

An Bord Pleanála Oral Hearing

Irish Water

Greater Dublin Drainage

**Response to Fingal County Council's Proposed Condition
No.17 (Access path), Suggestion of Community Benefit Fund
and Naming of Waste Water Treatment Plant**

**GDD Oral Hearing
FCC Submission; Community Benefits & Naming**

Fingal County Council (FCC) Submission

At paragraph 48 of the FCC Submission there is a reference to made to the Chief Executive's Report which sought the imposition of a condition, Condition 17, in the following terms:

The developer shall liaise with the HSE to provide for a cinder type public path above the pipeline route between chainage 0+500 and 0+700 within the grounds of Connolly Hospital in order to ensure public access to the NSC. Prior to the commencement of development, the developer shall agree any required works in writing with the Planning Authority and all works shall be implemented prior to the completion of the Abbotstown Pumping Station.

Reason: *To achieve the aims of Local Objective 116 and provide for increased amenity in the wider area.*

Whilst FCC also state at paragraph 49 that “*the principle of this proposal has been accepted by Irish Water and the HSE*”, the suggested condition is not one which can lawfully be imposed. In effect, the proposed condition imposes a requirement for Irish Water to provide for public access and associated infrastructure on lands which it does not own. Whilst the proposed path/ route follows the pipeline route, it is important to note that Irish Water are acquiring a permanent wayleave only. Irish Water is not acquiring the land and will neither own, nor control the land and has no entitlement to carry out any permanent works on the land. It should also be noted in this regard that the pipeline works proposed to be carried out by IW in this location relate to underground tunnelling, and there will be no above-ground works.

The Argument/ Case Law

It is quite clear from the Development Management Guidelines for Planning Authorities (2007) that the imposition of the condition sought by FCC would not be appropriate or lawful:

Section 7.3.2 “Unless the requirements of a condition are directly related to the development to be permitted, the condition may be ultra vires and unenforceable. Section 34(4)(a) of the Planning Act gives power to impose a condition regulating the development or use of adjoining etc. land, but such land must be under the control of the applicant and the condition must be “expedient for the purposes of or in connection with the development authorised by the permission”. Moreover, where a condition requires the carrying out of works, or regulates the use of land, its requirements must be connected with the development permitted on the land to which the planning application relates.”

Section.7.11: “Conditions should not be attached to planning permissions requiring land to be ceded to the local authority for road widening or other purposes, nor should conditions require applicants to allow the creation of public rights-of-way, other than such access roads as are considered a necessary part of the development, or to agree to transfer part of their land to some third party as, say, the site for a school or a church. It is not lawful to require by condition a transfer of an interest in land to the local authority or other person/body.” (emphasis added)

The above summary to the limits of the power to impose conditions is based on case law and, in particular, the decision of the Supreme Court in *Ashbourne Holdings v An Bord Pleanála* [2003] 2 IR 114 which concerned a condition requiring the provision of public access to the Old Head, Kinsale. That condition was found to be *ultra vires* and it was held that “*a condition relating to a development or use of any land adjacent to the land to be developed and in the same ownership or control requires to be a condition which is expedient “for the purposes of or in connection with” the development the subject of the permission*”.

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It is clear from the SID application documentation and drawings submitted, the FCC Chief Executive's submissions to An Bord Pleanála (ABP), and FCC's submissions to the Oral Hearing, that this test is not satisfied and the recommended condition would not be expedient for the purposes of, or in connection with, the Proposed GDD Project. While it has a laudable objective, namely to assist FCC achieve the "*aims of Local Objective 116 and provide for increased amenity in the wider area*", no aspect of the Proposed Project gives rise to a requirement for this condition. The imposition of such a condition could also have the potential to interfere with the functions and operation of Irish Water as a utility provider, especially in respect of any likely required future maintenance of the underground pipeline.

In summary it is submitted that it would not be appropriate for ABP to impose a condition such as Condition 17 sought by FCC.

Community Benefit

During the course of the Oral Hearing, the ABP Inspector has requested Irish Water to consider the possibility of establishing a Community Benefit Fund.

Response

The statutory obligations of Irish Water are set out in the Water Services Act (No. 2) 2013. The Proposed Project falls within Irish Water's objectives to protect public health, increase economic competitiveness and conserve our environment, and to bring and maintain public water and wastewater services to acceptable international benchmarks. Central to the Proposed GDD Project is Irish Water's aim and remit to realise its core water services functions, namely the delivery of sustainable water and wastewater services in a timely manner, and within the funding framework of the Commission for the Regulation of Utilities (CRU).

The Proposed Project entails the provision of essential public infrastructure and is not a private or commercial venture. It represents an investment by the exchequer in the region of €500m to improve the wastewater network to bring environmental, public health, economic and social benefits for the population and communities living and working in the area; it thus represents a significant investment of financial and human resources by Irish Water, aligned to the delivery of this important environmental infrastructure project. It therefore, in and of itself, represents a significant and inherent community benefit and planning gain.

In considering the matter of community benefit, it is noted that this may take many different forms, with these also including aspects of 'community gain' or 'planning gain'. For example, future initiatives/ works relating to the implementation of habitat management measures at Construction Compound No.10 would also be considered to comprise aspects of planning, environmental, and biodiversity gain.

Further to the above, it is considered that the commitments given in regard to employment and education specifically, as provided in the SID application documentation in the Community Benefits Scheme, provides additional, fair and proportionate benefits associated with providing this vitally important piece of wastewater infrastructure for the population of north Dublin. This information is also provided in Table 2 of the Submission Response to ABP in January 2019.

Whilst specific information or proposals relating to environmental aspects are not included in the submitted Community Benefit Scheme, other than in regard habitat management measures at Construction Compound No. 10 (referred to above), it is highlighted that Irish Water will provide in-kind supports for local projects which seek to improve the local built or natural environment in areas in proximity to the Proposed Project. In this regard, it should be noted that such initiatives would be a continuance and expansion of existing such projects that Irish Water already funds, such as An Taisce's Green Schools Programme and the Think Before You Flush and Think Before You Pour campaigns run by Clean Coasts.

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In considering the request by FCC for the conditioning of a community fund, Irish Water respectfully requests that ABP considers the above-outlined factors, as well as the precedent that could be set for future public water and wastewater infrastructure provision projects, and the additional cost to the public finances that would arise through the imposition of a specific community gain fund.

On the basis of the public services infrastructure provision aspect of the Proposed Project, the commitments and proposals already outlined in the application documentation, and the matters as outlined above, it is respectfully submitted that the imposition of a condition which requires a specific Community Gain fund, is not warranted or appropriate and ABP should omit any such condition from the grant of any planning permission which may be forthcoming.

Naming Proposal

As regards a naming proposal for the WwTP, Irish Water have no difficulty with a condition being imposed on any grant of planning permission, which requires engagement with Fingal County Council with regard to the naming of the WwTP.