

**The Scottish Water (Dalwhinnie Clear Water Tank)
Compulsory Purchase Order 2021**

Statement of Reasons

1. Introduction

- 1.1. This is the Statement of Reasons ("**SoR**") by Scottish Water, established under section 20 of the Water Industry (Scotland) Act 2002 and having its principal office at Castle House, 6 Castle Drive, Dunfermline KY11 8GG ("**SW**").
- 1.2. This SoR sets out the reasons and justification for making "The Scottish Water (Dalwhinnie Clear Water Tank) Compulsory Purchase Order 2021" ("**the Order**").
- 1.3. SW is the statutory body in Scotland responsible for, *inter alia*, promoting the conservation and effective use of the water resources of, and the provision of adequate water supplies throughout, Scotland. This is all in accordance with Section 1 of the Water (Scotland) Act 1980
- 1.4. This SoR has been prepared in accordance with 'Planning Circular 6/2011 – Scottish Government policy on making Compulsory Purchase Orders'.
- 1.5. The Order is sought to acquire land necessary to deliver a Clear Water Tank ("**the CWT**") and its associated infrastructure, power cables, telemetry and an access road thereto from the A889 ("**the Project**").
- 1.6. The CWT is essential for the operation of the new Dalwhinnie Water Treatment Works to be constructed in Dalwhinnie ("**WTW**") as part of SW's £2.5 million investment to take care of Dalwhinnie's water supply and to ensure the provision of clean, safe and fresh water for the future. The CWT will act as a reservoir containing the treated water prior its supply to the population of Dalwhinnie. The Project is considered in more detail in sections 2, 3 and 4 of this SoR.
- 1.7. The land to be acquired is Plot 1, Plot 2 and Plot 3 shown shaded pink, green and blue respectively on the Plan contained in PART 1 of the Inventory to this SoR ("**the Plan**"). The Order is required for the acquisition of land for the Project all as more particularly detailed in sections 5 and 6 of this SoR.
- 1.8. SW submits that the public benefits that will arise from the delivery of the Project justify the interference with the relevant landowner's rights. SW submits that there is

a compelling case for confirmation of the Order.

2. Project History

- 2.1. As part of its national strategy of upgrading and improving drinking water throughout the country, SW has identified the village of Dalwhinnie as requiring improved services to ensure access to clean drinking water 24 hours a day.
- 2.2. The original Dalwhinnie Water Treatment Works was constructed in 1970 and has a design output of 0.16 megalitres per day. It serves a population of 82 including a visitor centre and the Dalwhinnie Distillery (there is no commercial supply to the distillery). The raw water source serving the Dalwhinnie WTW consists of 2 shallow river gravel boreholes on the east side of the River Truim, together with an infiltration chamber at the Dalwhinnie WTW site. The treatment process for the raw water supplied to the Dalwhinnie WTW includes dosing it with sodium hypochlorite for disinfection via a contact tank and a limestone contactor. The treated water is then pumped to the existing elevated single compartment clear water tank.
- 2.3. SW has carried out numerous Drinking Water Safety Plans over the current WTW and its corresponding clear water tank. Each report has deemed there to be sufficient risk of Cryptosporidium (a microscopic parasite) affecting the supply of clear water. Those who are exposed to Cryptosporidium are at risk of contracting the diarrheal disease Cryptosporidiosis and respiratory illnesses. This risk is caused by deficiencies in the existing clear water tank and the existing Dalwhinnie WTW. It is therefore a high priority for SW to replace and upgrade the existing CWT to a serviceable location.
- 2.4. The Drinking Water Safety Plans established that the existing clear water tank must be replaced in order to accommodate the new and more extensive water treatment works being constructed in Dalwhinnie. The existing WTW currently uses a basic contact tank and a limestone contactor which is being replaced with Nano-Filtration membrane plant.
- 2.5. The existing CWT does not have the capacity to provide 24 hours of supply to the population of Dalwhinnie. This is a minimum requirement for SW and it is necessary for them to meet modern regulations. In the event of maintenance or works being carried out to the WTW, it is Scottish Water's policy to ensure that there is at least 24 hours of supply available to cover any gaps in supply caused by such works that would take the WTW offline so as not to cause undue strain on the system. The existing tank has a singular compartment, which means maintenance cannot be

completed to the tank itself without supply/storage being interrupted.

3. Justification and need for the Project

3.1. The current single compartment clear water tank serving the Dalwhinnie population is over 70 years old and is underperforming. It is not up to modern requirements in terms of capacity and would be unable to provide residents at Dalwhinnie with 24 hour access to clean drinking water.

3.2. The CWT itself is in poor condition and is difficult to maintain as it is only accessible by foot and has no power or telemetry connections available for online monitoring of water quality and tank levels. This lack of suitable connections increases the frequency of visits and to the existing CWT to check that it is functioning correctly.

3.3. The existing CWT would need significant upgrading or replacement but the technical and logistical difficulties in completing an upgrade of this magnitude, along with the ongoing maintenance and operation at the existing site mean that this would not be a viable option for the following reasons:

- **Lack of Power** - There is no power supply at the existing site, which means ongoing maintenance, monitoring and communication equipment cannot to be used without temporary power sources being supplied. This has led to increased visits by SW staff and agents to assess to operation of CWT, which in turn affects neighboring landowners.
- **Compatibility** – It is likely that the upgrade being carried out to the WTW would lead to compatibility issues with the existing CWT due to the age of the system and inability to monitor operation remotely as noted above.
- **Access**
 - The existing clear water tank is in a remote location with no vehicular access, which makes monitoring, repairing, maintaining and upgrading the existing CWT untenable. The new location for the CWT site has been chosen as it is located remote from the village and utilizes an existing access track off the A889. The site also benefits from ready access to power and telemetry connections.
 - The existing CWT can only be accessed on foot via fire breaks in the forestry that surround the site. The lack of vehicular access means necessary equipment needed to carry out the repairs cannot be taken to the existing site and it is unable to be used.

- SW has explored a route for a right of access to the existing CWT which would use a road to a nearby house to the north east of existing site, but SW has been unable to secure an agreement with the landowner. The proposed access route is not deal in any event. It would have involved access over a private road and the construction of a new road through the forestry fire break to the south east of the clear water tank. In addition, the proposed route would have crossed a large diameter SSE Hydro Scheme pipeline, which would create operational issues for maintenance of the track.
 - Another potential alternative new access route from the north west was also identified however this would require the construction of an extensive new road through the forestry fire break to connect to an existing forestry road. This would result in a long, remote access route which would cause severe disruption and not be safe from an operational perspective in adverse or heavy forestry traffic conditions.
- 3.4. SW is therefore of the view that it cannot continue to use the existing clear water tank site, and an alternative site must be obtained which allows for easy vehicular access, nearby connections to mains power and telecommunications.
- 3.5. Following consideration of other potential viable sites SW have concluded that the most viable option is to construct a new CWT at the junction between the private road to Allt An't Sluic Lodge and the A889. All other potential sites under consideration were all also located on the land owned by the Estate (hereinafter defined) and the site determined for the new CWT offers the best location from an operational, engineering, and environmental perspective. This also the site favoured by the Estate.
- 3.6. On completion of the design of the new CWT, the land required for the new CWT site was identified and land agents were appointed by SW in January 2019 to negotiate the acquisition on its behalf. Following 18 months of negotiation with the Estate no satisfactory agreement could be reached for the land featured in the Order.
- 3.7. Accordingly, the land noted in the Order is required to complete the new CWT site.

4. SW's Investment in Dalwhinnie

- 4.1. As a result of the Drinking Water Safety Plans, a project to address the needs raised by the said Safety Plans was started as part of Scottish Waters investment programme ("**the Dalwhinnie Investment Project**"). Scottish Water is investing £2.5

million to improve the water supply for Dalwhinnie and to ensure the provision of clean, safe and fresh tasting water for 24 hours a day into the future.

4.2. The delivery dates for the Dalwhinnie Investment Project were agreed between Scottish Water and the Drinking Water Quality Regulator for Scotland (“**the DWQR**”).

4.3. Scottish Water’s agreed Dalwhinnie Investment Project scope with the DWQR include the following infrastructure upgrades:

- Development of additional raw water abstraction boreholes on the banks of the River Truim;
- Installation of a new Nano-Filtration membrane plant adjacent to the existing WTW to replace the existing treatment process;
- Construction of a new, twin compartment, 200m³ CWT with associated access track;
- Provision of new Water into Supply instrumentation kiosk at the new CWT;
- New 1.1km pumping main and distribution main to connect the new CWT to the existing distribution system; and
- New power supplies to the new WTW and CWT sites, and BT supply to the new CWT site for monitoring and control.

5. Land to be acquired by CPO

5.1. The plots of land to be acquired by CPO are shown on the on the Plan contained in PART 1 of the Inventory as follows:

- Plot 1 – an area of rough scrub land shaded pink and labelled ‘Plot 1’ on the Plan;
- Plot 2 – an area of rough scrub land shaded green and labelled ‘Plot 2’ on the Plan; and
- Plot 3 – an access road shaded blue and labelled ‘Plot 1’ on the Plan

Plot 1, Plot 2 and Plot 3 are together referred to as “**the Plots**”.

5.2. The Plots are owned by:

(1) Agro Invest Overseas Limited [designiation to be inserted] (“**Agro**”) who own a 75% share of the Plots; and

(2) Christopher Osgood Hanbury, Bridget Ann Hanbury, Zahara Patricia Hanbury, Emma Priscilla Hanbury, Arabella Philippa Hanbury, Jessica Rose Hanbury,

Charles Osgood Hanburgh and George Christopher Hanbury ("**Hanbury**") who own the remaining 25% share of the plots equally between them (each to the extent of 1/8 pro indiviso)

and together Agro and Hanbury are known as the Ben Alder Estate ("**the Estate**")

- 5.3. SW entered into discussions with the Estate, however despite reaching agreement with Agro they were unable to find agreement with the Hanburys.
- 5.4. Agro is supportive of the Project and the purchase however the legal complications produced by the Hanbury ownership of the plot has precluded SW's purchase from proceeding.
- 5.5. SW is satisfied that the Plots are owned by Agro and Hanbury and has followed the guidance contained in the ' Scottish Government Planning Circular 6/2011 – Scottish Government policy on making Compulsory Purchase Orders'.
- 5.6. SW will continue to seek to have discussions with Agro and Hanbury to acquire the Plots from them voluntarily during the CPO process.

6. Description of the Land to be Acquired

- 6.1. The land required for the Project is in Dalwhinnie in the county of Inverness. Title to the area of land comprising the Plots is recorded in the General Register of Sasines for the County of Inverness. The land is owned by the Estate and forms part and portion of the of the ground delineated in red on the plan annexed and executed as relative to the Disposition contained in PART 2 of the Inventory.
- 6.2. The land required for the Project is located to the north of the Dalwhinnie Distillery. It comprises three plots of land adjacent to the river Allt An't Sluic where it meets the junction between the private road to Allt An't Sluic Lodge and the A889. and is accessed via a private track to the west of the A889 and north of the river Allt an't Sluic.
- 6.3. Plot 3 is currently an access track and will continue to be used as an access track after the acquisition of the land. There is a requirement to obtain the access track from the Estate in order to cross the private road leading from the A889. SW is willing to grant rights back to those proprietors who have access rights over the said track for their current use, and maintenance would be divided on a user basis.

- 6.4. The Plots are not subject to any agricultural tenancies or leases.
- 6.5. The real burdens and servitudes currently affecting the Plots to be acquired will be extinguished in accordance with sections 106 and 107 of the Title Conditions (Scotland) Act 2003.

7. Enabling Power and Purpose of the Acquisition

- 7.1. SW is using the powers contained in Section 47 of the Water Industry (Scotland) Act 2002 to acquire land using Compulsory Purchase for its core functions.
- 7.2. SW considers that the making of the CPO complies with the terms of its enabling powers.
- 7.3. Under Section 47 of the Water Industry (Scotland) Act 2002 Scottish Water may for the purposes of any of its core functions be authorised by the Scottish Ministers to acquire by compulsory purchase land situated in Scotland. In this Act, references to core functions are to *inter alia* Scottish Water's powers and duties under the Water (Scotland) Act 1980.
- 7.4. This acquisition is relevant to Scottish Water's core functions in terms of the Water (Scotland) Act 1980 and therefore qualifies as land which may be acquired by compulsory purchase in terms of powers granted under the Water Industry (Scotland) Act 2002.

8. Purpose of the CPO

- 8.1. The CPO is being promoted to ensure the village of Dalwhinnie has 24 hour access to a supply of clear drinking water.
- 8.2. The additional capacity provided by the CWT is essential for the operation of the WTW. Operational and maintenance personnel are required to be in attendance to operate the CWT, and regular access is required for inspection, maintenance and repair. The rights acquired under the Order will allow SW to fulfil their obligations.
- 8.3. The need for the Project and the benefits that the Project will bring are set out in sections 2 and 3 of this SoR.

8.4. In addition, there are a wide range of public benefits which include:

- 24-hour access to clean drinking water for the village of Dalwhinnie;
- A reduction on the reliance on private water supplies;
- Improved access, including vehicular access, for maintenance, renewal and repair in order to maintain a reliable supply of clear drinking water;
- Improved water quality and a reduction in water quality risk caused by an aging asset;
- BT connection in close proximity of the site to allow for improved telemetry;
- Site will have better access to power supply for use of new instrumentation allowing for more efficient maintenance, repair, control and monitoring; and
- Disruption caused by access via foot traffic over third party land will reduced.

9. Special Considerations

9.1. The proposals in the CPO do not involve the acquisition of land of a special category listed in Section 1(2) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and the land does not form part of the Cairngorms National Park.

10. Impact of the Project and Proposed Mitigation

10.1. By virtue of the scale, location and type the Project is not subject to Environmental Impact Assessment.

10.2. The access road to the CWT will be utilizing an existing private road leading to Allt An't Sluic Lodge from the A889.

10.3. A mound will be constructed around the CWT which will be landscaped. The CWT will be partially visible from the road however will not project above it, giving the appearance of the mound being set down due to the levels across the site

11. Use of the CPO land after acquisition

11.1. If the Order is confirmed it will result in Plot 1 and Plot 2 being used for the CWT, associated infrastructure, cables and service media, and Plot 3 being used as a permanent access track to and from the site of the CWT, and for cables and service media necessary for the use of the CWT.

12. Planning

- 12.1. Full Planning Permission was granted by Highland Council on 5 February 2019. The grant of planning permission relative to Planning Application Reference Number 18/05544/FUL is contained in PART 3 of the Inventory
- 12.2. Highland Council granted Planning Permission citing in the Decision Notice that “The proposals accord with the provisions of the Development Plan and there are no material considerations that would warrant refusal of the application”.
- 12.3. The Report of Handling is contained in PART 4 of the Inventory. This is the delegated report which lists the policies that the proposal adheres to and confirms that there are no departures from this.

13. Alternative Ways of Realising the Project

- 13.1. SW considers that the location of the CWT on the Plots and the acquisition of the Order subjects is the best option. Alternatives have been considered and rejected for good reasons.
- 13.2. The first stage of the design process examined whether the existing clear water tank could be upgraded to allow for necessary improvements to be made and if any alternative access routes to the existing clear water tank were available. As previously noted, the existing clear water tank does not have the capacity or necessary power or telemetry connections to allow for necessary monitoring, and to enable the supply of clear drinking water at the level of production required for the village of Dalwhinnie. Different access routes were assessed against a number of factors, including the effect on the environment, safety, cost, ease of construction, disruption to the local community and it was concluded that these were not viable. Further information is detailed in 3.1 above.
- 13.3. The alternative options considered for a new CWT location included one site beside the Quarry to the east of the A889 and three different sites, all on the Estate’s land. The Quarry site was discounted early in the design process as a planning application had been submitted to re-develop it to support the A9 dualling works.
- 13.4. The Estate is supportive of the need to locate a new CWT on their land and they

advised SW which of the three locations identified was their preferred option.

- 13.5. Consultants were engaged to assess the various factors and after considering the information and reports, the decision was taken by SW to approve the Project as it now stands.
- 13.6. The Project that SW is now promoting became the preferred option since accessing it is more direct, more affordable and would arguably cause less disturbance to the Estate and other local landowners by making use of existing access routes and power and telemetry connections. This is also the option preferred by the Estate.

14. Engagement

- 14.1. SW has been committed to acquiring the necessary land by voluntary acquisition and has adhered to the guidance in the Planning Circular 6/2011 – Scottish Government policy on making Compulsory Purchase Orders.
- 14.2. SW has engaged with all relevant stakeholders including all directly affected landowners.
- 14.3. SW recognises that where practicable, it should acquire land voluntarily but that it has not been possible to acquire the land required for the Project voluntarily.

15. Public Benefit

- 15.1. The Project has several benefits including creating safer drinking water storage and the increased storage of clean water for the village of Dalwhinnie. Future reliance on private water supplies for Dalwhinnie and the surrounding area will be reduced.
- 15.2. The access route that SW is promoting is best in terms of public benefit since it is shorter, more direct and more affordable because it uses existing access routes. This will cause less disturbance in the area since it will maintain the existing provisions of roads in the vicinity.
- 15.3. The new CWT will allow SW to install additional capacity to ensure there is sufficient water storage to serve the population of Dalwhinnie in the event of any scheduled maintenance to either the CWT or the WTW.

16. Risk

- 16.1. SW considers that there are no significant barriers to the Project other than the acquisition of the CPO land.
- 16.2. SW is working collaboratively and positively with the Estate's factor.
- 16.3. As described in section 12 of this SoR, the planning application has been granted.
- 16.4. In terms of engineering, SW has made considerable efforts to ensure that the necessary ground investigations, topographical surveys and other investigations were comprehensive enough to identify any risks so it could produce solutions to overcome them.
- 16.5. Ground investigations have been undertaken and do not identify any substantial issues. The site is not located within the Cairngorm National Park and currently comprises an area of rough scrub site at a lower elevation than the public road.
- 16.6. Funding is allocated for the acquisitions and the Project, and the construction contract has been awarded. A Purchase Order was issued to SW's principal contractor for this Project, Ross-shire Engineering Ltd, for the carrying out of all design and construction activities required to complete the Project, and the rest of the Dalwhinnie Investment Project. Allowance has been made in the construction contract for the acquisition of land and all necessary rights, including for the acquisition of land by Compulsory Purchase Order if necessary.
- 16.7. The CPO is required for the construction of the CWT, and therefore SW and Ross-shire Engineering Ltd's work to construct the CWT would commence as soon as possible following confirmation of the CPO.
- 16.8. Construction work has already commenced on the other elements of the improvement scheme at Dalwhinnie.

17. Human Rights

- 17.1. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various Convention rights may be engaged in the process of making and considering the Order, including those under Articles 6, 8 and Article 1 of the First Protocol.

- 17.2. The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”, i.e. compulsory purchase must be proportionate in that in pursuing the public interest the objective to be achieved in making the Order must outweigh the interference with any private rights. Both public and private interests are to be taken into account in the exercise of SW’s powers and duties. Similarly, any interference with Article 8 rights must be “necessary in a democratic society”, i.e. proportionate. SW is of the view that in pursuing this Order, it has carefully considered the balance to be struck between individual rights and the wider public interest. Interference with Convention rights, to the extent that there is any, is considered to be justified in order to secure benefits which are in the public interest.
- 17.3. Entitlement to a Fair and Public Hearing - Such rights require a fair and public hearing in the determination of a person’s several and political rights (ECHR, Article 6). The statutory procedures, taken with the right to object and the statutory challenge, satisfy the requirements of Article 6.
- 17.4. Rights to Respect for Private and Family Life and Home - Such rights may be restricted if the infringement is in accordance with the law, has a legitimate aim and is fair and proportionate in the public interest (ECHR, Article 8). It is considered that such interferences as may occur as a result of the Order are in accordance with the law, pursue a legitimate aim and are proportionate having regard to the public interest in the Project referred to in this statement.
- 17.5. Peaceful Enjoyment of Possessions (including Property) – This does not impair the right to enforce such laws as the State considers necessary to control the use of property in accordance with general interest (ECHR, Article 1 of the First Protocol). It is considered that the Order will strike a fair balance between the public interest in the implementation of the Project and those private rights which will be affected by the Order. Compensation will be available to those who can prove they have a legitimate claim arising from the exercise of compulsory purchase powers.

18. Ministerial Statements

- 18.1. No views have been expressed by the Scottish Ministers on the proposed Project.

19. Resolution

- 19.1. SW's Executive Leadership Team approved the use of CPOs in appropriate circumstances on 25 September 2018.
- 19.2. An email from Mark Dickson, Scottish Water's Director of Capital Investment dated [2021] is contained in PART 5 confirming his approval to proceed with the Compulsory Purchase Order.

20. Conclusion

- 20.1. Due to the need to progress the acquisition of the Plots by CPO, the target Project completion date is now forecast to be 2 years beyond the date agreed with the DWQR.
- 20.2. This Order will enable the Project to be completed and signed off by the DWQR and will rectify the current clear water tank deficiencies at Dalwhinnie.
- 20.3. It is SW's opinion that the public interest of the proposed Project outweighs the private rights of the proprietors; that the use of the land following acquisition is clear; that the Project will be completed in reasonable timescale; and that there is nothing to prevent the Project from being completed once the acquisition has been achieved.

Inventory

- PART 1** Plan – CPO Plan

- PART 2** Disposition by Fountain International Limited in favour of Neil Patrick Smith and Isabel Margaret Smith dated 27 February and recorded in the Division of the General Register of Sasines for the County of Inverness on 31 March both dates in the year 1989

- PART 3** Grant of Planning Permission – Decision Notice issued by Highland Council dated 5 February 2019 relative to Planning Application 18/05544/FUL

- PART 4** Report of Handling by Highland Council relative to Planning Application 18 dated 31 January 2019

- PART 5** Email from Mark Dickson (SW's Director of Capital Investment) dated []