 to the proposed wastewater treatment plant. Despite the arguments set out in the objection that cost is not a proper consideration for the Board to take into consideration, I would argue that the feasibility and economic cost is a valid consideration in evaluating alternatives. It is in my opinion, incumbent upon Irish Water as a commercial semi-state body, which is dependent on exchequer funding, would be required to take reasonable cognisance of capital costs associated with the project while evaluating alternatives.

7.8.4. [redacted] suggests that it would be more appropriate to incorporate an independent access through the adjoining lands to the south which are under the ownership of [redacted] so as the compulsory purchase order would relate to the one landholding to the south of the access lane. I do not see any substantial merit in the argument set forward. The location of the wastewater treatment plant is justified in my opinion as its location permits gravity fed transportation of effluent to the marine outfall. Moving the access further to the south would involve the provision of an additional rising main along the R630 for a distance of approximately 275 metres and also would involve the construction of a new access road to the wastewater treatment plant in parallel to the existing access lane for a distance of approximately 350 metres. I do not consider that such an expense is justified having regard to the presence of an existing access lane available to adequately serve the proposed wastewater treatment system. The Board will note that this access lane already

[3] I refer the Board to Tab No. 14 in the folder submitted by Irish Water at the proceedings of the Oral Hearing. It contains a response to [redacted] objection on behalf of Irish Water, by GVA Donal O Buachalla Property Advisors. This submission is not contained on the main file, but should be consulted for the purposes of determining the CPO Order.

accommodates ducting associated with the telecommunication mast, and a high pressure gas main[4] located along the access lane.

7.8.5. While the agent on behalf of [redacted] during the oral hearing suggested that no details of any cost benefit analysis or any costings associated with utilising the existing lane versus the construction of a new access road was submitted by Irish Water, it stands to reason that utilising a laneway that already exists to serve the proposed wastewater treatment plant would be cheaper than constructing a new access road.

7.8.6. [redacted] also suggested that Irish Water may not have sufficient legal interest to carry out pipe laying within the alignment of the existing public road. Mr. Dodds in response to this at the oral hearing indicated that Irish Water had sufficient legal jurisdiction to carry out the works under the provisions of Section 41 and Section 97 of the Water Services Act 2003. Issues regarding the legal entitlements of Irish Water to carry out works within the public road are a matter for a court of law and are not a matter for An Bord Pleanála in determining or confirming or otherwise the CPO.

7.8.7. With regard to the intensification of use of the access lane, Irish Water have indicated that there will be an intensification of use of the access lane during the construction period. This intensification while material, will be temporary and limited to the duration of the works only. Whereas during the operational phase, Irish Water have indicated that the WWTP will give rise to a mere one or two trips per day. Any desludging of the plants will be on a weekly or twice monthly basis. The intensification of use will not be of a material nature and would not warrant a refusal to confirm the CPO.

7.9. <u>Objection from</u> [redacted]

7.9.1. The objection from [redacted] argues that the proposed land-take both permanent and temporary will have a detrimental effect on the development potential of lands owned by [redacted] and will result in effectively dividing the landholding. This in turn will adversely impact on the development potential of the overall lands. The proposal in this instance seeks to utilise an existing access road which traverses the industrially zoned lands and also separates lands which are

[4] See letter (Tab 14) submitted by GVA Donal O Buachalla by Irish Water at the Oral Hearing.

under two separate ownerships. The location of the wastewater treatment plant in this instance is located along the northern boundary of the [redacted] and as such does not segment and divide the landholding in question. As referred to earlier in my report the wastewater treatment plant being located on elevated land facilitates the provision of a gravity fed sewer to the marine outfall. The location of the wastewater treatment plant will minimise both capital and operational costs associated with the plant. Furthermore, I would refer the Board to the evidence of [redacted] which notes that there is approximately 90 hectares of undeveloped industrially zoned land in the Whitegate/Aghada area adjacent to the proposed wastewater treatment plant. The development of a mere 0.628 hectare site which constitutes less than 1% of the overall land zoned for industrial purposes will not in any significant way impact on the development potential of the lands in question. It is reiterated that the applicant in this instance is not seeking to build a new access road but utilise an existing access for which there is an established right of way (albeit not for Irish Water) across the industrially zoned lands. Based on the above, I do not consider that the proposed wastewater treatment plant will in any way adversely impact on the development potential of the industrially zoned lands. In fact, the provision of a wastewater treatment plant could potentially, in the longer term, facilitate and cater for the development of the lands in question by providing much necessary infrastructure to cater for development.

7.9.2. It is also contended that the proposed development is contrary to current land use policy and zoning and that any wastewater treatment plant should be more properly located in accordance with the stated objectives of special policy area WG-X-01. The zoning objective for WG-X-01 identifies the lands governed by this zoning objective as "*area with the potential for major largescale energy and renewable energy related development including port related activities and bulk liquid storage and processing activities. The siting and design of large structures of buildings should have regard to the existing contours, the need to minimise the visual impact of the development and the requirement to protect residential amenities of existing properties. It is not intended that the entirety of this site be developed but that proposals for development of the site shall include for the provision of long-term structural landscaping with particular attention to site boundaries and existing residential developments. Development proposals should also provide for the upgrading of*

*road, water supply and wastewater infrastructure to a standard acceptable to the Council*".

7.9.3. It is clear from the information contained in the Irish Water submission that the proposed wastewater treatment plant in this instance primarily seeks to address the issues and problems associated with the existing agglomerations of Rostellan, Aghada and Whitegate in that currently residential areas associated with these settlements are currently discharging untreated wastewater into the Eastern Cork Harbour area. The purpose of the proposed wastewater treatment plant and associated infrastructure including pumping stations is primarily aimed to address this issue. Any largescale development of lands zoned WG-X-01 would in my view involve separate wastewater infrastructure to be provided to cater for any largescale industrial development. I would agree with Irish Water's interpretation that the specific local objective under WG-X-01 relates to the provision of additional wastewater infrastructure specific to any future development within the lands to serve the expansion of industrial and port related activity and would be provided as part of this development.

7.9.4. I do note however that Plot No. 10 provides potential for future expansion of the plant including the provision of secondary wastewater facilities if needed. It may therefore be an option at a future date that a wastewater treatment plant in the location proposed under the current CPO application could possibly cater for future industrial expansion also. However, it is my opinion that it would be inappropriate to refuse to confirm the CPO for the proposed wastewater treatment plant on the lands in question on the basis that it is policy that further wastewater infrastructure may be required to cater for the development of industrial lands in the vicinity. I reiterate that the primary purpose of the wastewater treatment plant which is subject of the current CPO is to address issues in relation to untreated effluent being discharged from existing residential settlements at Whitegate, Aghada and Rostellan.

## 8.0 Conclusions and Recommendations

Arising from my assessment above I consider that An Bord Pleanála should confirm the CPO before it without modification based on the reasons and considerations set out below. I am satisfied that the process and procedures undertaken by Irish Water

are reasonable and that Irish Water has demonstrated the need for the acquisition of lands, wayleaves, and rights of way and lands for temporary construction and that the lands wayleaves, rights of way and lands for temporary construction being acquired are both necessary and suitable. I consider that the proposed acquisition of the said lands, wayleaves, rights of way and temporary construction rights would be in the public interest and the common good by improving water quality in the lower Cork harbour area and would be consistent with the policies and objectives of both strategic and statutory planning policy.

In summary, I am satisfied that the lands, wayleaves and rights of way in question are required by the Irish Water for the purposes of performing its statutory functions to improve water and wastewater infrastructure. I recommend that the Board confirm the CPO subject to no modifications.

**DECISION**

Confirm the above Compulsory Purchase Order based on the reasons and considerations set out below.

**REASONS AND CONSIDERATIONS**

Having considered the objections made to the compulsory purchase order and the report of the person who conducted the oral hearing into the objections, and having regard to the provisions of the Water Framework Directive (2000/60/EC), the Urban Wastewater Treatment Directive (91/271/EEC), the current Cork Co. Council Development Plan 2014-2020, and the East Cork District Local Area Plan, 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.

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**Paul Caprani**

**Senior Planning Inspector**

15th October 2019

## APPENDIX 1

## PROCEEDINGS OF ORAL HEARING

An Oral Hearing was held into the proposed Irish Water Compulsory Purchase Application on Tuesday 1st October, 2019. The Oral Hearing was held at the Radisson Blu Hotel at Little Island, County Cork. The following were in attendance at the Oral Hearing.

**On behalf of Irish Water**

Alan Dodds – Barrister at Law
Olwyn James – Planner MRUP MIPI
Clodagh O'Donovan – BE Civil
Kevin O'Sullivan – BE Civil
Seamus Glynn – BE Civil
John Finnegan – Env. Eng
Tracey Horan – Chartered Surveyor
Catherine Murphy – IW Representative Cork Co. Council

**On behalf of** [redacted]
William Martin - Agricultural Consultant

[redacted] did not attend the Oral Hearing[5]

[5] I refer the Board to the email contained on file dated 30th September, 2019 submitted to the Board by Patricia O'Sullivan from TPlan Planning Consultants indicating that Chriselle Holdings would not be in attendance at the hearing.

After introductory remarks by the Planning Inspector, Irish Water were requested to make the formal submission to the hearing.
Mr. Alan Dodds, Barrister at Law after some introductory legal comments called upon four expert witnesses to present submissions to the oral hearing and these are summarised below:

**Witness Statement by Seamus Glynn, Engineer.**

This witness statement outlines the existing situation and the need for the scheme. It notes that the existing sewage infrastructure comprises of individual collection systems serving the villages of Whitegate, Upper Aghada, Lower Aghada and Rostellan. Currently untreated wastewater is discharged directly into Cork Harbour without any significant form of treatment. The submission goes onto set out details of the existing network infrastructure serving Rostellan, Lower Aghada, Upper Aghada and Whitegate and the Ardnabourkey Estate. The submission notes that the Rostellan and Lower Aghada outfalls are located a mere 420 metres from designated shellfish waters. It also notes that a package plant provided by a private developer for a small scheme in Lower Aghada has not been operated or maintained for some time. Sewage generated at Ardnabourkey Estate is treated by a septic tank prior to discharging into a percolation field. It states that there is an existing EPA wastewater discharge license which covers the existing discharges at Rostellan, Aghada, Whitegate and Ardnabourkey. The existing operations are in non-compliance with this discharge license. The practice of discharging raw untreated wastewater is unsustainable and unacceptable due to impacts on water quality, the environment and human health.

The main objective of the Whitegate/Aghada Sewage Scheme is to end the discharge of untreated wastewater into Cork Harbour to improve water quality and to provide wastewater infrastructure necessary for sustainable economic growth and development within the agglomeration. The submission goes on to outline the proposed scheme. The wastewater treatment plant at Ballytigeen will be designed to treat 2,479 PE which is the 10-year predicted combined population which will

discharge to the public network at Rostellan, Aghada and Whitegate. The plant will be designed to allow for an increase in capacity up 3,700 PE. The scheme is designed to ensure compliance with relevant environmental standards. A new EPA wastewater discharge license will be applied for before the scheme is commissioned. The scheme will, as required by law, comply with the requirements of the Urban Wastewater Treatment Regulations, the Wastewater Discharge Authorisation Regulations and the Surface Water Regulations. Implementation of the scheme will ensure that no significant impacts arises on nearby protected designated sites including the Cork Harbour SPA, the Rostellan North Shellfish Area, the Rostellan South Shellfish Area, the Cork Harbour Ramsar Convention Site and any Beach Bathing Waters in the vicinity. The scheme is included in Irish Water's Capital Investment Plan and is on the high priority list of schemes that Irish Water plan to deliver as part of this programme. Financial provision has been allocated towards the scheme, subject to the confirmation of the CPO and the receipt of planning permission. For the above reasons it is argued that the acquisition of a permanent land, wayleaves, rights of way and temporary working areas are suitable to fulfil a community need and the proposal will accord with or at least will not be a material contravention of the provisions of the statutory development plan.

**Brief of Evidence by Kevin O'Sullivan and Clodagh O'Donovan**

This submission also sets out details of the project background and objectives. It notes that the upgrade Whitegate/Aghada agglomeration is included in the EPA Urban Wastewater Treatment Report, entitled "*Focus on Wastewater Treatment in Ireland*" as being an agglomeration having no treatment or only preliminary treatment. The existing PE loadings exceed the discharge licence limit with the current agglomeration load being approximately 2,238 PE. The submission goes on to note that there are a number of designated sensitive waters within the Cork Harbour area. It notes that a separate independent route and site selection report was prepared in February, 2019 and was submitted with the CPO documentation to An Bord Pleanála. The submission goes on to outline the proposed works and states that the plot areas have been kept to a minimum required to construct and operate the proposed pumping stations. It should be noted that the landowner, Cork County Council, has indicated a preference towards granting wayleaves and rights of way rather than the acquisition of the plots for the pumping station. The report goes on to

detail the land requirements for Rostellan Pumping Station, Lower Aghada Pumping Station and the Whitegate Pumping Station.

The land acquisition wayleaves and temporary working areas required for the proposed wastewater treatment plant and associated access roads are indicated on Figure 6 of the submission. It notes that the widths of the wayleaves and right of ways proposed follow the width of the existing access road. To facilitate the construction and operation of the proposed wastewater treatment plant, it is necessary to acquire the lands at Plot 10. The majority of infrastructure proposed within the eastern part of this plot consists primarily of primary treatment facilities and associated access road, parking and control kiosk. It is noted that a secondary treatment area may be required to comply with any conditions associated with an EPA discharge license and the western part of the plot will be earmarked to accommodate any such secondary treatment, if required. It is stated that the plot area has been kept to the minimum required in order to construct and operate the proposed wastewater treatment plant and associated infrastructure.

It is stated that in order to intercept all flows within the existing network, it is necessary to construct proposed pumping stations as near as possible to the existing outfall locations. The pumping stations are to be constructed downstream of any known or potentially unknown connections. Details of the alternative locations for the wastewater treatment plant and outfall are summarised in Mr. O'Sullivan's submission.

Finally, the submission goes on to address the concerns set out in the objector's submission to the CPO received by An Bord Pleanála.

In response to a question from the Planning Inspector, Mr. O'Sullivan indicated that it was not necessary to obtain wayleaves along public roads between Whitegate and the wastewater treatment plant on the basis of the provisions of Section 41 and Section 97 of the Water Services Act 2007 which permits Irish Water to carry out the said works subject to obtaining a road opening license.

**Statement of Evidence by Olwyn James.**

This evidence specifically related to planning policy and the submissions sets out details of the project and the site description. It notes that there is no relevant planning history for any of the proposed sites to which the CPO application relates. The report goes on to outline details in the Cork County Development Plan as they relate to the proposal and reference is made to the various overall policies in relation to water services, water infrastructure and wastewater disposal. In terms of zoning the submission notes that the County Development Plan states that where lands have not been explicitly zoned in either the adopted local area plans or the adopted special area plans, the specific zoning shall be deemed to be that of the existing use of the lands. It is noted that there are no sites zoned utilities within the Whitegate and Aghada settlement boundary. The sites of the three pumping stations at Rostellan, Aghada Lower and Whitegate are all within the settlement boundary but are not zoned. It is therefore considered that zoning objective ZU2-3 would apply which is referred to above.

The land use zoning maps for Whitegate/Aghada shows the identified site for the wastewater treatment plant and the majority of the gravity sewer from the wastewater treatment plant are in an area zoned industry and this is subject to Objective WG-I-04 which seeks the provision for the extension of the adjoining established industrial area including new port related activities and bulk liquid storage. Special attention will be paid to both the design and siting of large structures of buildings and the provision of appropriate structural landscaping. Proposals for development of the site shall include proposals for the provision of long-term structural landscaping on site WG-O-16. It is the opinion of Irish Water as set out in the brief of evidence that a wastewater treatment plant and associated gravity main would fall into a use class which would be acceptable under zoning objective ZU3-7 as set out in the County Development Plan which also relates to industrial zoning. It is calculated that there are currently 90 hectares of undeveloped industrial zoned land in the Whitegate area and the CPO relates to the acquisition of a mere 0.6 hectares. As such it is contended that the development of a wastewater treatment plant would not impede the vision for the lands in question.

Finally, the submission goes on to address the concerns raised in the objections in relation to the CPO application. In conclusion it is argued that there is strong national, regional and local policy to support the proposed project in principle. It is also considered that the proposed development is not material contravention of the provisions of the development plan.

Appendix 1 of the submission sets out details of the strategic planning policy relating to the site.

**Statement of Evidence of Mr. John Finnegan**

This short submission sets out a summary of the chronology of the compulsory purchase order procedure to date. It notes the following:

- On 21st December, 2017 Irish Water issued an introduction to project letters to all landowners that were identified; setting out the nature of the project and that Irish Water's valuer would be in contact with them to enter negotiations and agree compensation.
- On 30th May, 2018 Irish Water issued a 60-day letter to all landowners including details of the CPO pack.
- Irish Water subsequently prepared documents in relation to the CPO order, the CPO drawings, the public notices and the landowner notices for the CPO.
- Prior to making the CPO, the Engineer's Report and Manager's Order were prepared and signed.
- The compulsory purchase order was signed by the Company Secretary and the Director of Irish Water.
- Subsequent to making the CPO, the Compulsory Purchase Order Pack was issued to the landowners and occupiers. These include the CPO cover letter, the landowner notice, individual landowner drawings and a copy of the signed and sealed CPO.

- The public notices were then published in the newspaper and an objection date of 6 weeks post notification was permitted. It is noted that two objections were received in respect of the CPO and these objections remain outstanding.

**Witness Statement of Ms. Tracey Horan**

This submission sets out details of landowner engagement. In respect of Chriselle Holdings Limited separate contracts were made on 25 occasions between the 19th June, 2018 and 12th September, 2019. Contact was made via e-mail and telephone calls.

In the case of Mr. Liam Day, a total of 17 contacts were made by way of letter, e-mail and telephone call between the 25th June, 2018 and the 10th September, 2019.
In conclusion, Irish Water are satisfied that all reasonable endeavours were made to engage with landowners and/or the agents in respect of the CPO.

**SUBMISSION ON BEHALF OF OBJECTORS**

**Statement of Evidence on behalf of Mr. Liam Day**

This statement of evidence was submitted by Mr. William Martin of Martin and Rea Consultants in Agriculture and Valuers. The objection specifically relates to both the permanent wayleave and the permanent right of way sought in respect of Plot No. 27 linking the R630 to the poprosed wastewater treatment plant. Mr. Day's lands are located in the townland of Ballytigeen adjoining Whitegate Oil Refinery. It notes that the owner's lands are contained within the Whitegate and Aghada Local Area Plan. Whitegate and Aghada is designed as a specialist employment centre to reflect its role in the storage and processing of strategic energy resources. The area has the capacity to accommodate largescale industrial undertakings that require dedicated port facilities. The County Development Plan identifies the settlement as the preferred location for large standalone industrial uses with a commensurate limit on residential growth to avoid unnecessary conflicts in the

future. The objector's lands are zoned WG-1-04 "*provision for the extension of an adjoining established industry area including new port related activities and bulk liquid storage*". It is stated that drawings have been submitted to the owner by Irish Water which are wholly inadequate in detail in terms of scale and lack of dimensions.

In terms of the objector's position he fully accepts that the wastewater treatment project is required. However, the site chosen to accommodate the treatment plant is capable of having independent access without having to encroach on the objector's property. Irish Water seek to justify the acquisition of the lands on the basis of sterilising other lands, the cost of building a new road and the increased cost of a rising main together with operational costs. None of these are proper considerations for the Board or planning generally. The reasons are all fiscal ones to save costs without having to properly compensate the objector for the imposition of a major intensification of use of his laneway where only occasional users currently have a right of way. Irish Water sought to acquire the site for a treatment plant from a landowner which is landlocked by reason of their own objectives. Irish Water seek to save money in the CPO procedure as opposed to complying with the relevant planning rules and considerations the effect of which will result in the daily use of a right of way in perpetuity in addition to the provision of a wayleave for pipes and this is manifestly different from the current use of the laneway. This concluded the submission on behalf of Mr. Day.

**Questions and Cross Examinations**

The Inspector permitted Mr. Martin to put a number of questions to Irish Water.

Mr. Martin questioned whether Irish Water had the legal authority to lay pipes along the public road in the absence of wayleaves and noted that the inspector raised this point during the course of the hearing. Mr. Dodds on behalf of Irish Water indicated that under the relevant provisions of the Water Services Act entitled Irish Water to lay such pipes and services within the confines of the public road. Reference was specifically made to Section 41 and Section 97 of the said Act.

Mr. Martin requested that Irish Water provide details of the costing and the cost benefit analysis with regard to alterative accesses to the proposed wastewater treatment plant. Mr. O'Sullivan on behalf of Irish Water stated that no such figures were available for the purpose of the oral hearing. However, he argued that it stood to reason that utilising an existing access as opposed to constructing a new access would be cheaper.

Mr. Martin argued that no robust and comprehensive assessment of alternatives were undertaken particularly in respect of the matters relating to the proposed access to the wastewater treatment plant. He reiterated that the intensification of use that would occur with the provision of a wastewater treatment plant would be unacceptable to his client. When asked by the inspector, Irish Water indicated that it is most likely that the wastewater treatment plant would not be manned on a full-time basis. However, there would be one to two trips to the wastewater treatment plant on a daily basis and that sludge would be removed from the treatment plant on a weekly/fortnightly basis. That concluded the questions and cross-examination at the hearing.

**Closing Statements**

Mr. Martin indicated that he did not wish to make a closing statement on behalf of his client.
Mr. Alan Dodds by way of a closing statement highlighted certain points in the legal submissions submitted by Irish Water at the beginning of the proceedings and referred to Mr. Dodd's introductory remarks at the hearing. The closing remarks highlighted the necessity for the scheme and argued that there was sufficient information in front of An Bord Pleanála to demonstrate that there is a need for the scheme to progress and that the proposal in every way meets the common good. The proposal will eliminate the discharge of untreated wastewater and in doing so will comply with various EU Directives. It is submitted that the statement of evidence by Mr. Glynn and Mr. O'Sullivan proved the case for the proposed CPO. Mr. Dodds also reiterated that the lands sought in this instance are proportionate and that various alternatives were considered in formulating the

Scheme before the Board and that the subject scheme represents the most optimum solution to address the shortfall in wastewater treatment infrastructure. Mr. Dodds made reference to various case law in demonstrating the exigencies of the common good. It also sets out the legal requirements in applying the proportionality test. In conclusion, Mr. Dodds stated that the case put forward by Irish Water adequately demonstrate that the lands sought in this instance are justified and in accordance with the common good.

This concluded the oral hearing and the inspector closed the hearing at 12.20 pm.