

**THE SCOTTISH WATER
(FORRES WASTE WATER TREATMENT WORKS EXPANSION)
COMPULSORY PURCHASE ORDER 2020**

**WATER INDUSTRY (SCOTLAND) ACT 2002
AND
ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947**

STATEMENT OF REASONS

SCOTTISH WATER

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 (Forres Waste Water Treatment Works Expansion) Compulsory Purchase Order 2020" (“**the Order**”).
- 1.3. SW is the statutory body in Scotland responsible for, *inter alia*, providing such public sewers and public SUD systems as may be necessary for effectually draining its area of domestic sewage, surface water and trade effluent, and to make such provision, by means of sewage treatment works or otherwise, as may be necessary for effectually dealing with the contents of its sewers and SUDS systems. This is all in accordance with Section 1 of the Sewerage (Scotland) Act 1968.
- 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 an expansion of the existing Forres Waste Water Treatment Works (“**the WWTW**”) and to create a new access track between the WWTW and Invererne Road (“**the Project**”).
- 1.6. In order to continue operating the WWTW at Forres conform to its statutory duty, Scottish Water requires to extend and modify the WWTW. This extension and modification requires the acquisition of additional land around the WWTW site to enable installation of additional equipment, and also for a continued access route to the WWTW. The Project is considered in more detail in sections 2 and 3 of this SoR.
- 1.7. SW submits that the public benefits that will arise from the delivery of the expanded WWTW justify the interference with the relevant rights of the landowners. SW submits that there is a compelling case for confirmation of the Order.

2. Background

- 2.1. The CPO is required for (i) the expansion of the existing WWTW and (ii) the creation of a new access track to access the WWTW for operational purposes and to carry out the expansion works detailed in sections 2.3 and 2.4 of this SoR.

- 2.2. The WWTW was originally built in 1973 and takes domestic sewerage, surface water and trade effluent from the town of Forres and the surrounding areas including Kinloss and Findhorn. It is over 40 years old and several assets are life expired or underperforming. These have been identified for refurbishment or replacement and upgrading. It serves a population equivalent of approximately 16,000. The site which it occupies extends to 1.25 hectares. The WWTW comprises the subjects shown outlined in red on the Title Plan contained in SW's Title which has been registered in the Land Register of Scotland under Title Number MOR17403 ([Part 1](#) of the Inventory).
- 2.3. It is a high priority for SW's capital maintenance programme to restore the WWTW to a serviceable condition. The key elements are the provision of a new inlet for the WWTW, the replacement of eight bio-filter arms and the bio-filter valve chamber penstock valves, the refurbishment of the settlement tanks and the provision of adequate sludge storage.
- 2.4. Most of the works referred to in section 2.3 above will take place within the existing footprint of the WWTW but new sludge tanks are required to provide the minimum acceptable level of storage. This means that additional land is required for this to the south west of the existing WWTW site. This additional land forms part of the land shown shaded pink on Acquisition Plan 1 contained in [Part 4](#) of the Inventory. Additional areas of land are required temporarily for the construction of the access road for the Project, and to carry out the capital maintenance works. These areas are shown shaded green and hatched green on the said Acquisition Plan 1.

3. Project History

- 3.1. The current access to the WWTW crosses over the Aberdeen to Inverness railway line. The railway line lies to the south east of the WWTW.
- 3.2. As part of its national strategy of upgrading certain railway tracks to improve services, Network Rail has carried out an upgrade to the Aberdeen to Inverness railway line, changing it from a single line to a dual line adjacent to the WWTW. During early 2016, Network Rail advised SW that it would be commencing these upgrade works on the line around mid-2016. It notified SW that the level crossing to the WWTW in its current form presented a significant safety hazard for train passengers and for those using the level crossing and therefore the level crossing required to be significantly upgraded or permanently closed by 7 October 2017.
- 3.3. The level crossing presented a hazard because the crossing was previously uncontrolled. If access was required over the crossing, the user simply opened the gates and looked to make sure that a train was not approaching. In the event that a slow moving vehicle required to use the crossing (e.g. a tanker), the driver could telephone the signal box to check before crossing the line.

- 3.4. SW recognised that this presented a health and safety issue. Network Rail then proposed that it would be beneficial to abandon this level crossing and eliminate the risks associated with level crossings completely.
- 3.5. In addition to continuing operational requirements, the Project involves a significant number of very large vehicle movements and it made sense to plan for these to be made using an access road rather than a railway crossing.
- 3.6. In order for SW to have continued use of a level crossing, Network Rail would have required to upgrade the crossing to the required standard. This work would have required works to the WWTW site to facilitate the crossing, but in doing this work, it would have made it impossible to carry out the necessary upgrade of the inlet works.
- 3.7. SW entered into discussions with Network Rail when they became aware of Network Rail's plans for the railway upgrade and the closure of the level crossing.
- 3.8. It was evident that it was mutually beneficial for the existing crossing to be closed and for an alternative access road to be used to enter the WWTW.

4. Temporary Access Arrangements

- 4.1. In order to facilitate Network Rail's project and not delay their work, SW agreed to the permanent closure of the level crossing. SW's entered into a Discharge Agreement with Network Rail Infrastructure Limited on 6 October 2017 which discharged SW's rights to use Bogton Sewage Works Level Crossing. The Discharge Agreement (which contains a plan showing the location of the Level Crossing) is contained in [Part 10](#) of the Inventory.
- 4.2. SW also entered into temporary arrangements from 7 October 2017 with a neighbouring landowner, Christie-Elite Nurseries Limited incorporated under the Companies Acts (Registered Number SC056516) and having its registered office formerly at Christie Elite Nurseries, Forres, Moray IV36 3TW and now at Union Plaza (6th Floor), 1 Union Wynd, Aberdeen AB10 1DQ ("**Christie-Elite**"), and Network Rail to use an alternative access route and level crossing until SW constructs the suitable permanent new access road to which this CPO relates.
- 4.3. The temporary access arrangement that SW has entered into with Christie-Elite and Network Rail cannot be used permanently. Network Rail advised SW that they could not commit to supporting the use of the level crossing on a permanent basis. Network Rail permitted this temporary route on the basis that an alternative route would be obtained within a five year period by 6 October 2022 when the temporary access arrangement ends.

- 4.4. A temporary Deed of Servitude was granted by Christie-Elite to Scottish Water granting this right of access. The Deed of Servitude is contained in [Part 11](#) of the Inventory. The Deed of Servitude is also contained in Scottish Water's Title Deed for the WWTW contained in [Part 1](#) of the Inventory. The temporary access route is shown in blue on the title plan contained within the said Title Deed.
- 4.5. Christie-Elite currently operate a tree nursery on the land in question and do not desire SW tankers passing their office, canteen and warehouse in perpetuity, nor do Network Rail desire SW using the level crossing on a long term basis (see section 3 of this SoR).

5. Justification and need for the Project

5.1. As described above, SW used the Level Crossing serving the WWTW (known as Bogton Sewage Works Level Crossing) to access the WWTW. It is theoretically possible that the level crossing could have been upgraded in order that it could continue to be used for access, but there are several factors which make this untenable. The technical difficulties encountered with upgrading the crossing is one of the reasons for the closure, as well as the safety considerations in using a level crossing. In addition, this was not a desirable option for the following reasons:

- The railway adjacent to the WWTW has been changed from a single track to a dual track, and the trains are likely to be longer and travel at a higher speed which means that the previous level crossing used to take access would no longer be safe.
- Network Rail's proposals to upgrade the crossing were not technically compatible with the operation of the WWTW. For example, upgrading the Level Crossing would require significant alterations to the WWTW site itself to enable tankers to enter (and which alterations would not be compatible with SW's planned upgrade works to the WWTW).
- The nearest other level crossings to the WWTW are at the Christie-Elite Nursery to the east of the WWTW and a gated crossing to the west of the WWTW. The crossing at the Christie-Elite Nursery (Bogton Nursery Level Crossing) is part of the temporary access to the WWTW currently being used by SW detailed in section 4 of this SoR but Network Rail cannot allow it to be used permanently.

Network Rail advised Scottish Water that it would be a last resort option. The Bogton Nursery Level Crossing would require costly upgrading. In addition, it would mean that SW would still need to cross a railway, which is not an option that Network Rail is keen to support. Please see the letter from Network Rail to Scottish Water dated 2 October 2017 contained in [Part 6](#) of the Inventory.

- The gated crossing to the west of the WWTW is unsuitable for access to the WWTW because it has simple gates and steep approaches and Network Rail cannot allow it to be used. The access would require costly upgrading and SW tankers would be unable to navigate it due to the current geography of the WWTW.
 - Both of these alternative crossings are only accessible via private land in third-party ownership and would therefore also require third party land acquisitions and/or the acquisition of servitude rights of access. It would also still require SW to cross a railway. The preferred option does also require the acquisition of third party land but it is the only option which means that SW vehicles and tankers do not have to cross a railway level crossing, so it is the best option from a health and safety point of view, not only for SW but also rail users.
- 5.2. SW is therefore of the view that it cannot continue to access the site using any of the level crossing points, and therefore an alternative access route must be obtained which does not involve crossing the railway.
- 5.3. The only viable option is to construct a suitable access track between Invererne Road and the WWTW.
- 5.4. On completion of the design in November 2016, the land required for the new access was identified and land agents were appointed by SW on 14 November 2016 to negotiate the acquisitions on its behalf.
- 5.5. SW has successfully reached agreement to purchase part of land required for the new access, and has already purchased the land shown on Acquisition Plan 1 from Christie-Elite.
- 5.6. Following 36 months of negotiation with the proprietors no satisfactory agreement could be reached for the land featured in the CPO.
- 5.7. Accordingly, the CPO subject land is required to complete a new access track between Invererne Road and the WWTW.
- 5.8. In accordance with SW's policy, its Executive Leadership Team approved the use of CPOs in appropriate circumstances and resolved to make a Compulsory Purchase Order for the Project on 25 September 2018. An email from Mark Dickson, Scottish Water's Director of Capital Investment dated 20 March 2020 is contained in [Part 12](#) confirming his approval to proceed with the Compulsory Purchase Order.

6. Project Implementation

- 6.1. Access to the WWTW for construction work will initially be taken over the current temporary access route which is through land owned by Christie-Elite (which is to the north east of the WWTW) and is described in more detail in section 4 of this SoR.
- 6.2. The new access road to the WWTW is from the south west of the WWTW and will utilise the existing haul road constructed by Network Rail in 2016. The existing haul road is currently a track and it needs to be upgraded and improved to enable it to be used for SW's operational purposes.
- 6.3. The route of the new access road will also cross Mosset Burn. There is therefore a requirement to cross the burn with a new bridge, together with the need for obtaining the stopped-up section of former public road to form a new junction.
- 6.4. For the construction of the new bridge, piled foundations will be constructed on both banks of Mosset Burn. The four bridge beams will be lifted in from the west bank of the burn at Invererne Road/Waterford Road.

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 Sewerage (Scotland) Act 1968.
- 7.4. This acquisition is relevant to Scottish Water's core functions in terms of the Sewerage (Scotland) Act 1968 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 because the closure of the level crossing means that SW will have no permanent pedestrian or vehicular access to the WWTW in the future. The current temporary arrangements will expire on 6 October 2022.

- 8.2. Access to the WWTW is essential for its operation. Operational and maintenance personnel are required to be in daily attendance to operate the WWTW, and regular access is required for tanker vehicles to carry out de-sludging and for vehicles to deliver chemicals and other materials to operate the WWTW.
- 8.3. The need for the Project and the benefits that the Project will bring are set out in sections 3, 4 and 5 of this SoR.
- 8.4. In addition, there are a wide range of public benefits which include:
- Greatly improved safety for all those accessing the site, particularly tanker drivers who need to visit the WWTW regularly (which could be several times a week) because they no longer need to use level crossing;
 - Network Rail is keen to reduce the risks associated with level crossings and the closure of a level crossing eliminates risk; and
 - It supports the capital maintenance project to upgrade the WWTW. The ability to access the WWTW on a long term basis was a key consideration in the decision to carry out the upgrade.

9. Description of the Land to be Acquired

- 9.1. The land required for the Project is on the outskirts of Forres which is in Morayshire. The existing Forres Waste Water Treatment Works is built on an area of flat ground bounded on the south east by the railway line and bounded on the north, east and west by flat agricultural land which adjoins the Burn of Mosset further to the north and to the west. SW's title to the WWTW is registered under Title Number MOR17403. The Title Sheet is contained in [Part 1](#) of the Inventory, and the subjects are shown outlined in red on the Title Plan contained therein.
- 9.2. The land required for the Project is located to the north west of the Aberdeen to Inverness railway which runs through Forres along the north side of the A96 and is currently accessed by a private track and gated level crossing which leads from the east bound carriageway of the A96 between the junctions for the B9011 and the A940.
- 9.3. The land required for the Project is a flat strip of land adjacent to the railway leading from the west of the WWTW to where it meets the junction between Waterford Road and Invererne Road. The land is shown shaded pink and green on Map 1, Map 2 and Plan 1 contained in [Part 2](#), [Part 3](#) and [Part 4](#) PART 4 respectively of the Inventory, and shown outlined in red on Acquisition Plan 2 contained in [Part 5](#) of the Inventory.

- 9.4. Part of the land is currently used for agricultural purposes and it is utilised as part of a commercial tree nursery plantation. Part of the land is also the burn known as Mosset Burn. There is a requirement to cross the burn with a new bridge, together with the need for obtaining the stopped-up section of former public road to form a new junction.
- 9.5. SW has reached agreement with two landowners for part of the land required to complete the Project (together with necessary temporary access rights, SW is taking occupation of these plots by way of licences). This land is not included in the CPO and is being acquired by agreement.
- 9.6. The land to be acquired by agreement comprises:
- the plots of land shown shaded pink and green, and the plot shown hatched green on Acquisition Plan 1 contained in [Part 4](#) of the Inventory to be acquired from Christie-Elite (purchase completed); and
 - the plot of land outlined in red on Acquisition Plan 2 contained in [Part 5](#) of the Inventory to be acquired from Network Rail (purchase Missives concluded, settlement scheduled for January 2021).
- 9.7. The land to be acquired by the CPO is shown shaded pink and labelled Plot 1, shaded pink and labelled Plot 2 and shaded green and labelled Plot 3 all on Map 1 contained in [Part 2](#) and shaded pink and labelled Plot 4, shaded pink and labelled Plot 5 and shaded green and labelled Plot 6 all on Map 2 contained in [Part 3](#) of the Inventory and comprises:
- Plot 1 - the plot of land shaded pink and labelled 'Plot 1' on Map 1. The owner of this plot is unknown. This plot is required permanently for a new road junction, section of new track and one half of the new bridge;
 - Plot 2 - the plot of land shaded pink labelled 'Plot 2' on Map 1. The Church of Scotland is the owner of this plot and it is required permanently for a new section of track including a passing place;
 - Plot 3 – the plot of land shaded green labelled 'Plot 3' on Map 1. The Church of Scotland is also the owner this plot. This plot is required for the construction of the access track and will be used as a working area during the construction of the access road and bridge. The intention is that Plot 3 on Map 1 will be declared surplus to the requirements of SW after the completion of the Project, and will be disposed of in accordance with the Scottish Public Finance Manual and SW's internal Acquisitions, Disposals and Leases Policy;

- Plot 4 – the plot of land shown shaded pink labelled ‘Plot 4’ on Map 2. Moray Council is the owner of this plot and it is required permanently for part of the new road junction;
 - Plot 5 - the plot of land shown shaded pink labelled ‘Plot 5’ on Map 2. Moray Council is the owner of this plot and it is required permanently for a new section of track and one half of the new bridge; and
 - Plot 6 – the plot of land shaded green labelled ‘Plot 6’ on Map 2. Moray Council is the owner of this plot. This plot is required for the construction of the access track and will be used as a working area during the construction of the access road and bridge. As with Plot 3 above, the intention is that the said Plot 6 will be declared surplus to the requirements of SW after the completion of the Project, and will be disposed of in accordance with the Scottish Public Finance Manual and SW’s internal Acquisitions, Disposals and Leases Policy.
- 9.8. The plots of land labelled Plot 2 and Plot 3 on Map 1 contained in [Part 2](#) of the Schedule, and Plot 5 and Plot 6 on Map 2 contained in [Part 3](#) of the Schedule are subject to agricultural tenancies which the tenant, Christie-Elite Nurseries Limited, had agreed to renounce. Christie-Elite was sold in December 2019 and the new owners are currently seeking to resurrect negotiations with Moray Council in relation to the renunciation in respect of Plot 5 and Plot 6.
- 9.9. The real burdens and servitudes currently affecting the land to be acquired will be extinguished in accordance with sections 106 and 107 of the Title Conditions (Scotland) Act 2003. The intention is that SW will offer servitude rights of access to the landowners (being Moray Council, Church of Scotland and Christie-Elite) over the new access road and bridge. The servitude rights of access are for the existing uses only, and maintenance and repair of the bridge and access road will be shared on a proportionate user basis.
- 9.10. SW is not proposing to construct the road to an adoptable standard but it has asked Moray Council if they would consider adopting the bridge and road after construction if it was built to the required standard. Moray Council has confirmed that it would not adopt the bridge or the road.

10. Special Considerations

- 10.1. The proposals for Plot 1, Plot 2 and Plot 3 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

- 10.2. The proposals for Plot 4, Plot 5 and Plot 6 in the CPO involve the acquisition of land of a special category listed in Section 1(2) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. The heritable proprietor of Plot 4, Plot 5 and Plot 6 is Moray Council. Plot 5 is part of Moray Council's Common Good property. Moray Council has consented to the sale of the property and Declarator of Disposal has been issued by Elgin Sheriff Court on 18 September 2018. The Declarator of Disposal is contained in [Part 17](#) of the Inventory. It was intended that a licence to occupy would be granted by Moray Council to SW in respect of Plot 6 and therefore this land was not included in the application for the Declarator of Disposal.

11. Impact of the Project and Proposed Mitigation

- 11.1. By virtue of the scale, location and type the Project is not subject to Environmental Impact Assessment.
- 11.2. The new access road will be utilising a haul road constructed by Network Rail along the north/north west of the railway during a recent dualling of the railway. A filter drain is being added to the existing haul road when it is upgraded.
- 11.3. The new bridge over the Mosset Burn is designed for a 1 in 200 flood event and will not have a detrimental effect on the watercourse.

12. Use of the CPO land after acquisition

- 12.1. If the CPO is confirmed it will result in the acquired land being used for the permanent access track to the WWTW.
- 12.2. The land to be acquired by CPO for temporary purposes is necessary for the construction of the access road and it is expected that in due course it will be declared surplus to the requirements of SW.

13. Planning

- 13.1. Full Planning Permission was granted by Moray Council on 21 November 2019.
- 13.2. Moray Council granted Planning Permission citing that "The development proposal complies with the requirements of the Moray Local Development Plan 2015 and there are no material considerations that indicate otherwise".
- 13.3. The grant of planning permission relative to Planning Application Reference Number 19/00567/APP is contained in [Part 7](#) of the Inventory.

- 13.4. The Report of Handling is contained in [Part 8](#) 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.

14. Alternative Ways of Realising the Project

- 14.1. The WWTW expansion and especially the route of the new access across the CPO land is the best option and alternatives have been considered and rejected for good reasons.
- 14.2. The first stage of the design process examined several alternative routes. Each route was assessed against a number of factors including the effect on the environment, safety, cost, ease of construction, disruption to the WWTW, the railway and the local community. All possible routes were investigated before approval of the Project.
- 14.3. Consultants were engaged to assess the various factors and after considering all of the information and reports the decision was taken by SW to approve the Project as it now stands.
- 14.4. The proposals to serve the WWTW with a new access from the south west and to extend the WWTW at its south west corner date back to a previously approved planning consent in 2003. In promoting the Project again in the current investment period, SW initially proposed to pick up on the previously consented access route but then became aware of Network Rail undertaking a separate railway line upgrade which involved closing a level crossing at Mosset Road and forming a temporary haul road along the edges of the field to the west of the WWTW. Network Rail's project materially changed the circumstances and the Project that SW is now promoting became the obvious preferred access route since it was shorter, more direct, more affordable and would arguably cause less disturbance.
- 14.5. Aside from the originally proposed 2003 route, the other alternatives all involved the continued requirement to cross the railway by level crossing.

Continuing to use the Bogton Sewage Works Level Crossing was what SW was seeking to stop and would have required costly upgrading and having to make alterations within the WWTW site to still allow tankers to enter.

Using the Nursery Level Crossing long term would require costly upgrading and in any event Christie-Elite do not desire SW tankers passing their office, canteen and warehouse in perpetuity for operational reasons. Trying to improve the simple gated level crossing to the south west of the WWTW would also require costly upgrading and third party land acquisitions or servitude rights. Neither SW nor Network Rail considers SW access to the WWTW over railway level crossings acceptable from a health and safety point of view.

- 14.6. It is not possible for the temporary route described in section 4 of this SoR to be made permanent. Network Rail has advised SW that it cannot allow this route to be made permanent. The Bogton Nursery Level Crossing would require costly upgrading, and that SW would need to pay a significant consideration to the landowner (currently Christie-Elite) for the servitude right of access required over their land.
- 14.7. The affected landowners have not made any representations regarding alternative routes. The representations do not concern the design proposal rather what price and level of betterment the landowners receive from giving up pieces of their land.

15. Engagement

- 15.1. 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.
- 15.2. SW has engaged with all relevant stakeholders including all directly affected landowners, tenants and occupiers.
- 15.3. It has agreed terms with 2 landowners for voluntary acquisition and it is progressing these acquisitions as more particularly described in section 9 of this SoR. It has completed the acquisition of land from Christie-Elite.
- 15.4. SW recognises that where practicable, it should acquire land voluntarily but that it has not been possible or practicable to acquire voluntarily all of the land required for the Project.

16. Land to be acquired by CPO: Plot 1 – Unknown Owner

- 16.1. This plot comprises:

- (1) a recently stopped up section of the former public road; and
- (2) part of Mosset Burn.

It is the plot labelled 'Plot 1' on Map 1 contained in [Part 2](#) of the Inventory.

- 16.2. It was suggested that this plot was owned by Altyre Estates Company (“**Altyre**”) and therefore SW entered into discussions with them. SW failed to reach an agreement with Altyre, and also Altyre has been unable to provide SW with a valid title to this plot of land.

16.3. SW is satisfied that Plot 1 is an unknown owner plot. It has followed the guidance contained in the Scottish Government Planning Circular 6/2011 regarding unknown owners and it has taken a number of steps to identify an owner including:

- SW's solicitors, Lindsays Solicitors, have carried out an extensive amount of research, title examinations and searches to determine the owner of the plot but the results have been inconclusive. Lindsays have corresponded with the solicitors acting for Altyre since February 2018 and have requested further information (including title deeds) to substantiate Altyre's claim. Details of the work done by Lindsays in this regard is contained in [Part 14](#) of the Inventory.
- Landownership Scotland has also been instructed to carry out a search over the land in question to determine an owner. They concluded that it is possible that the land is owned by either Altyre Estates Company (the land at Sanquhar) or that it is part of the Forres Burgh Charter granted by King James V (which we expect would now vest in Moray Council). Landownership Scotland advised that it would be unlikely that they would definitively establish the owner of the land. A copy of the letter setting out Landownership Scotland's findings is contained in [Part 11](#) of the Inventory.
- SW has asked Moray Council if they are the owner of Plot 1 but they have advised that they do not own this plot.

17. Land to be acquired by CPO: Plot 2 and Plot 3 – Church of Scotland

17.1. Negotiations reached a far stage with the Church of Scotland who are the owners of Plot 2 and Plot 3 shown on Map 1 contained in [Part 2](#) of the Inventory but an agreement has not yet been reached.

17.2. The Church of Scotland want unrestricted rights of access over the new bridge and track, together with rights to upgrade it, widen it and lay services along its full length. The Church of Scotland is also seeking a premium over market value and it will not be contributing to the costs of construction or maintenance of the track and the bridge that SW is proposing to construct.

17.3. To grant these rights would not, in SW's opinion be neutral since it would offer significant betterment to the Church of Scotland and would potentially be to the detriment of other neighbouring landowners.

- 17.4. SW is of the view that it has offered the Church of Scotland reasonable prices and it will grant rights of access over the access road for the existing purposes. This is in accordance with the terms agreed with Christie-Elite.
- 17.5. Negotiations commenced with the Church of Scotland in September 2017. These were carried out by Savills. SW took over discussions in April 2018 with Church of Scotland, both directly and with their agents, Bowlts. Diary entries demonstrating the correspondence between the Church of Scotland and SW and their agents, Savills, are contained in [Part 15](#) and [Part 16](#) of the Inventory.
- 17.6. SW will continue to seek to have discussions with the Church of Scotland to acquire the land from them voluntarily during the CPO process.

18. Land to be acquired by CPO: Plot 4, Plot 5 and Plot 6 – Moray Council

- 18.1 Negotiations reached a far stage with the Moray Council who are the owners of Plot 4, Plot 5 and Plot 6 shown on Map 2 contained in [Part 3](#) of the Inventory. Moray Council obtained Declarator of Disposal contained in [Part 17](#) of the Inventory. It was intended that a licence to occupy would be granted by Moray Council to SW in respect of Plot 6 and therefore this land was not included in the Declarator of Disposal.
- 18.2 Negotiations commenced with Moray Council in September 2017. SW took over the negotiations with Christie-Elite in September 2017 which resulted in Christie-Elite agreeing to renounce the agricultural tenancy with Moray Council.
- 18.3 SW are of the view that commercial terms relating to the renunciation were previously agreed with Christie-Elite and vacant possession was to be granted by Moray Council to Plot 4 and Plot 5 on acquisition, and a licence to occupy Plot 6 was to be granted for the duration of the work to construct the access road. Christie-Elite was sold in December 2019 and the new owners are currently seeking to resurrect negotiations with Moray Council in relation to the renunciation. SW are not party to these negotiations.
- 18.4 SW will continue to seek to have discussions with Moray Council to acquire the land from them voluntarily during the CPO process subject to vacant possession being granted.

19. Public Benefit

- 19.1. The Project has several benefits including creating a safer access to the WWTW; future resilience for the treatment of sewerage in Forres and the surrounding area; and improved safety for rail passengers by removal of a potentially dangerous crossing.

- 19.2. The access route that SW is promoting is best in terms of public benefit since it is shorter, more direct and more affordable than what was proposed and consented to in an original 2003 planning application, and arguably causes less disturbance to the landowners since it is fully contained along the margins of their ownerships. It is parallel and adjacent to an existing railway corridor, and makes effective re-use of a recently stopped up section of former public road solum which otherwise has limited alternative uses.
- 19.3. The WWTW is over 40 years old and the proposed investment and upgrading will address a number of the assets which are life expired or underperforming, so their refurbishment or replacement and upgrading ensures the WWTW remains fit for purpose to serve Forres and the surrounding area for many more years to come.

20. Risk

- 20.1. SW considers that there are no significant barriers to the Project other than the acquisition of the CPO land.
- 20.2. SW is working collaboratively and positively with Network Rail.
- 20.3. As described in section 9.5 of this SoR, the remainder of the land will be acquired voluntarily and agreements are progressing.
- 20.4. As described in section 13 of this SoR, the planning application has been granted.
- 20.5. 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. Discussions have also been held with Network Rail on the construction method statement and adjustments to that statement have been made following these discussions.
- 20.6. Ground investigations have been undertaken and do not identify any substantial issues. SW's contractor, ESD (Efficient Service Delivery which is a joint venture of Black & Veatch, Galliford Try and MWH Global) carried out ground investigations in January 2016.
- 20.7. These comprised trial pits and two boreholes at the new sludge tank location within the WWTW site (and which comprises part of the land shown shaded pink on Plan 1 contained in [PART 4](#) of the Schedule). Ground investigation work was carried out in August 2015 by BAM for Network Rail when they were designing the bridge over the Mosset burn. The same borehole information from BAM has been used in the design of SW's bridge abutments (for the bridge over the Mosset burn). The ground investigation work also indicated that within the WWTW site there is a high water table so ESD has allowed for de-watering plant during the construction of the new inlet works.

- 20.8. Funding is allocated for the acquisitions and the Project, and the construction contract has been awarded. A Purchase Order was issued to Scottish Water's principal contractor for this Project, ESD on 17 May 2017 for the carrying out of all design and construction activities required to complete the Project. ESD's high level construction programme of work is contained in [Part 9](#) of the Inventory. 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 and compensation relative thereto, if necessary.
- 20.9. SW and ESD intended to commence the work on the Project in March 2020. Due to the COVID-19 pandemic, this was delayed but the upgrading of the WWTW commenced in July 2020.
- 20.10. SW has acquired land from Christie-Elite to allow the expansion and upgrading of the existing WWTW to commence.
- 20.11. SW has entered into Missives with Network Rail for the acquisition of the land shown outlined in red on Acquisition Plan 2 contained in [Part 5](#) of the Schedule. Settlement is scheduled to take place January 2021.
- 20.12. The CPO is required for the construction of the majority of the access track, and therefore the work to construct the access road and bridge would commence as soon as possible following confirmation of the CPO.

21. Human Rights

- 21.1. 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.
- 21.2. 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.

- 21.3. 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.
- 21.4. 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.
- 21.5. 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.

22. Ministerial Statements

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

23. Resolution

SW's Executive Leadership Team approved the use of CPOs in appropriate circumstances on 25 September 2018. This was approved against the proposal for the CPO in question.

24. Conclusion

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 reasons for the temporary and permanent rights are clear; that the Project will be completed in reasonable timescale; and that there is nothing to prevent the Project from being completed.

Inventory

- PART 1** Title Sheet MOR17403
- PART 2** CPO Map 1
- PART 3** CPO Map 2
- PART 4** Acquisition Plan 1 – Christie-Elite Acquisition Plan
- PART 5** Acquisition Plan 2 – Network Rail Title Plan (Title Sheet MOR16453)
- PART 6** Letter from Network Rail to Scottish Water dated 2 October 2017
- PART 7** Grant of Planning Permission issued by Moray Council dated 21 November 2019 relative to Planning Application 19/00567/APP
- PART 8** Report of Handling by Moray Council relative to Planning Application 19/00567/APP dated 21 November 2019
- PART 9** ESD's High Level Construction Programme of Works
- PART 10** Discharge Agreement between Scottish Water and Network Rail relative to Bogton Sewage Works Level Crossing dated 6 October 2017 and 6 November 2017
- PART 11** Deed of Servitude by Christie-Elite to Scottish Water
- PART 12** Email from Mark Dickson (SW's Director of Capital Investment) dated 20 March 2020
- PART 13** Letter from Landownership Scotland to Lindsays Solicitors dated 10 October 2019
- PART 14** Diary Entries - Lindsays Solicitors
- PART 15** Diary Entries – Scottish Water
- PART 16** Diary Entries – Savills
- PART 17** Court Decree - Declarator of Disposal of Common Good Land