



An
Bord
Pleanála

Inspector's Report ABP-301973-18

Local Authority Project	Irish Water Compulsory Purchase (Mountbellew Sewerage Scheme) Order 2018.
Location	Mountbellew, Co. Galway.
Applicant	Irish Water.
Local Authority	Galway County Council.
Objector(s)	Mountbellew Co-op Livestock Mart Society Limited.
Observer(s)	None.
Date of site inspection	02 August 2018.
Inspector	S Rhys Thomas.

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1.0 Introduction

- 1.1. This report addresses Irish Water's Compulsory Purchase Order (CPO) (Mountbellew Sewerage Scheme) Order 2018. This CPO would facilitate the implementation of a project that would entail the provision of a new Wastewater Treatment Plant (WwTP) at a new location, north of Mountbellew at a greenfield site adjacent to Mountbellew Co-op Livestock Mart. The project would also entail the construction of a pumping station and storm water tank at the existing Mountbellew WwTP, currently located adjacent to the Castlegar River. A new rising main will be laid to transfer the wastewater from the new pumping station to the proposed WwTP for treatment. A new gravity discharge pipeline will transfer waste from the WwTP to the existing discharge point on the Castlegar River. The existing WwTP will be decommissioned and demolished. The project also involves the construction of upgraded/new access roads to the proposed infrastructure.
- 1.2. The primary objective of this project would be to provide appropriate treatment and adequate capacity in compliance with the Urban Waste Water Treatment Regulations 2001. The subject CPO would entail the land purchase of 2 plots, the establishment of permanent wayleaves and permanent rights of way over 2 plots, a permanent wayleave over 1 plot and the establishment of temporary working areas over 2 plots with a permanent right of way over one of these plots. A single objector has challenged the subject CPO. Their objections pertain to one of the land purchase plots, one of the right of way/wayleave plots, and one of the temporary working area plots. All of these plots are in the vicinity of the Objector's lands. There are therefore three challenges to the CPO.

2.0 Statutory Basis

- 2.1. The application is made under Section 76 and the Third Schedule of the Housing Act, 1966, as extended by Section 10 of the Local Government Act (No. 2) Act, 1960, (as substituted by Section 86 of the Housing Act, 1966, and as amended by Section 6 and the Second Schedule to the Road Act, 1993) and the Planning and Development Act, 2000 – 2015, and as applied by Section 93 of the Water Services Act, 2007, as amended.

2.2. Irish Water, pursuant to Section 7 of the Water Services (No. 2) Act, 2013, is carrying out the functions of a Water Services Authority for the purposes of the Water Services Act, 2007.

3.0 Site Location and Description

3.1. Mountbellew is located along the N63, mid-way between Roscommon Town and Galway City in the county of Galway. The Mountbellew Sewerage Scheme would run from the existing Wastewater Treatment Plant (WwTP) at the Castlegar River north west of Pairc Na Gcon housing estate to greenfield lands east of the Mountbellew Co-op Livestock Mart. The project involves the laying of new pipes from the existing WwTP along a private laneway to the public road (N63). New pipes will also be laid along an existing private access road to the Mart complex and connect with the site of the proposed WwTP.

3.2. The site proposed for the location of the WwTP (plot 100) is currently an arable field with boundaries composed of mature trees and hedgerows. The site is broadly flat with some minor undulations. The site is accessed from a wide private roadway approximately 11 metres in width and made up of aggregate and quarry dust. The roadway is not metalled and is also the subject of the CPO. The roadway extends from the proposed WwTP site to the N63 to the west and also provides access to other agricultural fields, the Mart, a teleworking office and agricultural sheds. At a point from the entrance of the Mart to the public road, a concrete footpath is provided along the southern side of the roadway. A stone agricultural shed and concrete block shed in disrepair abut the boundary of the private roadway. The southern boundary of the private roadway (plots 101 and 102) comprises a concrete post and wire fence, to the north stands a low stone wall, topped with a concrete post and wire fence back planted with hedging.

3.3. The single track private laneway that provides access to the existing WwTP comprises hardcore and aggregate with grass margins. The laneway opens onto the public road across a cattle grid through a gateway with low concrete piers. A turning area is provided at the termination of the laneway with the WwTP. The laneway abuts an agricultural field and a housing estate to the south, here the boundary

comprises a 2 metre high un-faced concrete block wall and fence. To the north of the access laneway is an agricultural field, the boundary comprises a timber post and wire fence, access to this field is provided at the western end of the laneway and from the N63.

3.4. The main elements of the Mountbellew Sewerage Scheme are as follows:

- The construction of a WwTP on a site of 0.714 Hectares, to cater for a population equivalent of 1,600. The WwTP will comprise inlet works, a primary settlement tank, biological filter units, a clarifier, sludge drying beds and a control building.
- The decommissioning and demolition of the existing WwTP.
- The construction of a new pumping station and stormwater holding tank at the site of the existing WwTP.
- The construction of a 160mm diameter rising main to convey influent to the proposed WwTP, along private laneways and across the public road.
- The construction of a treated effluent outfall pipe (375mm diameter) from the proposed WwTP to an existing discharge point at the existing WwTP, along private laneways and across the public road. The relaying of an existing inlet sewer close to the existing WwTP.
- The establishment of permanent wayleaves, rights of way and temporary working areas
- Operation and maintenance of the new pumping station, storm water holding tanks and WwTP.

4.0 Purpose of the CPO

4.1. Irish Water outlines the background to the project, which would be facilitated by the subject CPO. The submissions made by Irish Water comprise: the Form of Notice in relation to the making of the CPO, a drawing outlining the locations of plots, a copy of the CPO, an Engineer's report that outlines the project and a Consultant Engineer's report that outlines the WwTP site selection and pipeline routing. The overall purpose of the CPO can be summarised as follows:

- The Urban Waste Water Treatment Directive (91/271/EEC) sets out requirements for the collection, treatment and discharge of urban wastewater. Mountbellew is identified as a priority area where improvements are required. Wastewater discharges from Mountbellew have resulted in the Castlegar River to be classified as 'Poor' and wastewater discharges from Mountbellew are identified as the sole pollution pressure. In order to comply with the Surface Water Regulations and the Water Framework Directive, the river must achieve 'Good' status by 2021.
- The EPA's Mountbellew agglomeration Discharge Licence (Reg. No. D0219-01) was issued in 2015, the final effluent from the Primary Discharge Point for Mountbellew was non-complaint in 2016.

This project would address both of these critiques. Plans to improve the existing wastewater facility were advanced in 2007. However, it is stated that the site of the existing WwTP has been inundated from the Castlegar River on a number of occasions, most significantly in 2015 when the majority of the site was flooded. Thus, the existing WwTP would be decommissioned and demolished, a completely new WwTP would be constructed to improve effluent discharge to the Castlegar River. In addition, the provision of a new WwTP would facilitate future expansion of Mountbellew.

- 4.2. The project was the subject of a route and site selection exercise. The route thus selected would pass over lands in private ownership and the site is located on lands in private ownership. As the need for the project is pressing and Irish Water has previously experienced delays in terms of unregistered lands and land transfers not finalised, and some landowners unwilling to enter formal agreement, the subject CPO has been made in a bid to expedite matters.
- 4.3. Names identified in the Land Acquisition Schedule – Mountbellew Regional Co Operative Livestock Mart Society Ltd, Coolsivna Construction Ltd c/o Patrick Gardiner, Joseph Bergin, Keith Giblin, Brendan Gardiner and Mountbellew Vintage Club.

5.0 Policy Context

5.1. Irish Water

In October 2015, Irish Water published its Water Services Strategic Plan (WSSP), Mountbellew is not identified in this publication. However, in May 2014 Irish Water published the Proposed Capital Investment Programme 2014-2016 in which, Mountbellew Sewerage Scheme is included.

5.2. Plans

River Basin Management Plan 2018 – 2021

The River Basin Management Plan for Ireland 2018-2021, published by the Department of Housing, Planning and Local Government. The Plan sets out the actions that Ireland will take to improve water quality and achieve 'good' ecological status in water bodies (rivers, lakes, estuaries and coastal waters) by 2027. Ireland is required to produce a river basin management plan under the Water Framework Directive (WFD). Under Appendix 1 Scheduled Waste-Water Treatment Plant Upgrades, Mountbellew is scheduled as an urban area in need of a waste-water treatment plant upgrade (table 4), with a completion date of 2021.

Regional Planning Guidelines for the West Region 2010 – 2022 (RPG)

Under the Regional Planning Guidelines for the West Region 2010 – 2022 (RPG) Mountbellew is identified as a Key Town and Table 22: *Water Services Investment Programme 2010-2012* shows Mountbellew Sewerage Scheme under the Shannon International River Basin District as needed. A number of policies and objectives in relation to wastewater are set out in the RPG, of relevance to the CPO are as follows:

IP25: To ensure that adequate infrastructure is in place to meet demands from continuing growth and development of the economy and to cater for existing and increased population levels.

IP30: Support investment for the water and wastewater services of many small towns and villages in the region where there is an urgent need for these services.

IO38: Provide quality water and waste water services necessary for environmental purposes and for urban and rural economic development purposes.

Galway County Development Plan 2015-2021

Mountbellew is identified as ‘Other Villages’, population less than 1,500, under section 2.6.6 *Other Villages (Population <1,500)*, the following is stated:

The villages in this tier of the hierarchy include Headford, **Mountbellew**, Baile Chláir, Ballygar, An Cheathrú Rua, Dunmore, Glenamaddy, Craughwell, Corofin, Moylough, Kinvara, Clarinbridge, An Spidéal, Ardrahan and Kilcolgan. They have strong settlement structures and have the potential to support additional growth, offering an alternative living option for those people who do not wish to reside in the larger key towns and do not meet the housing need requirements for the rural area. The wastewater treatment facilities in some of these towns/villages require investment and therefore it is considered that their inclusion at this level in the hierarchy will provide a plan-led approach to securing this investment in the future.

Table 6.4: *Wastewater Projects to be Completed in County Galway Under Irish Water’s Proposed Capital Investment Plan 2014-2016* indicates Mountbellew Sewerage Scheme, projects in this table entail improvements/upgrading works and new infrastructure provision and are envisaged to be completed during the lifetime of the Galway County Development Plan 2015 – 2021.

Under the “Water, Wastewater, Waste Management & Extractive Industry” chapter of the Galway County Development Plan 2015 – 2021 (CDP), six wastewater policies are set out, the following four of which are of particular relevance to the subject CPO project:

Policy WS 1 – Irish Water

Galway County Council will work in close co-operation with Irish Water in its new role as the lead authority for water services.

Policy WS 2 – Irish Water and Rural Towns and Villages

Galway County Council will work with Irish Water to provide appropriate water and waste water facilities in rural towns and villages.

Policy WS 3 – Irish Water’s Proposed Capital Investment Plan

Support Irish Water in the implementation of their Proposed Capital Investment Plan 2014-2016 and any subsequent Investment Programmes.

Policy WS 5 – Water Quality

Promote public awareness of water quality issues and the measures required to protect all waters including all surface water and groundwater bodies.

In addition, the following objectives are set out, and are found to be relevant to the CPO are as follows:

Objective WS 1 – Protection of Ground Waters

Support the protection of groundwater resources and dependent wildlife/habitats in accordance with the Groundwater Directive 2006/118/EC, the European Communities Environmental Objectives (Groundwater) Regulations, 2010 (S.I. No. 9 of 2010) or any updated legislation and the Groundwater Protection Scheme and source protection plans for water supplies.

Objective WS 2 – EU Policies and Directives

Protect, conserve and enhance all existing and potential water resources in the County, in accordance with the EU Water Framework Directive, the River Basin Management Plans, the European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I. No.272 of 2009), the EU Bathing Water Directive (Directive 2006/7/EC) implemented by the Bathing Water Quality Regulations 2008 (S.I. No. 79) of 2008 and implement the European Communities (Drinking Water) Regulations (No. 2) 2007 and ensure that water supplies comply with the parameters in these regulations.

Objective WS 3 – Irish Water

Liaise with and advise Irish Water in identifying, prioritising and progressing the implementation of water projects throughout County Galway over the lifetime of the plan.

Objective WS 10 – Investment in Water Services Infrastructure

Support the extension or upgrading of existing water infrastructure facilities in the County through the implementation of Irish Water's Proposed Capital Investment Plan 2014-2016 and any subsequent Investment Programmes.

Finally, section 6.17 Wastewater Policies and Objectives of the CDP, are outlined as follows:

Policy WW 1 – Collaborative Provision of Wastewater Collection and Treatment Systems

Co-operate with Irish Water in the delivery of the Proposed Capital Investment Plan 2014-2016 (or updated plan) and to increase capacity to service settlements, to jointly investigate proposals for future upgrades of treatment plants; and participate in the provision of a long term solution for waste water treatment in the West Region.

Objective WW 1 – EU Policies and Directives

Ensure that all waste water generated is collected, treated and discharged after treatment in a safe and sustainable manner, having regard to the standards and requirements set out in EU and national legislation and guidance and subject to compliance with the provisions and objectives of the EU Water Framework Directive, relevant River Basin Management Plans, Urban Waste Water Directive and the EU Habitats Directive.

Objective WW 2 – Provision of Wastewater Collection and Treatment Systems

Support, in conjunction with Irish Water, during the lifetime of the plan the provision, extension and upgrading of waste water collection and treatment systems in all towns and villages of the County to serve existing and planned future populations, including Clarinbridge, Corofin and Lackagh.

Objective WW 6 – Adherence to Environmental Standards

Promote the provision of safe and secure waste water infrastructure to ensure that the public is protected and that permitted development, is within the environmental carrying capacity and does not negatively impact on habitat quality or species diversity.

Objective WW 8 – Substandard Wastewater Treatment Plants

Support and facilitate as appropriate the upgrading of substandard public waste water treatment plants in order to comply with the provisions of the Urban Waste Water Treatment Regulations 2001 and 2004, the Waste Water Discharge (Authorisation) Regulations 2007 and implement the relevant recommendations set out in the EPA document Focus on Urban Waste Water Discharges in Ireland (and any subsequent updates).

Relevant Guidelines

The EPA wastewater Treatment Manual – ‘Treatment Systems for Small Communities, Business, Leisure Centres and Hotels – Buffer distance minimum 50 metres.

5.3. Natural Heritage Designations

There are 11 Natura 2000 sites within a 15 km radius of the site, the sites are:

- River Suck Callows SPA,
- Carrownagappul Bog SAC,
- Curraghlehanagh Bog SAC,
- Shankill West Bog SAC,
- Ballygar (Aghrane) Bog SAC,
- Aughrim (Aghrane) Bog SAC,
- Camderry Bog SAC,
- Lough Lurgeen Bog/Glenamaddy Turlough SAC,
- Lisnageeragh Bog and Ballinastack Turlough SAC,
- Derrinlough (Cloonkeenleananode) Bog SAC,
- Lough Corrib SAC.

None of these sites overlap with this site, which lies just north east of Mountbellew. The nearest of the Natura 2000 site is Carrownagappul Bog SAC. The Castlegar

River flows into the River Suck Callows SPA and SAC, approximately 16 kilometres downstream to the east.

6.0 **Objections**

6.1. (a) Mountbellew Co-op Livestock Mart Society Limited:

- Land acquisition – owns plot 100
 - Permanent right of way and permanent wayleave – owns plots 101 and 102
 - Temporary working areas – owns plot 102
- **No planning / scheme maps** – Irish water have failed or refused to handover details of the proposed schemes such as size and scale of the facility or any other plans or proposals.
 - **Environmental Assessment / Feasibility Study** – no reports have been prepared to assess the impact of the proposed development on livestock held at the Mart. It is not clear if environmental, planning and business assessment reports have been carried out. Questions are raised in relation to the widening of access roads, laying of pipes (over and underground), insulation, security fences, disruption caused during construction and operational use. The future viability of the Mart has not been assessed and the Mart have not had an opportunity to review any documents prepared by IW.
 - **Noise Pollution** – noise pollution from the WwTP may have an adverse impact upon livestock, causing stress leading to increasingly aggressive livestock that could result in a hazardous work environment. In addition, increased levels of stress to livestock could impact upon health, food intake and digestion and lower rates of weight gain and impact upon stock value.
 - **Business Development** – the inclusion of a buffer zone around the proposed WwTP could impact upon the future expansion plans for the Mart, this would impact upon property rights. The impact to the Mart of the increased volume of traffic over the proposed rights of way / wayleaves as a result of the construction of a WwTP requires assessment and the possibility on the business viability of the Mart.

- **Right of Way** – at the commencement of negotiations, Mountbellew Mart requested that the access road and lands be maintained and reinstated to their prior condition, Irish Water refused to engage. It now appears that the roadway will be wider. The Mart are concerned that an increase in width to the roadway would attract future development of surrounding lands and this would negatively impact upon the access road and diminish business. This is an issue that was the subject of previous legal challenges in relation to the access road and road widths.
- **Valuation** – in order to progress matters, the Mart appointed their own independent Valuer Gaynor Miller. A valuation was provided and negotiations were directed by Irish Water to take place between their Valuer GVA Donal O’Buchalla and Gaynor Miller. No valuation/offer of compensation was given in writing. Separately, solicitors were appointed to negotiate on price, however, no offer of compensation was offered by Irish Water and hence the commencement of the CPO process.
- **Impact of WwTP on Local Business** – Mountbellew Mart is a co-operative and part of the local community and an important local commercial draw for the village. The grounds also host the Galway Teleworking Co-operative Ltd which employs three people, the Mountbellew Vintage Association and Mountbellew Heritage Association. The proposed CPO will have an adverse impact on the economy of the area, local business and the social life of Mountbellew.
- **Alternative Sites** – there are more suitable alternative sites in the vicinity with the same elevation as the Mart lands and it appears that IW have not given adequate consideration to alternatives.

7.0 The Oral Hearing

- 7.1. A day long oral hearing into the objections made against the CPO was held on 26 October 2018 in the Shearwater Hotel, Ballinasloe, Co Galway. This hearing was recorded and so a complete record of what transpired is available. A list of attendees is also available.
- 7.2. The following parties made submissions to the oral hearing:

- On behalf of Irish Water, Alan Dodd BL called the following expert witnesses:
 - Colm Boyd, Infrastructure Programme Manager, delivery of wastewater projects and to address CPO Procedure. This evidence included, as attachments, drawing extracts and Irish Water’s written responses to each of the specific concerns raised by the objectors.
 - P J Griffin, Technical Director for RPS, project manager for the planning, design and construction stages of the project, site selection and alternative options considered in respect of the WwTP, photographs, drawings and tables were included in the evidence.
 - Michael Cooke, Land and Wayleaves Specialist, CPO process, key dates and supported by drawings and draft agreements.
 - Chris Boyle, Divisional Director GVA Donal O Buachalla, lead surveyor and property valuation services, key dates of engagement with landowner and specific commitments to landowner.
- The objector’s represented themselves through their Honourable Treasurer, Mr Oliver Noone elaborated on their original submission; a summary and background to the Mart’s community basis, correspondence between the parties are included as evidence.

7.3. The main points arising during the course of the oral hearing are summarised below. First, from Irish Water:

In relation to **project need**:

- The existing situation and problems associated with the existing WwTP were outlined and included; the plant is operating beyond its design capacity of 700 PE, current loading is estimated at 1,214 PE; outfall from the facility is affecting the water quality of the Castlegar River; the current site is prone to flooding; a new WwTP at an alternate site will address these issues.

In relation to **planning policies**:

- The upgrade of wastewater facilities is supported by regional and local development plan policies and objectives. The works proposed at Mountbellew are part of the Water Services Strategic Plan (WSSP).

In relation to **site selection**:

- The deficiencies associated with the existing WwTP in terms of capacity, impacts on the water quality of the Castlegar River and inundation were outlined.
- A number of sites (five in total) were selected as possible locations and shown on a aerial photograph. Sites A and D were discounted on account of likely objections from Transport Infrastructure Ireland (TII) concerning the need for a new vehicular entrance onto a regional road. The remaining sites were subjected to a variety of site selection criteria, that included: proximity of dwellings, access requirements, planning, wayleave requirements, visibility, influent pipeline and outflow, landuse, ecology, archaeology, topography, net present cost, geology, services.¹
- In addition, a further site (offered by Cahermorris Developments) was tested against the selection criteria, but did not perform as well as site B, the preferred site.
- Alternative access arrangements were also explored, these are shown in figures 7 and 8 of P J Griffin's Brief of Evidence. However, given the characteristics of the narrow laneway selected and the need to acquire rights of way for pipes, these were discounted.

In relation to the Compulsory Purchase Order **procedure**:

- The format and process of the CPO procedure was outlined, punctuated by the relevant dates and material provided to the landowners.
- The dates of landowner engagement were listed out and comprised, meetings, emails and telephone discussions. The content and responses of

¹ See table 1 – Proposed WwTP Site Evaluation, Brief of Evidence P J Griffin.

the various engagements were outlined in the Brief of Evidence submitted by Chris Boyle.

7.4. The specific concerns of the objector were addressed by IW as follows:

- Through a process of continuous engagement copies of all plans, drawings and other documentation were made available to the objector. After February 2017, no further requests for documentation were requested by the objector.
- A site and route selection process was undertaken and addressed a number of factors in order to arrive at a suitable location. Irish Water do not find it necessary to carry out a feasibility study on the impact of a WwTP on the Mart's business and the community as the objective of the scheme is to ensure the provision of a fit for purpose WwTP.
- Irish Water are not required to carry out EIA in relation to the acquisition of lands. As part of the statutory planning process, Irish Water will comply with EIA regulations. With reference to a buffer zone, such distances usually relate to residential development and not agricultural marts. A WwTP will have a negligible impact on the day to day running of the mart. There will be disruption during the construction phase, but routine maintenance and bi-monthly sludge removal during the operational phase will not cause undue impacts.
- There will be no adverse impacts from either the construction or operational phase of the development. This is due to the use of standard construction machinery and noise limits applied to the operation of blowers and pumps.
- Irish Water are not aware of any permitted expansion of the Mart. If the CPO is confirmed and followed through, the Mart may be entitled to compensation.
- The existing Mart access road will not be widened and all works will take place within the existing roadway. The road will then be reinstated to an equal or better than the pre-existing condition.

- Irish Water have at all times sought to meaningfully engage with the objector. This is supported by the dates of letters and telephone conversations.

7.5. Secondly, from the objector:

- The objector, outlined the historical background to the establishment of the Mart and its place in the wider community, stressing its values and commitment to Mountbellew.
- In relation to the future expansion of the Mart, it was explained that not all expansion plans require planning permission and so it is not justified to assume the Mart has no plans to grow.
- There are no objections in principle to the upgrades necessary to the wastewater treatment at Mountbellew.
- In the opinion of the Mart, site C is the better location for a WwTP.
- The lands required by IW are not proportionate.
- The Mart are not in a position to query the material presented by IW and question the issue of fair procedure.

From the question time:

- Irish Water requested to address the closing statements made by the objector with reference to fair procedure and acknowledgment of the need for the project. This they did, specifically pointing out that all the requirements of the CPO process were followed.
- With reference to the availability of drawings, these were supplied and were continually made available. In addition, assistance was offered by Irish Water with reference to the availability of a technical expert to advise as necessary.
- Concerning site C, there was engagement with the landowner, but the site scored poorly in the site selection process and no further engagement was made.

- In response to the objector's future plans to expand, Irish Water described the detail of the project and its planned capacity to accommodate the future growth of Mountbellew, it is not anticipated that future expansion of the new WwTP would be necessary.
- Planning permissions (from the 1990s) were noted by Irish Water with respect to permitted vehicular access to sites A and D from the regional road, however, recent advice concerning the provision of a new entrance was negative.
- With reference to the clearance of sludge from the site, it was reiterated that sludge removal would take place bi-monthly and that sludge would not be imported onto the site at any time.
- Maintenance of the access road was referenced and Irish Water explained that they were sure that an appropriate accommodation could be reached, in terms of reinstatement.
- Irish Water are satisfied that an appropriate level of detail concerning the proposed WwTP had been made available and that the landowner had ample opportunity to acquaint themselves with the level of detail and material prepared by IW.

Closing submissions from both parties reiterated their previous presentations. The objectors added that their limited access to detailed information has hampered their appeal and preparation for the oral hearing. That the information presented at the hearing was too dense and limited their ability to pose suitable questions and that the overall CPO process is unfair. On behalf of Irish Water, Mr Dodd presented Outline Legal Submissions that provided the legal backdrop to Compulsory Purchase Orders and specifically addressed the matter of no planning of scheme or maps and non disclosure of environmental impact assessment and effect of development on Mountbellew Mart's livestock and surrounding lands.

8.0 Assessment

8.1. For the Board to confirm the subject CPO proposal, it must be satisfied that Irish Water has demonstrated that this CPO “is clearly justified by the common good”.² Legal commentators³ have stated that this phrase requires that the following minimum criteria must 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 that community need,
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate), and
- The works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan.

8.2. Each of the above cited criterion is reworked into a question and used as a heading in my assessment of the subject CPO proposal, which is set out below. Following a discussion of each of these questions, I will consider, under a fifth heading, the objections of the objector, insofar as they pertain to the selected Mountbellew Sewerage Scheme site, and related legal matters if any.

Is there a community need that is to be met by the acquisition of the site in question?

8.3. Irish Water has set out the community need for the project, which is the subject of this CPO. The Mountbellew Sewerage Scheme would address the pollution issues that face the existing treatment plant, both in terms of outflows to the Castlegar River and the risk of inundation from flooding. ⁴ By enabling the wastewater treatment facility to be relocated to an alternative site, whilst availing of existing infrastructure,

² Para. [52] of judgement of Geoghegan J in *Clinton v An Bord Pleanala (No. 2)* [2007] 4 IR 701.

³ Pg. 127 of *Compulsory Purchase and Compensation in Ireland: Law and Practice*, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath and published by Bloomsbury Professional (West Sussex and Dublin, 2013).

⁴ Refer to Brief of Evidence of Colm Boyd on existing situation and need for the project.

would effectively restore outflow to be within acceptable levels. The resultant improvements to the treatment of wastewater would address the 'Poor' classification attributed to the Castlegar River that is due solely to the wastewater discharges and address non-compliant EPA Discharge Licence (Reg No. D0219-01) issued in 2015. In addition, the proposed CPO would go some way to addressing pressures from urban waste-water highlighted in the River Basin Management Plan for Ireland 2018-2021, published by the Department of Housing, Planning and Local Government. Under Appendix 1 Scheduled Waste-Water Treatment Plant Upgrades, Mountbellew is scheduled as an urban area in need of a waste-water treatment plant upgrade (table 4), with a completion date of 2021.

- 8.4. The objectors to the CPO did not question the community need for the project and agreed that the principle for the project was necessary.
- 8.5. Strategically, both the Regional Planning Guidelines and the County Development Plan (CDP) identify Mountbellew as a settlement that has the potential to support growth so by implication the capacity of the sewerage system is an issue that needs to be resolved. The CDP specifically refers to the growth of settlements, under Policy WW 1 and Objective WW 2, respectively.
- 8.6. I conclude that the project would manifestly meet the community need to mitigate the risk of pollution to the Castlegar River and meet the requirements of and future compliance with EPA discharge licences and to facilitate the future growth of Mountbellew. The acquisitions proposed under the CPO to enable this project to be implemented would, thus, in principle be fully justified.

Is the particular site suitable to meet that community need?

- 8.7. Irish Water have explained in their submitted documents and at the oral hearing how the lands that are the subject of the CPO would form a suitable location for the wastewater treatment facility and a route for piped infrastructure.
- 8.8. The objectors to the CPO questioned, in principle, the suitability of the route for the project, the vehicular access to the site selected and ultimately the location for the proposed WwTP itself. Firstly, the objectors are unsatisfied that the use of their road infrastructure, as they see it, for the laying of pipes, wayleaves and rights of way is

not justified and could be situated elsewhere. In addition, the proposed location of the WwTP adjacent to the Mart would impact upon their ability to expand and effect their day to day business. A position they feel has not been adequately addressed by Irish Water.

- 8.9. During the oral hearing, evidence from a route and site selection perspective was submitted, that included a commentary on the alternatives considered for a suitable route and location for the piped infrastructure and WwTP respectively. In addition, Irish Water reiterated that the amount of land required for the site of a WwTP was sufficient for the urban agglomeration of Mountbellew and that no further lands would be required.
- 8.10. In my mind the location of piped infrastructure and the associated need for wayleaves and rights of way in this instance are secondary to the primary piece of infrastructure namely the WwTP. The site arrived at for the WwTP by Irish Water has raised an objection from the landowner. The site scored better than any other site tested and so provides an appropriate location to cater for the community need. I note that two alternative sites (A and D) were discounted for planning risk reasons and not subjected to the overall route and site selection process. This is unfortunate and could perceivably undermine the robustness of the selection process. However, the inclusion of lands that could be made available by an additional landowner is useful and adds to validate the overall selection process.
- 8.11. The nature and extent of the lands to be acquired are reasonable for the purposes of a new WwTP. In this respect, the site is removed from residential properties, these would be sensitive receptors to the type of development that will be proposed for the site. In addition, given the farming context of the surrounding lands and notwithstanding the agricultural Mart premises located close by, it is likely that design and operational issues could be sorted out during the planning process. There is a reasonable expectation that the two forms of development; Mart and WwTP could operate agreeably in proximity to each other. On balance, I am satisfied that the exercise undertaken by IW in relation to site and route selection is acceptable and .

8.12. I conclude that the lands, through which the project which is the subject of the CPO would pass and be located, would be suitable to meet the aforementioned community need.

Have any alternative methods of meeting the community needs been considered and are they demonstrably not preferable (taking into account environmental effects, where appropriate)?

8.13. Irish Water has outlined the alternative locations for the proposed WwTP and route selected for piped infrastructure, these are outlined in the report prepared by RPS on behalf of Irish Water and presented during the oral hearing by P J Griffin, Chartered Engineer. The site and route selection report includes photographs, maps and a detailed site evaluation matrix.

8.14. The objectors critically assessed each site presented during the oral hearing but offered no alternative assessment criteria or site other than the sites that formed part of the IW site and route selection exercise.

8.15. I have reviewed Irish Water's assessment of each of the Options. I am satisfied that this assessment is reasonable and robust and that the selected site is demonstrably preferable to the other ones examined. Other than alternative locations explored by IW, no other alternative means of meeting the community need in terms of municipal waste treatment has been explored. However, I am satisfied that the method selected by IW, i.e. a new WwTP of increased capacity is satisfactory in terms of meeting the community need.

Would the works to be carried out accord with or at least not be in material contravention of the provisions of the statutory development plan?

8.16. The statutory development plan for the entirety of the project, which is the subject of the CPO, is the Galway County Development Plan 2015-2021.

8.17. As discussed under the second heading of my assessment, the project would be compatible with relevant CDP objectives. It would also fulfil specific Policy WS 2 of the CDP, to provide appropriate water and waste water facilities in rural towns and villages.

8.18. I conclude that the project would accord with the provisions of the relevant statutory development plans.

Consideration of objections and related legal matters

8.19. The objectors' original concerns are summarised under section 6.1 above. During the oral hearing these concerns were refined and refocused in several respects. Essentially, they can be summarised under the following headings:

- Impact to the operations of the Mart and animal welfare
- Impact to access road, reinstatement and future development
- The need for Environmental Assessment,
- The lack of planning scheme maps,
- Impact to wider community, and
- Proportionality.

Impact to the operations of the Mart and animal welfare

8.20. The objectors highlighted concerns about the day to day operations of the Mart and impacts to animal welfare. Specifically, concern was expressed in relation to a lack of research prepared by Irish Water that showed that they had considered such impacts. Irish Water responded by stating that under CPO procedures such additional research was not required. Notwithstanding CPO requirements and procedures, during the oral hearing IW stated that the construction and operation of the WwTP would comply with noise requirements and not impact animal welfare. In addition, routine maintenance and sludge removal traffic would be negligible and not impact on the operations of the Mart.

8.21. Planning permission does not exist in relation to the Mountbellew Sewerage Scheme and this is unfortunate for a variety of reasons. Firstly, issues such as impacts of noise and odour would be addressed during the planning process, teased out and remedied as appropriate. Secondly, the overall scope and scale of the project would be laid out and open to scrutiny by interested parties. However, all of these detailed matters are rightly the subject of a planning application and the case before the Board is a compulsory purchase order and the matters that are required to be

assessed are: community need, suitability of the site to meet that need, alternative methods of meeting that need and that the works would not be in material contravention of the statutory development plan. I am satisfied that IW have provided sufficient information and though the existence of a planning permission for the development would be helpful to the case, it is not a mandatory requirement.

Impact to access road, reinstatement and future development

8.22. The objector has expressed serious concern about the use of their private access road. Concerns centre on potential traffic conflicts, particularly on mart days, the type of vehicular traffic operated by IW, the reinstatement of the road after pipes have been laid and the potential of future development as a result of an improved access road. Firstly, the acquiring authority, in this case IW, wish to utilise the private road to access a site for a WwTP, they also wish to install pipes below the roadway and rely on wayleaves and rights of way to enable maintenance. It is clear that both IW and the Objector have discussed issues such as road reinstatement. However, specific operational details such as sludge removal from the site only surfaced during the oral hearing. But again, these are matters that would correctly be open to assessment during the statutory planning application process. Ultimately, these are matters for the parties to work out together in conjunction, as appropriate, with the question of compensation

8.23. In relation to the Objector's unease concerning the potential for future development because of an improved roadway are I think unfounded and outside the remit of this CPO. In any case, the Mart will continue to own the roadway and exert control of any future rights of way over it with the necessary agreements in place. Any physical expansion or alternative uses considered by the Mart may depend upon securing planning permission and in any case, IW have stated that the amount of lands selected for acquisition are sufficient to meet their needs. I am satisfied that the lands required by IW would not adversely impact upon the Mart's capability to expand and grow.

The need for Environmental Impact Assessment (EIA)

8.24. The objectors raised the question as to whether or not the project should be subject to EIA. Irish Water explained that under CPO procedures, EIA was not required. In

the event that a planning application is made, the requirements of EIA, if necessary would be met. I would agree that there is not a need for EIA in relation to the acquisition of lands, wayleaves or rights of way. Consequently, there would appear to be no requirement placed upon Irish Water to engage in EIA at this stage, however, it would be mandatory to comply with the relevant requirements should a planning application be made.

The lack of planning scheme maps

- 8.25. The objectors are not satisfied at the level of information issued by IW in relation to the CPO process. There is a distinct feeling that the lack of information with regard to the detail of the WwTP, the construction and operational phases of the development; has hampered their ability to engage fully with the process and allow for a more reasoned objection. In addition, the objector is not satisfied that the methods by which information has been revealed to them and indeed presented on the day of the oral hearing was not satisfactory. Whilst, I understand the objector's frustration in relation to the CPO process and the lack of detailed information, I am minded that IW have fully discharged their responsibilities in relation to the content and procedures in relation to the Mountbellew Sewerage Scheme, no more and no less.
- 8.26. I am satisfied that the correct level of detail in terms of maps and supporting information was made available in accordance with the requirements of a Compulsory Purchase Order and these were made available to the objectors on the public file. As I have already outlined, it is unfortunate that a planning application has not been made in respect of the WwTP and supporting infrastructure. If this were the case the detailed and intricate matters voiced by the objectors would perhaps be more fully addressed in a planning context.

Impact to wider community

- 8.27. The objectors have demonstrated their links with the community of Mountbellew and its wider hinterland from the establishment of the Mart and ongoing business on the site. It was also stated that the Mart lands host a teleworking business and plans are in train to develop other community based projects and initiatives around the Mart's lands and buildings. The objector fears that the use of the access road and the taking of land used for and by the community would lead to a detrimental impact.

Whilst, I acknowledge the importance that the objector places on the degree and scope of their community involvement, I cannot see how the CPO would by itself lead to the impacts envisaged by the objector. As I have already pointed out, planning permission has neither been sought or granted for a WwTP and its associated infrastructure and should an application be made then all of the construction and operation phase concerns could be addressed as appropriate.

Proportionality

- 8.28. The objectors do not agree that the proposed site is the best, in their view site C is the better site in terms of proximity to the existing facility. The objectors questioned whether or not the proposed permanent acquisition of their lands for the WwTP site is proportionate. The concept of proportionality is outlined by Mr. Justice McKechnie in the case of Reid -v- the IDA [2005] IESC 82. In this case, the Justice referred to the following principle, which is of relevance in deciding upon CPOs:

The conferring and exercise of such power must be granted and carried out in such a way that the impairment of the individual's rights must not exceed that which is necessary to attain the legitimate object sought to be pursued. In other words, the interference must be the least possible consistent with the advancement of the authorised aim which underlies the power.

- 8.29. The objectors outlined that other sites and access routes were more appropriate and that the acquisition of their lands in close proximity to the Mart site would impact upon their plans for expansion and day to day operations. In addition, it was set out by the objectors that the increase of traffic along their access road during the construction and operational phase of the development would also impact upon the smooth running of the Mart. Clearly, during the construction phase, the use of the overall site would be disrupted, as discussed above. Furthermore, during the operational phase, there would be on-going disruption.
- 8.30. By way of response, Irish Water's Infrastructure Programme Manager Colm Boyd stated that once the plant is operational, trips generated by the WwTP would comprise daily morning and evening caretaker visits, periodic maintenance involving sludge removal, infrequent deliveries of materials and equipment; in total, it is likely that perhaps there would be up two truck visits per month.

- 8.31. In seeking to assess whether or not the proposed permanent acquisition of land, wayleaves and rights of way associated with the landowner's access road as distinct from an alternative site and alternative access raised by the objectors, would be proportional, I consider that the issue of access is an important one but not pivotal to the CPO. In my mind, the volume of traffic that may be generated by the operational WwTP would be minimal and would not impact to any great degree on the day to day running of the Mart or for that matter the teleworking premises. This results from a variety of factors that include the proportions of the access road, existing traffic volumes, undertakings from IW to contribute to road reinstatement and maintenance, and that the volume of traffic generated by IW would be so low that traffic conflicts would be unlikely to occur. I consider that the traffic impacts that would result from the use of the access road by IW would be minimal and would not conflict with those traffic movements of existing users.
- 8.32. In relation to the permanent acquisition of lands for the location of a new WwTP. I am satisfied that the site of the WwTP has been objectively assessed in terms of alternatives and the site selected performs the best in terms of the criteria set out by IW. In addition, given the information provided by IW any issues concerning the operational phase of the WwTP would be subject to strict controls and would be unlikely to impact to any great degree on the workings of the Mart. However, detailed matters concerning any development proposal would be subject to the statutory planning process and require the submission of a planning application.
- 8.33. In the light of the foregoing considerations, I conclude that the proposed permanent acquisition of the site selected by Irish water for the Mountbellew Wastewater Treatment Plant and associated permanent wayleaves and permanent rights of way would be proportional.

9.0 Recommendation

That the CPO be confirmed without modifications.

10.0 Reasons and Considerations

Having considered the objections made to the CPO and having regard to the following:

- i. Irish Water's Water Services Strategic Plan (WSSP) and Irish Water's Capital Investment Plan (CIP 2017-2021),
- ii. Relevant policies and priorities of the Regional Planning Guidelines for the West Region 2010 – 2022,
- iii. Relevant policies of the Galway County Development Plan 2015 – 2021,
- iv. The Urban Waste Water Treatment Directive (91/271/EEC),
- v. The EPA's Mountbellew Agglomeration Discharge Licence (Reg. No. D0219-01),
- vi. The manifest community need for the project,
- vii. The suitability of the route selected for the project to meet the community need,
- viii. The demonstrably preferable nature of the route selected over that of the identified alternatives,
- ix. The accordancy of the project with statutory development plans,
- x. The proportionality of the project, particularly in relation to the site selected for the Wastewater Treatment Plant and the proposed permanent acquisition of this site,
- xi. The submissions and observations made at the oral hearing, and
- xii. The report and recommendation of the inspector.

It is considered that, the permanent acquisition, permanent wayleaves, and temporary working areas proposed by Irish Water of the lands in question, as set out

in the Order, Schedules, and on the Deposited Maps, are necessary for the purposes stated and the objections raised cannot be sustained having regard to the necessity of these purposes.

Stephen Rhys Thomas
Planning Inspector

26 November 2018