



Safety Before LNG
*Protecting the Shannon
Estuary & its people*

Safety Before LNG
Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
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13 March 2010

Standards in Public Office Commission,
18 Lower Leeson Street,
Dublin 2.

By Email only to: sipo@sipo.gov.ie

Re: Complaint against Councillor John Brassil and Senator Ned O'Sullivan

Dear Sir/Madam,

I refer to the Standards in Public Office Commission's letter dated July 15th 2009.

From information released under the Freedom of Information Act and attached below, it has come to light that from 2005 to November 2009 Councillor John Brassil received €109,557.09 from Shannon Development - €87,504 of that figure being directors fees alone.

Director Brassil told the "Kerryman" Newspaper of September 11th 2008:

"I have always acted for the benefit of the people I serve and bringing 500 jobs and a €500 million investment to north Kerry is absolutely what I'm elected for".

He never mentioned the thousands of euros he was receiving in expenses from Shannon Development when he voted to rezone the Shannon Development-owned lands for the proposed Shannon LNG terminal from rural to industrial without declaring any beneficial interests.

We now request that you reopen your investigation into our complaint in the light of this new information because, as you state in your letter of July 15th 2009, *"the interest referred to here must be an interest of the members themselves"*.

We await your feedback,

Yours faithfully,

Johnny McElligott

Mr Johnny McElligott
Safety Before LNG
Island View
Convent Street
Listowel
Co Kerry

17 December 2009

Ref : SD/09/11/FOI

Dear Mr McElligott

I refer to the request which you made under the Freedom of Information Act 1997 for access to records held by Shannon Development as follows:-

"Request 1 and 2 - essentially the same request giving totals of expenses, i.e. accommodation, mileage etc without copies of invoices. In months where specific Shannon LNG expenses were incurred, these should be highlighted in more detail.

Request 3 - give a Key Milestone Meeting timeline for the Project with details as outlined for John Brassil and/or Shannon Development representatives attending these key meetings.

Request 4 - details of official correspondence with Mr McElligott in relation to requests under FOI or Access to Environmental Information legislation not required"

I have made a final decision on your request on 17th December 2009. My telephone number is 061 710208 and I will seek to answer any questions you may have, and to assist you generally in this matter.

In response to your request I have decided to grant access to the information requested.

As you requested information rather than specific documents I have compiled two tables outlining the information requested. The first contains details of Mr Brassil's remuneration and other payments made to Mr Bassil, the second contains a list of key meetings in relation to the LNG Project, the executives who attended the meetings and the cost associated with each meeting.



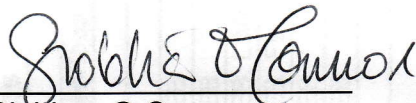
I can confirm that, other than official correspondence between Shannon Development and yourself such as responses to your request for access to environmental information, we hold no file in relation to yourself.

Rights of Appeal.

You may appeal this decision. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Shannon Development, Shannon Town Centre, Shannon County Clare.

You must make your appeal within 4 weeks of receiving this letter; A Fee of €75 is applied to an internal review. (making of a late appeal may be permitted in appropriate circumstances). The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this body.

Yours Sincerely



Siobhan O Connor
Freedom of Information Officer
Shannon Development.
Tel: 061 710208
E Mail oconnors@shannondev.ie

Expenses John Brassil – Jan 2005 – date

Year	Month Expenses processed	Directors Fees per annum *	Mileage	Taxis Bus Train	Parking	Sundries	Foreign Travel Paid by Shannon Development	LNG related Expenses
2005	Sept	€10,158		181.15				Nil
	Dec		1,105.73					Nil
2006	Feb	€12,079	335.43					Nil
	Aug		1192.63					Nil
	Dec		708.13					Nil
2007	June	€20,667	1826.20					Nil
	Aug		1423.68				231.49	Nil
	Oct		2074.21			137.25		Nil
	Nov		898.70					Nil
2008	Jan	€24,000	699.38		88.20			Nil
	Feb		108.70					Nil
	Mar		816.54					Nil
	May		3343.05			54.00		Nil
	June		1215.76	90.00				Nil
	Oct		951.60					Nil
2009	Jan	€20,600	722.85	76.00				Nil
	June		1681.50			70.91		Nil
	Oct		1862.00	149.00	9.00			Nil
								Nil
	TOTAL	87.504	20,966.09	496.15	97.20	262.16	231.49	

* Fees for 2009 are for the period Jan – Nov only

Key Milestone Meetings								
	Date	Meeting	SD Attendees	Cost				
				€				
2005	14 - 16 March	Visit Gastech, Bilbao, Spain	ROS	586				
	August	Due diligence meeting with HESS, NY	ROS, EB	4532.61				
2006	8th - 10th February	Meet with HESS in NY	ROS, EB	1867.78	no record of flight costs found			
	19th April	Signing of purchase option agreement at HQ	ROS, EB, L McE	nil				
	22nd May	Project Announcement by Minister	ROS, EB, FL, NOS, OM	252.43				
	12-14th July	Meeting with HESS & Poten in NY	ROS, EB	3567.52				
	29/ 30 November	Meeting with HESS in NY	ROS, EB	3947.72				
2007	21st May	Visit to FLUXUX LNG, Zeebrugge	OM	380.96				
	23rd July	Visit to Barcelona LNG	OM	953.83				
	31st October	Meeting HESS in NY	ROS, EB	2315.08				
	12th December	Visit to Sagunto LNG, Spain	ROS	no detail				
2008	Week 21st January	Oral Hearing in Tralee - 5 days	ROS, OM, NOS, EB	1786.43				
	23rd June	Visit to Barcelona LNG	ROS	no cost	exec on own time			
	23rd July	Meeting HESS in Brussels, visit FLUXYS	ROS	709.14				
	29th July	Meeting HESS in NY	ROS, EB	829.74	no record of flight costs found			
	1st December (?2r	Oral hearing in Listowel	ROS	nil				
2009	26th May	CER Oral Hearing, Tralee	ROS	119.7				
		ROS - Richard O Sullivan - Project Manager						
		EB - Eugene Brennan - Executive Director SD						
		OM- Ogie Moran - Kerry Regional Manager						
		FL - Frank Larkin - Press Officer						
		L McElligott - Former Chairman of SD Board						
		NOS - Nandi O Sullivan - Press officer						



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13 March 2010

The Office of the Ombudsman,
18 Lr. Leeson Street, Dublin 2

By Email only to: ombudsman@ombudsman.gov.ie

Re: Obligation to disclose directorships under Section 177 of the Local Government Act 2001

Dear Sir / Madam,

We are referring to you, the Ombudsman, the decision of the Department of Environment, Heritage and Local Government on December 10th, 2009 to refuse to make an opinion on or to oblige disclosure of directorships under Section 177 of the Local Government Act 2001 - thereby creating a new precedent in Ireland. This decision followed a ruling by the Standards in Public Office Commission that two Kerry Councillors did not have to disclose their directorships in state-owned companies benefiting to the tune of millions of euros from a rezoning vote in which the 2 councillors took part.

The Department of Environment, Heritage and Local Government stated in its decision:

"The Minister has asked me to state that he has no role in relation to the Standards in Public Office Commission, and therefore cannot comment on its correspondence to you. Responsibility for interpretation of legislation is ultimately a matter for the Courts."

We are not referring the decision of the Standards in Public Office Commission to you, rather the decision of the Department of Environment, Heritage and Local Government to allow this new precedent be set in an area under its control and under which the Minister can set regulations regarding the obligations to disclose directorships. No such regulations exist at present.

Background:

The Standards in Public Office Commission ruled on June 19th 2009 that a directorship did not have to be declared at a Kerry County Council rezoning decision meeting under Section 177 of the Local Government Act 2001 if the individual councillor did not enjoy any element of personal benefit or advantage from the decision made, even though the

company of which two councillors were directors stood to gain large sums of money following the outcome of the rezoning decision.

On July 15th 2009 the Standards in Public Office Commission elaborated on its decision of June 19th 2009. It stated that under Section 177(1) the beneficial interest "*must be an interest of the member themselves*".

We are of the strongest opinion that this decision is creating a new precedent in Irish Law. As the Minister referred to in Section 176 (3)(c) of the Local Government Act 2001 we requested a declaration from him on whether or not a directorship now no longer needs to be declared under Section 177 of the Local Government Act 2001.

The refusal by the Minister to intervene in this area under his control means that the precedent created by this decision is that directors of any companies who are also on local authorities where votes which will enrich those same companies are taking place do not have to declare these interests if they are not personally benefiting from the transaction (something which is usually difficult to prove in the first place). This decision, in one fell swoop, will give a lot of power to companies to influence local authority decisions through their directors on those same authorities.

We believe that this precedent has been created without proper authority, is improperly discriminatory, is creating an undesirable administrative practice and is contrary to fair and sound administration.

We basically believe that local authority decision making must be independent and transparent. The laws currently in place do not allow, as we understand it, for local authority members to have a secret conflict of interest and aim rather to outlaw possible corruption in the local authority decision-making process. The outcome we expect from your office is a clear ruling on what directors must do when local authority decisions are being made concerning their companies where they are also members of that local authority.

We await your response and attach the relevant decision for your information.

Please do not hesitate to contact us if you require further information..

Yours sincerely,

Johnny McElligott

Email Reply received from Minister Gormley on 10 December 2009.

REP6983/JG/09?

From: **MINISTER** (minister@environ.ie)
Sent: 10 December 2009 11:37:22
To: safetybeforelng@hotmail.com

10 December, 2009.

Mr. Johnny McElligott.

RE: REP6983/JG/09

Dear Mr. McElligott,

I have been asked by Mr John Gormley, T.D., Minister for the Environment, Heritage and Local Government, to refer to your recent correspondence regarding provisions of the Local Government Act 2001 relating to the ethical framework in local government.

The Minister has asked me to state that he has no role in relation to the Standards in Public Office Commission, and therefore cannot comment on its correspondence to you. Responsibility for interpretation of legislation is ultimately a matter for the Courts.

Yours sincerely,

Eddie Kiernan,
Private Secretary

REP6983/JG/09?

From: **MINISTER** (minister@environ.ie)

Sent: 23 November 2009 12:39:24

To: safetybeforelng@hotmail.com

Please Quote Ref: REP6983/JG/09

23 November, 2009

Email:safetybeforelng@hotmail.com

Dear Mr McElligott ,

I have been asked by Mr. John Gormley, T.D., Minister for the Environment, Heritage and Local Government to refer to your recent email in connection with Local Government Act 2001

A further email on this matter will issue as soon as possible.

Yours sincerely,

Eddie Kiernan
Private Secretary

>>> Safety Before LNG <safetybeforelng@hotmail.com> 18/11/2009 09:27 >>>

Safety Before LNG

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19 November 2009

Minister John Gormley T.D.
Department of Environment, Heritage and Local Government,
Custom House,
Dublin 1.
By Email only to minister@environ.ie

Re: Obligation to disclose directorships under Section 177 of the Local Government Act 2001

Dear Minister,

The Standards in Public Office Commission ruled on June 19th 2009 that a directorship did not have to be declared at a Kerry County Council rezoning decision meeting under Section 177 of the Local Government Act 2001 if the individual councillor did not enjoy any element of personal benefit or advantage from the decision made, even though the company of which two councillors were directors stood to gain large sums of money following the outcome of the rezoning decision. On July 15th 2009 the Standards in Public Office Commission elaborated on its decision of June 19th 2009. It stated that under Section 177(1) the beneficial interest "*must be an interest of the member themselves*".

We are of the strongest opinion that this decision is creating a new precedent in Irish Law. As the Minister referred to in Section 176 (3) (c) of the Local Government Act 2001 we are requesting a declaration from you on whether or not a directorship now no longer needs to be declared under Section 177 of the Local Government Act 2001.

The precedent created by this decision means that directors of any companies who are also on local authorities where votes which will enrich those same companies are taking place do not have to declare these interests if they are not personally benefiting from the transaction (something which is usually difficult to prove in the first place). This decision, in one fell swoop, will give a lot of power to companies to influence local authority decisions through their directors on those same authorities.

We believe that this precedent would be created without proper authority, would be improperly discriminatory, would create an undesirable administrative practice and would be contrary to fair and sound administration. We await your response and attach the relevant decision for your information.

Yours sincerely,

Johnny McElligott



15 July 2009

Mr Johnny McElligott
Island View
Convent Street
Listowel
Co Kerry

Complaint against Councillor John Brassil and Senator Ned O'Sullivan

Dear Mr McElligott,

I refer to your email of 1 July 2009 concerning the Standards Commission's decision of 19 June 2009 regarding your complaint against Councillor John Brassil and Senator Ned O'Sullivan.

The Standards Commission made its decision on your complaint on the basis of the considerations set out in the letter of 19 June 2009. While it notes the contentions you make in your letter of 1 July 2009 in regard to the basis, it does not and cannot accept them. In order to assist you, I will elaborate on the Standards Commission's decision in light of the arguments you make.

You contend that the directorships concerned are "material" for the reasons outlined at 1) in your letter. You refer to the gain that accrues to the companies through the action of their directors and state that the question of the personal gain of the directors is of no relevance. At 4) you assert that the Standards Commission cannot go beyond its own remit in refusing to determine that a beneficial interest was illegally undeclared for a reason that does not exist in primary legislation or codes of practice.

The Standards Commission does not accept your arguments. Its decision was based on the provisions of Part 15 of the Local Government Act 2001 and specifically on sections 176 and 177. Section 177(1) requires disclosure by a member and non-participation by him or her in a matter before a meeting of a local authority where *"he or she has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, the matter"*. It is quite clear from this that the interest referred to here must be an interest of the member themselves. In the matter under consideration which was the subject of your complaint, you yourself have referred to the gain that accrues to the companies. In other words, it is clear and you accept that the companies each had an interest in the matter under discussion. However, the Local Government 2001 does not provide for the disclosure of that

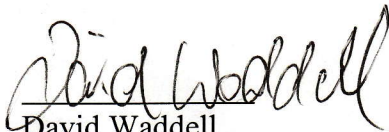
interest. While the two members each had a declarable interest in their capacity as directors of two companies, who in turn each had an interest in the outcome of the Council's decision, those declarable interests were not themselves interests in or material to the matter under discussion and accordingly, no obligation under section 177(1) arose.

I note your reference to a Freedom of Information request currently with the Office of the Information Commissioner on the Shannon LNG option to purchase agreement which you requested that the Commission view at the OIC offices. I presume this is the new information to which you refer in your letter. The Standards Commission could not accede to your request. However, had it considered it appropriate to consider such documentation in the course of its consideration of your complaint, it would not have been appropriate for it to seek to view it in the Office of the Information Commissioner merely on the grounds of convenience. It would have requested a copy of such a document from the relevant body, in this case Shannon Development. It did not consider that such information would have been relevant to its decision on your complaint.

As I informed you in our phone conversation of 2 July 2009, the Standards Commission regards as offensive your reference to a suspicion of political interference in its decision-making process. The Standards Commission rejects this unwarranted and baseless allegation. While it is clear you are unhappy with the Standards Commission's decision, it is not acceptable that you cast aspersions on the independence and integrity of the members of the Commission. The Commission made its decision in light of the relevant legislation and on no other basis.

I trust that you are now clear on the reasons for the decision taken by the Standards Commission in this case. I must inform you that this matter is now closed.

Yours sincerely,


David Waddell
Commission Secretary



Island View
Convent Street
Listowel
County Kerry

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Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

Safety Before LNG
Protecting the Shannon Estuary

1 July 2009

For Attention of:
David Waddell
Commission Secretary,
Standards in Public Office Commission,
18 Lower Leeson Street,
Dublin 2.

By Email only to: sipo@sipo.gov.ie

Re: Complaint against Councillor John Brassil and Senator Ned O'Sullivan (New Information)

Dear Mr. Waddell,

I refer to the Standards in Public Office Commission's letter dated June 19th 2009 on its decision on this matter which we feel now needs to be reconsidered because of the dangerous precedent it creates in allowing increased corporate influence on local authority decisions. This goes far beyond the remit allowed in legislation to the Commission. This also represents a serious lack of transparency on the part of the Commission. We now request that you reassess this decision based on the following arguments and new information.

The Standards in Public Office Commission did acknowledge that the directorships by Councillor Brassil and Senator Ned O'Sullivan were both declarable and beneficial interests by virtue of Section 176(2) of the Local Government Act 2001.

However, the problem is that your office has decided that there was no need for the 2 directors to declare their beneficial interest (an interest which is accepted by you as being a beneficial interest) at local authority meetings where their respective companies will gain millions of euros following the decision of Kerry County Council to rezone rural and secondary special amenity land to industrial for an LNG terminal because the interest was not "material".

You state the beneficial interest was not "material" because it could not be proved that the directors gained any personal benefit from the decision.

However, Section 176 (3) of the Local Government Act 2001 determines the only conditions under which a person voting in a motion does not have to declare the beneficial interest as follows:

"A person shall not be regarded as having a beneficial interest which has to be disclosed

under this Part where [section 167](#) (3) is applicable or because of - (a) an interest which is so remote or insignificant that it cannot be reasonably regarded as likely to influence a person in considering or discussing, or in voting on, any question with respect to the matter or in performing any function in relation to that matter (b) being a ratepayer or a local authority tenant and in common with other ratepayers or tenants, or (c) any other circumstances which may be prescribed by regulations made by the Minister”

Section 167(3) only applies to shareholders, not directors.
There are no relevant regulations prescribed by the Minister.

Voting in a land rezoning deal which is worth millions to the companies of which the councillors were also directors cannot be said to be so remote or insignificant an interest that it would not influence director’s decision to vote on the motion. Indeed both directors have openly admitted that they were influenced by their positions as directors as follows:

Director Brassil told the “Kerryman” Newspaper of September 11th 2008:

“I have always acted for the benefit of the people I serve and bringing 500 jobs and a €500 million investment to north Kerry is absolutely what I’m elected for”.

Director O’Sullivan told the “Kerryman” Newspaper of September 17th 2008:

”I was doubly obliged to assist the LNG project as both a member of Kerry County Council and as a member of the port company”.

Therefore, it is our contention that:

- 1) The directorships themselves are the “material” interests because they allowed companies to have its directors vote on issues which will directly enrich these companies by millions of euros. In other words, the personal criteria of “material” interest being judged according to the personal gain of the director has no relevance when it is the gain that accrues to the companies through the action of their directors that is of ultimate importance.
- 2) John Brassil was re-elected to the Kerry County Council in June 2009 and part of his campaign focussed on his support for the Shannon LNG project and his position as now Chairman of his company, Shannon Development.
- 3) We have a Freedom of Information Request with the Office of the Information Commissioner (OIC) on the Shannon LNG option to purchase agreement (reference 080105) which we request you view at the OIC offices in your building in order to confirm the exact conditions of sale and value of the land purchase deal, sold subject to obtaining planning permission within 2 years for the most sizeable hazard in Ireland on land at the time not even zoned industrial.
- 4) The Standards in Public Office Commission cannot go beyond its own remit in refusing to determine that a beneficial interest was illegally undeclared for a reason that does not exist in primary legislation or codes of practice.
- 5) A new precedent will be created if this complaint is not upheld. It would mean that directors of any companies that are also on local authorities where votes, which will enrich those companies are taking place, do not have to declare their interests if they are not personally benefiting from the transaction (something which is usually difficult to prove in the first place). This decision, in one fell sweep, would give a lot of power to companies to influence local authority decisions through their directors on those same authorities.

- 6) Not upholding our complaint would leave a lingering doubt in our minds of a lack of transparency by the Standards in Public Office Commission that would seem to point to suspicion in our minds of political interference in its decision-making process.

The influence of developers in scandalous rezoning decisions throughout Ireland in recent years that has helped bring this country into a massive recession is now generally accepted as corruption by both national and international observers.

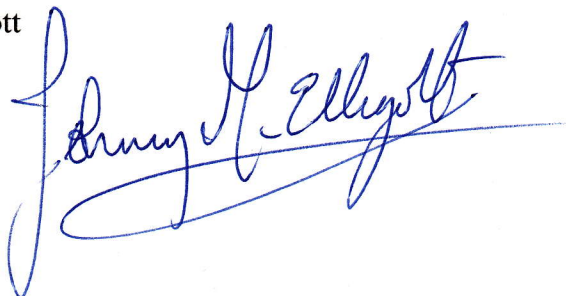
The question the Commission must now answer is how the Ethics legislation, that obliges directorships to be declared at local authority meetings in order to avoid corruption of the planning process by corporations, can now be so blatantly ignored, with the support of you - the independent ethics watchdog - when it concerns a decision strongly supported by the political establishment and powerful lobby groups.

Finally, we do note that you state in your letter of June 19th 2009 that "*there is no provision in the Ethics Acts for any appeal against a decision of the Standards Commission*". However, you should equally note that if the Commission has acted outside its statutory remit to implement a decision that is to our detriment and an abuse of our constitutional and statutory rights, then we will not hesitate, once our own legal experts have audited your actions, to instigate legal action against the Standards in Public Office Commission. Our right to do so is not time-constrained following your decision.

We await your feedback on this new information and legal argument we have provided you.

Yours sincerely,

Johnny McElligott

A handwritten signature in blue ink, appearing to read 'Johnny McElligott', with a large, sweeping flourish underneath.



19 June 2009

Mr Johnny McElligott
Island View
Convent Street
Listowel
Co Kerry

Complaint against Councillor John Brassil and Senator Ned O'Sullivan

Dear Mr McElligott,

I refer to previous correspondence in connection with your complaints against Councillor John Brassil and Senator Ned O'Sullivan. The Standards Commission has now completed its consideration of your complaints and has decided that there is no basis on which to initiate an investigation under the Ethics in Public Office Acts 1995 and 2001 (Ethics Acts). I will set out in detail below the Commission's consideration of the matter in respect of Councillor Brassil and Senator O'Sullivan.

Councillor John Brassil

In your letter of complaint to the Standards Commission, you made three complaints against Councillor Brassil, namely:

1. that he breached his obligations under section 177 of the Local Government Act 2001 (Local Government Act) in voting to support a variation to the Kerry County Development Plan to rezone lands in Kilcolgan for the development of an LNG terminal, while a member of Shannon Development;
2. that he accepted an appointment by the Minister for Enterprise, Trade and Employment, Micheál Martin TD, as Chairman of Shannon Development, two months after the rezoning, which the KRA considers would not have been offered had he voted against the rezoning and that in so doing he breached section 170 of the Local Government Act which prohibits rewards or favour;
3. that he breached sections 168 and 177(4) of the Local Government Act by seeking to influence the decision of Kerry County Council to support the Shannon LNG project.

You made each of these complaints under sections 4(1)(a) and 4(1)(b) of the Standards in Public Office Act 2001 (Standards Act). It is accepted that the reference in section 4(1)(b) to a specified person having "*contravened a provision of the Principal Act*" may be taken to

refer to a contravention of Part 15 of the Local Government Act by virtue of section 180(2) of that Act. Your complaints have therefore been considered with a view to determining whether Councillor Brassil contravened the provisions of Part 15 of the Local Government Act as set out in each complaint and separately, whether such a contravention, if done, was a "specified act" as referred to in section 4(1)(a).

Your complaints were considered in the light of the evidence you provided with those complaints, along with observations provided by Councillor Brassil and information supplied by Mr Brian Looney, ethics registrar, Kerry County Council, including the report of the Kerry County Manager and Mayor into the complaint to Kerry County Council.

Section 177(1) of the Local Government Act provides:

Where at a meeting of a local authority or of any committee, joint committee or joint body of a local authority, a resolution, motion, question or other matter is proposed or otherwise arises either—

- (a) as a result of any of its functions under this or any other enactment, or*
- (b) as regards the performance by the authority, committee, joint committee or joint body of any of its functions under this or any other enactment,*

then, a member of the authority, committee, joint committee or joint body present at such meeting shall, where he or she has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, the matter—

- (i) disclose the nature of his or her interest, or the fact of a connected person's interest at the meeting, and before discussion or consideration of the matter commences, and*
- (ii) withdraw from the meeting for so long as the matter is being discussed or considered,*

and, accordingly, he or she shall take no part in the discussion or consideration of the matter and shall refrain from voting in relation to it.

Section 176 provides guidance as to what may be a "beneficial interest" for the purposes of Part 15 of the Local Government Act. The section provides:

176.—(1) In respect of a resolution, motion, question or other matter which is proposed, or otherwise arises from or as regards the performance by the local authority of any of its functions under this or any other enactment, "beneficial interest" for the purposes of this Part, in relation to a person, includes an interest in respect of which—

- (a) he or she or a connected person, or any nominee of his or her or of a connected person, is a member of a company or any other body which has a beneficial interest in, or which is material to, any such matter,*
- (b) he or she or a connected person is in a partnership with or is in the employment of a person who has a beneficial interest in, or which is material to, any such matter,*
- (c) he or she or a connected person is a party to any arrangement or agreement (whether or not enforceable) concerning land which relates to any such matter,*
- (d) he or she or a connected person in the capacity as a trustee or as a beneficiary of a trust has a beneficial interest in, or which is material to, any such matter,*
- (e) he or she or a connected person is acting with another person to secure or*

exercise control of a company which has a beneficial interest in, or which is material to any such matter.

(2) A person shall also be deemed to have a beneficial interest which has to be disclosed under this Part if he or she has actual knowledge that he or she or a connected person has a declarable interest (within the meaning of section 175) in, or which is material to, a resolution, motion, question or other matter which is proposed, or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment.

(3) A person shall not be regarded as having a beneficial interest which has to be disclosed under this Part where section 167(3) is applicable or because of—

- (a) an interest which is so remote or insignificant that it cannot be reasonably regarded as likely to influence a person in considering or discussing, or in voting on, any question with respect to the matter or in performing any function in relation to that matter,*
- (b) being a ratepayer or a local authority tenant and in common with other ratepayers or tenants, or*
- (c) any other circumstances which may be prescribed by regulations made by the Minister.*

In his observations to the Commission, Councillor Brassil asserts that he had no beneficial interest in any property owned by either Shannon Development or Kerry County Council. It was noted that the report of the Kerry County Manager and Cathaoirleach found that Councillor Brassil did not personally gain from any transaction of Shannon Development.

It is clear that as Councillor Brassil's interest as a board member of Shannon Development is a declarable interest by virtue of section 176(2) of the Local Government Act, it was a beneficial interest. However, the Commission found that in view of the fact that Councillor Brassil did not enjoy any element of personal benefit or advantage from the decision to vary the development plan, that beneficial interest was not material to the motion. Accordingly, the Commission found that there is no evidence to sustain the complaint that Councillor Brassil contravened the provisions of section 177 of the Local Government Act. It follows that Councillor Brassil's actions in this regard were not a 'specified act' or acts.

In regard to the second complaint concerning an alleged breach of section 170 of the Local Government Act, that section provides:

An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under section 169 may include guidance for the purposes of this subsection.

The Commission found that there was no evidence before it to sustain the complaint made. Accordingly, it follows that Councillor Brassil did not do a "specified act" in contravening that section.

The third complaint against Councillor Brassil alleged that he breached sections 168 and

177(4) of the Local Government Act by seeking to influence the decision of Kerry County Council to support the Shannon LNG project. Section 177(4) concerns a matter in respect of which *he or she has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, any matter which is proposed, or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment.*

As noted in respect of the first complaint, the Standards Commission found that Councillor Brassil did not derive personal benefit or advantage from the decision to vary the development plan. It follows that he did not have an interest relevant to the provisions of section 177(4) and so did not contravene that section. It further follows that he did not do a "specified act" in contravening that section.

Accordingly, the Standards Commission has found that there is no basis on which to initiate an investigation under the Ethics Acts into your complaints about Councillor Brassil.

Senator Ned O'Sullivan

In your letter of complaint to the Standards Commission, you made four complaints against Senator O'Sullivan, namely:

1. that while a member of Kerry County Council, he breached his obligations under section 177 of the Local Government Act 2001 in voting to support a variation to the Kerry County Development Plan to rezone lands at Kilcolgan for the development of an LNG terminal, while a member of Shannon Foynes Port Company;
2. that while a member of the Council, he breached sections 168 and 177(4) of the Local Government Act 2001 by seeking to influence the decision of Kerry County Council to support the Shannon LNG project;
3. that as a Senator, he accepted an appointment to the Joint Committee on Climate Change and Energy Security which KRA considers would not have been offered had he voted against rezoning and that in doing so he breached section 180 of the Local Government Act 2001 which prohibits rewards or favours;
4. that he abused his position as a Senator and member of the Joint Committee on Climate Change and Energy Security in alleging that KRA had been briefed by the "Shell to Sea people", which KRA alleges was "an abdication of his responsibility and duty to be fair to all as obliged under Article 168 of the Local Government Act 2001".

You made each of these complaints under sections 4(1)(a) and 4(1)(b) of the Standards in Public Office Act 2001 (Standards Act). You were informed in our letter of 5 November 2008 that complaints numbers 3 and 4 are outside the remit of the Standards Commission as it does not have any authority to examine complaints against members of the Seanad.

The reference in section 4(1)(b) to a specified person having "*contravened a provision of the Principal Act*" may be taken to refer to a contravention of Part 15 of the Local Government Act by virtue of section 180(2) of that Act. However, the Commission's jurisdiction under Part 15 does not extend to former Councillors such as Senator O'Sullivan. Section 180(2)(a) of the Local Government Act provides that *the powers of investigation and report conferred on the Commission [under Part 15 of that Act] apply in relation to a person to whom subsection (1) or (2) of section 167 relates.* Section 167(1)(a) refers to a member of a local

authority and the remainder of section 167(1) and (2) is clearly expressed in the present tense also. Furthermore, section 180(3) and (4) clearly contemplate that the subject of any report of the Commission is a councillor - otherwise it would be difficult to understand the purpose of referring the report to the local authority or what *action* the authority might take on foot of such report.

However, the provisions of section 4(1)(a) of the Standards Act apply to a "specified person" which includes a person who at the time to which the complaint relates held a directorship (membership of a local authority falling within the definition of a directorship). Accordingly, the Commission has considered complaints 1. and 2. against Senator O'Sullivan in the light of whether he did a "specified act" by contravening the sections of the Local Government Act mentioned in the complaints.


In relation to the first complaint, Senator O'Sullivan asserted in his observations to the Standards Commission that he had no personal interest in the motion or the land involved. As with the considerations in the case of Councillor Brassil in relation to a similar complaint, as Senator O'Sullivan's interest as a board member of Shannon Foynes Port Company was a declarable interest by virtue of section 176(2) of the Local Government Act, it was a beneficial interest. However, in view of the fact that he did not enjoy any element of personal benefit or advantage from the decision to vary the development plan, his interest as a board member was not material to the motion and therefore he did not contravene the provisions of section 177 of the Local Government Act. It follows therefore that he did not do a 'specified act' as alleged.

In relation to the second complaint, the same considerations apply in that he did not have an interest which was material to the Council's decision. Accordingly, he did not do a "specified act" as alleged.

Accordingly, the Standards Commission has found that there is no basis on which to initiate an investigation under the Ethics Acts into your complaints about Senator O'Sullivan.

This letter sets out the decisions of the Standards Commission in relation to each of your complaints. You should note that there is no provision in the Ethics Acts for any appeal against a decision of the Standards Commission.

Yours sincerely,



Brian McKevitt
Commission Secretariat



**Kilcolgan Residents
Association
& Safety Before LNG**
Protecting the Shannon Estuary

Kilcolgan Residents Association
Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

6 March 2009

For Attention of:
David Waddell
Commission Secretary,
Standards in Public Office Commission,
18 Lower Leeson Street,
Dublin 2.

By Email only to: sipo@sipo.gov.ie
Re: Complaint against Councillor John Brassil and Senator Ned O'Sullivan.

Dear Mr. Waddell,

I wish to bring it to the attention of the Commission the following 3 points on our upcoming attendance at a European Parliament Petitions Meeting, the political debate on councillors being members of Harbour boards and the fact that money changed hands between Shannon LNG and Shannon Development before the vote to rezone lands for the proposed LNG terminal from Rural to Industrial took place:

1. We have been invited by the European Parliament to speak at its Committee on Petitions meeting of 31 March 2009 as detailed below. We are petitioning for condemnation of breaches of the SEA Directive by Kerry County Council for refusing to conduct a Strategic Environmental Assessment (SEA) when rezoning lands from rural to industrial (Variation No. 7 County Development Plan 2003-2009) in preparation for the Shannon LNG application for planning permission.

It would be very helpful if we could receive some notification from your office on the direction it is taking on our complaint about John Brassil and Ned O'Sullivan before the end of March 2009 because our petition to the European Parliament deals with the same decision which is the subject matter of our complaint to the Standards in Public Office Commission. We are also cognisant of the fact that the petition has no direct effect on your examination of our complaint and so should have no bearing on whether or not you continue with a formal investigation of our complaint.

2. I would like to point out that, in our opinion, the decision by councillors Brassil and Sullivan to vote for the rezoning of the Shannon Development-owned land at Tarbert was not an oversight on their behalf. Senator O'Sullivan pointed out in a Seanad debate into the Harbours Amendment Bill 2008 on

October 8th, 2008¹ that:

“On the contentious issue of councillors on boards, I strongly support the views expressed by Senators on both sides of the House and I am on record about the need to protect the rights of councillors. I was happy to hear the Taoiseach make it clear in the Dáil yesterday, in response to a query, that he has absolute confidence in councillors and should they be suitable for appointment to a board, he is fully in favour of public representatives being appointed to boards. That is from the Taoiseach, a man for whom I have the greatest respect, as does the entire country. I hope all the Ministers will take a leaf out of the Taoiseach’s book in that regard.

I have had words with the Minister, Deputy Dempsey, on this issue and he is aware of my views. Appointments were made recently to the board of Shannon Foynes Port Company with the result that for the first time in nearly 50 years, no Kerry person or public representative has a say in the affairs of the estuary which is closest to us and which is of major importance to our welfare and our future. I served on the board for 15 years. A cousin of mine, the late former Senator and Deputy, Kit Ahern, served for an even longer period. Many other excellent councillors represented the interests of Kerry and of the region but for the first time that has ceased to be the case. I can assure the Minister of State that is resented in Kerry. I hope that when any further appointments are made to the board of Shannon Foynes Port Company, the kingdom will not be left out again”.

Our interpretation of this statement is that there is an ongoing debate on the struggle for councillors to be members of Harbour Boards and that there is no sentiment of regret at a possible breach of ethics laws when councillors vote on issues concerning these bodies at council meetings. However, until the law is changed it must be respected. Mr. O’Sullivan went on to state in the same debate:

“I disagree with the speakers who said that An Bord Pleanála is not the appropriate body to deal with planning issues. We had witness to that in my own north Kerry area recently when we got fast-track planning permission for the proposed gas terminal, which is supported by the community with the exception of one or two individuals. Senator Paul Coughlan, my great friend and colleague, was good enough to mention the fact that I experienced difficulty regarding my position there, along with another colleague and great friend, Councillor John Brassil. A complaint was made about me to the director of the Ethics Register because I was a member of the board of Shannon Foynes Port Company at a time when Kerry County Council — of which I was also a member — rezoned land to provide for that gas terminal in Tarbert-Ballylongford. Councillor Brassil was a chairman of Shannon Development and I was a director of Shannon Foynes Port Company. I am glad to say both of us were exonerated. We had no case to answer. We had no pecuniary interest. I regret to say we do not own any property adjacent to the site. That matter has been put aside.”

3. I would like to point out **money has already changed hands** before the vote to rezone the lands in March 2007. Shannon Foynes Port Company made publicly available, in June 2008, the information of the option-to-purchase agreement between Shannon Development and Shannon LNG being conditional on obtaining planning permission within 2 years². From Shannon LNG accounts lodged with the Companies Registration Office, attached below, for year ended 31 December 2006, it is noted that **Shannon LNG had already paid at least €493,000 to Shannon Development by**

¹ <http://debates.oireachtas.ie/DDebate.aspx?F=SEN20081008.xml&Node=555>

² http://www.sfpco.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

December 2006 (three months before the vote) and this figure rose to €1,233,000 by year end December 31st 2007 (although it is not clear if this extra €740,000 in 2007 was paid before or after the vote of March 12th 2007). The sums of money transferred speak for themselves.

I await your feedback.

Yours sincerely,

Johnny McElligott



KOMISJA PETYCJI
PRZEWODNICZY

Brussels,
AGV/kl/[02-COM.PETI(2008)D/38784]

Mr John McElligott
Kilcolgan Residents Association
Convent Street Island View
Listowel, County Kerry
Ireland

312001 16.07.2008

Subject: Petition Nr. 0013/2008 (reference to be quoted in all correspondence)

Dear Mr. McElligott,

I would like to inform you that the Committee on Petitions considered your petition and decided that the issues which you raise are admissible in accordance with the Rules of Procedure of the European Parliament, insofar as the subject matter falls within the sphere of activities of the European Union.

The committee decided to ask the European Commission to conduct a preliminary investigation of the various aspects of the problem. Moreover, it felt that the issues raised in your petition should be submitted, also, to the Committee in the European Parliament within whose terms of reference it falls and, therefore, refer it to the Committee on Environment, Public Health and Food Safety.

I would also like to draw your attention to the document here enclosed which contains the reply given by the European Commission to petition 354/2006 which raised similar questions to those you raised with us.

I will keep you informed of any further action taken on your petition in due course.

Yours sincerely,

Marcin Libicki
Chairman
Committee on Petitions

Annexe: Notice to Members on petition 354/2006 (CM 667755EN)



PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT EΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
PARLEMENT EUROPÉEN PARLAMENTO EUROPEO EIROPAS PARLaments
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU EURÓPSKY PARLAMENT
EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

Commission des pétitions
Le Secrétariat

303944 04.03.2009

Brussels,
AGV/KI[02-COM.PETI(2008)D/12569]

Mr John McElligott
Kilcolgan Residents Association
Convent Street Island View
Listowel, County Kerry
Ireland

Subject: Petition Nr. 0013/2008 (reference to be quoted in all correspondence)

Dear Mr McElligott,

I would like to inform you that your petition has been included on the agenda of the meeting of the Committee on Petitions which will take place on 31 March 2009 in Brussels. It is scheduled to be dealt with around **16.00**. The meeting will take place in the **PHS** building of the European Parliament in Brussels, in room **ASP A1E2**(rue Wiertz 60 - 1047 Brussels).

In order to prepare access badges to enter the European Parliament building, please send us your date of birth as well as the names and dates of birth of all the people accompanying you **by the 25 March 2009 at the latest**. You will be awaited by one of our secretaries at the **Accreditation Centre at 15.00**. The accreditation centre is situated on the right side of the Luxembourg entrance of the Altiero Spinelli building, at the pedestrian area next to the Luxembourg train station.

When your petition is introduced, by special permission of the Committee, you may, if you wish, make a brief statement lasting no longer than five minutes. In this case, it would be helpful if you could provide copies of your statement to the Committee secretariat so that they can be distributed to the interpreters. After this the European Commission will be invited to give information on your case, and Members will then be in a position to discuss your case.

I look forward to welcoming you to the Committee meeting.

Yours sincerely,

David Lowe
Head of Unit
Committee on Petitions

Enclosure: map of the European Parliament



Shannon LNG Limited

3055459



DIRECTORS' REPORT AND FINANCIAL STATEMENTS
for the year ended 31 December 2006

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FEE IN	PAID FULL	RECEIPT No.
28 SEP 2007		
COMPANIES REGISTRATION OFFICE		

Shannon LNG Limited

DIRECTORS' REPORT AND FINANCIAL STATEMENTS for the year ended 31 December 2006

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Shannon LNG Limited

COMPANY INFORMATION

DIRECTORS

Patrick Power
Gordon Shearer

SECRETARY

Matsack Trust Limited

REGISTERED OFFICE

30 Herbert Street
Dublin 2

SOLICITORS

Matheson Ormsby Prentice
30 Herbert Street
Dublin 2

BANKERS

Allied Irish Bank
Main Street
Blackrock
Dublin

AUDITORS

Ernst and Young
Chartered Accountants
Barrington House
Barrington Street
Limerick

Shannon LNG Limited

DIRECTORS' REPORT

for the year ended 31 December 2006 (All figures are expressed in thousands of Euro)

The directors present their report and financial statements for the year ended 31 December 2006.

PRINCIPAL ACTIVITIES, BUSINESS REVIEW AND FUTURE DEVELOPMENTS

Shannon LNG Limited (Company) is a development stage company, engaged in the development of liquefied natural gas (LNG) marine import terminals. The company is currently working to secure all necessary permits to develop a terminal located in County Kerry. Construction of the terminal is expected to begin once all the permits are obtained.

The company was formerly known as the Irish National Energy Company Limited (INEC). On 19th April 2006 Hess LNG Limited (HESS LNG), a joint venture between Hess Oil and Gas Holdings Inc. (HOGHI), a subsidiary of Hess Corporation (HESS) and Midstream Beta Limited, a subsidiary of Poten & Partners Group, LLC (POTEN) acquired INEC. The name of the company was changed from INEC to Shannon LNG Limited on that date.

On 19th April 2006, the company entered into an option agreement with Shannon Free Airport Development Company Limited to purchase up to 281 acres for the purposes of developing an LNG marine import terminal. As of 31 December 2006 the company has paid €493 under the terms of the option agreement.

€493,000

RESULTS FOR THE YEAR AND STATE OF AFFAIRS AT 31 DECEMBER 2006

The profit & loss account and balance sheet are set out on pages 7 & 8. All project startup costs incurred to date have been charged to expense, with the exception of option payments for the project site in Shannon and deposits for office space. The company recorded a loss of €2,550 for the year.

IMPORTANT EVENTS SINCE THE YEAR END

On 8th March 2007, HOGHI increased its equity ownership in the company by acquiring 85% of Midstream Beta Limited's equity. Following the transaction, the company is owned 92.5% by HOGHI and 7.5% by Midstream Beta Limited.

DIRECTORS

On 18th April 2006 Ms. Catherine Power resigned as a director and was replaced by Mr. Gordon Shearer.

BOOKS AND ACCOUNTING RECORDS

The directors are responsible for ensuring that proper books and accounting records, as outlined in Section 202 of the Companies Act, 1990, are kept by the company.

To achieve this, the directors have appointed appropriate personnel to ensure that those requirements are complied with.

These books and accounting records are maintained at 30 Herbert Street, Dublin 2.

DIVIDENDS

The directors of the company do not propose the payment of a dividend for the year.

Shannon LNG Limited

DIRECTORS' REPORT

for the year ended 31 December 2006

DIRECTORS' AND SECRETARY'S INTERESTS

The interests of directors in the share capital of the company at the beginning and end of the year were as follows:

Director	At 31 December 2005 Number of Ordinary Shares	At 31 December 2006 Number of Ordinary Shares
Patrick Power	10,000	-
	At 31 December 2005 Number of Def. Ordinary Shares	At 31 December 2006 Number of Def. Ordinary Shares
Patrick Power	5,000	5,000

STATEMENT OF DIRECTORS' RESPONSIBILITIES IN RESPECT OF THE FINANCIAL STATEMENTS

The directors are responsible for preparing the financial statements in accordance with applicable Irish law and Generally Accepted Accounting Practice in Ireland including the accounting standards issued by the Accounting Standards Board and promulgated by the Institute of Chartered Accountants in Ireland.

Company law requires the directors to prepare financial statements for each financial year, which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper books of account which disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements are prepared in accordance with accounting standards generally accepted in Ireland and comply with the Companies Acts, 1963 to 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

AUDITORS

The auditors, Ernst & Young, Chartered Accountants, will continue in office in accordance with Section 160(2) of the Companies Act, 1963.

On behalf of the board on

27 June 2007

Directors

INDEPENDENT AUDITORS' REPORT TO THE MEMBERS OF SHANNON LNG LIMITED

We have audited the company's financial statements of Shannon LNG Limited for the year ended 31 December 2006 which comprises the Profit and Loss Account, the Balance Sheet and the related notes 1 to 13. These financial statements have been prepared under the accounting policies set out therein.

This report is made solely to the company's members, as a body, in accordance with section 193 of the Companies Act, 1990. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of directors and auditors

The directors are responsible for the preparation of the financial statements in accordance with applicable Irish law and Accounting Standards issued by the Accounting Standards Board and promulgated by the Institute of Chartered Accountants in Ireland (Generally Accepted Accounting Practice in Ireland) as set out in the Statement of Directors' Responsibilities.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Acts, 1963 to 2006. We also report to you our opinion as to: whether proper books of account have been kept by the company; whether, at the balance sheet date, there exists a financial situation which may require the convening of an extraordinary general meeting of the company; and whether the information given in the Directors' Report is consistent with the financial statements. In addition, we state whether we have obtained all the information and explanations necessary for the purposes of our audit and whether the financial statements are in agreement with the books of account.

We also report to you if, in our opinion, any information specified by law regarding directors' remuneration and other transactions is not disclosed and, where practicable, include such information in our report.

We read the Directors' Report and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgments made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

INDEPENDENT AUDITORS' REPORT TO THE MEMBERS OF SHANNON LNG LIMITED

Opinion

In our opinion the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of affairs of the company as at 31 December 2006 and of its loss for the year then ended and have been properly prepared in accordance with the Companies Acts, 1963 to 2006.

We have obtained all the information and explanations we consider necessary for the purposes of our audit. In our opinion proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion the information given in the Directors' Report is consistent with the financial statements.

In our opinion, the balance sheet shows an excess of liabilities over assets and, in our opinion, on that basis there did exist at 31 December 2006 a financial situation which under Section 40(1) of the Companies (Amendment) Act, 1983 may require the convening of an extraordinary general meeting of the company.

Emphasis of Matter – Going Concern

In forming our opinion, which is not qualified, we have considered the adequacy of the disclosures made in Note 1 to the financial statements concerning the uncertainty over the ability of the company to continue as a going concern. In view of the significance of this uncertainty we consider that it should be drawn to your attention. The financial statements do not include the adjustments that would result if the company was unable to continue as a going concern.

Ernst & Young
Ernst & Young
Registered Auditors
Limerick

Date: 18th July 2007


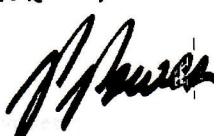
Shannon LNG Limited

PROFIT AND LOSS ACCOUNT for the year ended 31 December 2006

	Note	2006 €'000	2005 €'000
Sales		-	-
Cost of sales		-	-
GROSS PROFIT		-	-
Other (losses)/gains		-	-
Administrative expenses		-	-
Other income		-	-
Other expenses		(2,550)	(352)
(Loss) before income tax	2	(2,550)	(352)
Income tax expense	3	-	-
LOSS RETAINED FOR THE PERIOD		(2,550)	(352)

The company has no other recognised gains or losses in the current financial year other than those dealt with in the profit & loss account.

On behalf of the board on 27 June 2007


Directors 

Shannon LNG Limited

BALANCE SHEET for the year ended 31 December 2006

	Note	2006 €'000	2005 €'000
FIXED ASSETS			
Intangible fixed assets	4	493	-
Deposits		32	-
		<u>525</u>	<u>-</u>
CURRENT ASSETS			
Debtors	5	155	57
Cash and cash equivalents		39	1
		<u>194</u>	<u>58</u>
CREDITORS: amounts falling due within one year	6	(464)	(409)
NET CURRENT LIABILITIES		<u>(270)</u>	<u>(351)</u>
TOTAL ASSETS LESS CURRENT LIABILITIES		<u>255</u>	<u>(351)</u>
CREDITORS:			
amounts falling due after more than one year	7	(3,156)	-
NET (LIABILITIES)		<u>(2,901)</u>	<u>(351)</u>
CAPITAL AND RESERVES			
Share capital	9	1	1
Retained earnings		(2,902)	(352)
Shareholders' deficit (all equity interests)	8	<u>(2,901)</u>	<u>(351)</u>

On behalf of the board on 27 June 2007

R. Sheave
Directors

J. Power

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2006

1. ACCOUNTING POLICIES

(a) *Going concern*

The accompanying financial statements have been prepared on a going concern basis. As shown in the Profit and Loss account and Balance Sheet, the company has a limited amount of cash, has incurred losses and has accumulated a deficit during the development stage. These factors indicate the company may be unable to continue as a going concern. The financial statements do not include any adjustments that might be necessary should the company be unable to continue as a going concern.

The directors recognize that continuing as a going concern is dependent on among other factors, obtaining funding from Hess LNG. The company has an interest free loan agreement with Hess LNG. Through the end of 2006, the company has borrowed €3,156 under this agreement, with a further €1,370 borrowed since the end of 2006. The loan agreement provides project funding up to €10,000. The directors believe that the funding through the loan agreement will be sufficient to allow the company to continue as a going concern.

(b) *Basis of preparation*

The financial statements are prepared in accordance with generally accepted accounting principles under the historical cost convention and comply with financial reporting standards of the Accounting Standards Board, as promulgated by the Institute of Chartered Accountants in Ireland.

(c) *Start up costs*

All project startup costs incurred to date have been charged to expenses, with the exception of option payments for the project site in Shannon and deposits for office space.

(d) *Cash and cash equivalents*

Cash equivalents consist of highly liquid investments, which are readily convertible into cash and have maturities of three months or less when acquired.

(e) *Taxation*

The company has not generated any income to date, and as a result has not incurred any corporation taxes.

(f) *Cash Flow*

Financial Reporting Standard Number 1, "Cash Flow Statements", exempts small companies as defined in the companies' legislation from preparing cash flow statements. The company has availed of this exemption.

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2006

2. PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION

	2006 €'000	2005 €'000
The profit before taxation is stated after charging:		
Directors' emoluments	276	-
Auditors' remuneration	42	-
	<hr/>	<hr/>

3. TAX ON (LOSS) ON ORDINARY ACTIVITIES

(a)	Analysis of profit and loss account charge:	2006 €'000	2005 €'000
	Current tax:		
	Republic of Ireland corporation tax on profits of the period at 12.5% (see reconciliation below)	-	-
		<hr/>	<hr/>
	Tax on (loss) on ordinary activities	-	-
		<hr/>	<hr/>
(b)	Reconciliation of the expected tax charge at the standard tax rate to the actual tax charge at the effective rate		
	The tax assessed for the year is lower than the standard rate of corporation tax in the Republic of Ireland (12.5%). The differences are explained below:		
		2006 €'000	2005 €'000
	(Loss) on ordinary activities before tax	(2,550)	(352)
		<hr/>	<hr/>
	(Loss) on ordinary activities multiplied by the standard rate of corporation tax in the Republic of Ireland of 12.5% (2005: 12.5%)	(319)	(44)
	Effects of:		
	Increase in losses forward	319	44
		<hr/>	<hr/>
	Tax on (loss) on ordinary activities	-	-
		<hr/>	<hr/>

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2006

4. INTANGIBLE FIXED ASSETS

	<i>Property, plant & equipment</i> €'000	<i>Total</i> €'000
Opening balance	-	-
Additions	493	493
Amortisation	-	-
Net book value		

The intangible asset arises on the option to purchase land from Shannon Free Airport Development Company Limited.

5. DEBTORS

	<i>2006</i> €'000	<i>2005</i> €'000
Amounts falling due within one year:		
Trade and other receivables	155	57

6. CREDITORS: amounts falling due within one year

	<i>2006</i> €'000	<i>2005</i> €'000
Trade and other payables	464	409

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2006

7. CREDITORS: amounts falling due after more than one year

	2006 €'000	2005 €'000
Amounts due to parent undertaking	3,156	-

The company has entered into an interest free loan agreement with Hess LNG to provide funding for project development. The facility provides funding up to €10,000. As at 31 December 2006 the company had a loan balance with Hess LNG of €3,156.

8. RECONCILIATION MOVEMENTS IN SHAREHOLDERS' FUNDS

	2006 €'000	2005 €'000
Profit retained for the year	(2,550)	(352)
Opening shareholders' funds	(351)	1
Closing shareholders' funds	(2,901)	(351)

9. CALLED UP SHARE CAPITAL

	2006 €'000	2005 €'000
Authorised:		
1,000,000 ordinary shares of €0.01 each	10,000	10,000
20,000 deferred ordinary shares of €0.01 each	200	200
Allotted, called up and fully paid:		
40,000 ordinary shares of €0.01 each	400	400
20,000 deferred ordinary shares of €0.01 each	200	200
	600	600
Rounded amount	€'000	€'000
Allotted, called up and fully paid	1	1

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2006

9. CALLED UP SHARE CAPITAL (contd.)

Each of the Ordinary Shares and the Deferred Ordinary Shares shall rank *pari passu* in all respects save as specifically set out below:-

As Regards Dividend

- a) Each of the Ordinary Shares shall rank *pari passu* in all respects as to dividends.
- b) The Deferred Ordinary Shares shall confer upon the holders thereof no right to receive any dividend thereon.

As Regards a Return of Capital

- a) In the event of any liquidation, dissolution or winding-up of the Company, either voluntarily or involuntarily, the assets and retained profits available for distribution to the holders of Ordinary Shares in the capital of the Company shall be distributed with equal priority among the holders of Ordinary Shares in the same proportions as the holders hold such Ordinary Shares.
- b) The holders of Deferred Ordinary Shares shall have no rights to share in the assets or retained profits of the Company in the event of any liquidation, dissolution or winding-up of the Company.

As Regards Voting at General Meetings

- a) The holders of Ordinary Shares shall each be entitled to receive notice of, and to attend and speak and vote at, general meetings of the Company.
- b) The Deferred Ordinary Shares shall not confer upon the holders thereof the right to receive notice of or to attend or vote at general meetings of the Company.

As Regards Conversion of the Deferred Ordinary Shares

The following rights shall attach to Deferred Ordinary Shares as regards conversion:

- (a) All of the Deferred Ordinary Shares held by a Deferred Ordinary Shareholder shall automatically convert into Ordinary Shares in accordance with the Conversion Rate specified in Article 4.4(b) in the Memorandum and Articles of Association, on the occurrence of the Final Investment Decision.
- (b) Each holder of Deferred Ordinary Shares shall be entitled to receive one Ordinary share and the corresponding share certificate for each Deferred Ordinary share held by him on the date of the Final Investment Decision.

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2006

10. CONTROLLING PARTIES

Shannon LNG Limited is a wholly owned subsidiary undertaking of Hess LNG Limited, an undertaking incorporated in the Cayman Islands. The parent undertaking of the smallest group of undertakings for which group financial statements are drawn up, and of which the company is a member, is Hess Corporation. Copies of its group financial statements are available from 1185 Avenue of the Americas, New York, NY 10036, United States.

Hess LNG Limited is a joint venture between Hess Oil and Gas Holdings Inc. (HOGHI), a subsidiary of Hess Corporation (HESS) and Midstream Beta Limited, a subsidiary of Poten & Partners Group LLC (POTEN). The ultimate controlling parties are both incorporated in the United States. Copies of the group financial statements for Hess Corporation are available from 1185 Avenue of the Americas, New York, NY 10036, United States.

11. RELATED PARTIES

A summary of all material transactions between the company and its members and affiliates follows:

Services Agreement

2006
€'000

Hess LNG

€330

The company has entered into a services agreement with Hess LNG to provide certain services including coordination of project development, as well as legal and accounting support.

12. CONTINGENCIES

The company is subject to contingent liabilities with respect to existing or potential claims, lawsuits and other proceedings. The company considers these routine and incidental to its business and not material to its financial position or results of operations. The company accrues liabilities when the future costs are probable and reasonably estimable.

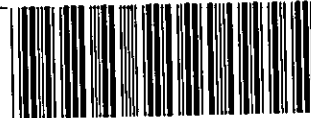
13. APPROVAL OF FINANCIAL STATEMENTS

The directors approved the financial statements on 27 June 2007

SHANNON LNG LIMITED

REPORT AND FINANCIAL STATEMENTS

PERIOD ENDED 31 DECEMBER 2007



3372598

Certified to be a true copy of the balance sheet, profit and loss account, directors' report and auditor's report as laid to the sole member of the Company in accordance with the European Communities (Single-Member Private Limited Companies) Regulations, 1994


Director

For and on behalf of Matsack Trust Limited


Secretary

SHANNON LNG LIMITED

**DIRECTORS' REPORT AND
FINANCIAL STATEMENTS**

**FOR THE YEAR ENDED
31 DECEMBER 2007**

C. R. O.
6 - OCT 2008

Shannon LNG Limited

DIRECTORS' REPORT AND FINANCIAL STATEMENTS for the year ended 31 December 2007

TABLE OF CONTENTS	PAGE
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DIRECTORS' REPORT	3
INDEPENDENT AUDITORS' REPORT	5
PROFIT AND LOSS ACCOUNT	7
BALANCE SHEET	8
NOTES TO THE FINANCIAL STATEMENTS	9

Shannon LNG Limited

COMPANY INFORMATION

DIRECTORS

Patrick Power
Gordon Shearer

SECRETARY

Matsack Trust Limited

REGISTERED OFFICE

30 Herbert Street
Dublin 2

SOLICITORS

Matheson Ormsby Prentice
30 Herbert Street
Dublin 2

BANKERS

Allied Irish Bank
Main Street
Blackrock
Dublin

AUDITORS

Ernst and Young
Chartered Accountants
Barrington House
Barrington Street
Limerick

Shannon LNG Limited

DIRECTORS' REPORT

for the year ended 31 December 2007 (All figures are expressed in thousands of Euro)

The directors present their report and financial statements for the year ended 31 December 2007.

PRINCIPAL ACTIVITIES, BUSINESS REVIEW AND FUTURE DEVELOPMENTS

Shannon LNG Limited (Company) is a development stage company, engaged in the development of liquefied natural gas (LNG) marine import terminals. The company is currently working to secure all necessary permits to develop a terminal located in County Kerry. Construction of the terminal is expected to begin once all the permits are obtained.

The company was formerly known as the Irish National Energy Company Limited (INEC). On 19th April 2006 Hess LNG Limited (HESS LNG), a joint venture between Hess Oil and Gas Holdings Inc. (HOGHI), a subsidiary of Hess Corporation (HESS) and Midstream Beta Limited, a subsidiary of Poten & Partners Group, LLC (POTEN) acquired INEC. The name of the company was changed from INEC to Shannon LNG Limited on that date.

On 19th April 2006, the company entered into an option agreement with Shannon Free Airport Development Company Limited to purchase up to 281 acres for the purposes of developing an LNG marine import terminal. As of 31 December 2007 the company has paid €1,233k under the terms of the option agreement.

RESULTS FOR THE YEAR AND STATE OF AFFAIRS AT 31 DECEMBER 2007

The profit & loss account and balance sheet are set out on pages 7 & 8. All project startup costs incurred to date have been charged to expense, with the exception of option payments for the project site in Shannon and deposits for office space. The company recorded a loss of €8,490k for the year (2006: €2,550k).

IMPORTANT EVENTS SINCE THE YEAR END

On 28 March 2008, An Bord Pleanála granted the Company planning permission to construct an LNG regasification terminal on the southern shore of the Shannon Estuary in County Kerry.

DIRECTORS

The present directors are listed on page 2. They have served throughout the period.

BOOKS AND ACCOUNTING RECORDS

The directors are responsible for ensuring that proper books and accounting records, as outlined in Section 202 of the Companies Act, 1990, are kept by the company.

To achieve this, the directors have appointed appropriate personnel to ensure that those requirements are complied with.

These books and accounting records are maintained at 30 Herbert Street, Dublin 2.

DIVIDENDS

The directors of the company do not propose the payment of a dividend for the year.

Shannon LNG Limited

DIRECTORS' REPORT

for the year ended 31 December 2007

DIRECTORS' AND SECRETARY'S INTERESTS

The interests of directors in the share capital of the company at the beginning and end of the year were as follows:

Director	<i>At 31 December 2006</i> <i>Number of Ordinary Shares</i>	<i>At 31 December 2007</i> <i>Number of Ordinary Shares</i>
Patrick Power	-	-
	<i>At 31 December 2006</i> <i>Number of Def. Ordinary Shares</i>	<i>At 31 December 2007</i> <i>Number of Def. Ordinary Shares</i>
Patrick Power	5,000	5,000

STATEMENT OF DIRECTORS' RESPONSIBILITIES IN RESPECT OF THE FINANCIAL STATEMENTS

The directors are responsible for preparing the financial statements in accordance with applicable Irish law and Generally Accepted Accounting Practice in Ireland including the accounting standards issued by the Accounting Standards Board and promulgated by the Institute of Chartered Accountants in Ireland.

Company law requires the directors to prepare financial statements for each financial year, which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper books of account which disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements are prepared in accordance with accounting standards generally accepted in Ireland and comply with the Companies Acts, 1963 to 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

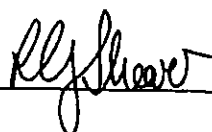
AUDITORS

The auditors, Ernst & Young, Chartered Accountants, will continue in office in accordance with Section 160(2) of the Companies Act, 1963.

On behalf of the board on

Directors

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INDEPENDENT AUDITORS' REPORT TO THE MEMBERS OF SHANNON LNG LIMITED

We have audited the company's financial statements of Shannon LNG Limited for the year ended 31 December 2007 which comprises the Profit and Loss Account, the Balance Sheet and the related notes 1 to 15. These financial statements have been prepared under the accounting policies set out therein.

This report is made solely to the company's members, as a body, in accordance with section 193 of the Companies Act, 1990. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of directors and auditors

The directors are responsible for the preparation of the financial statements in accordance with applicable Irish law and Accounting Standards issued by the Accounting Standards Board and promulgated by the Institute of Chartered Accountants in Ireland (Generally Accepted Accounting Practice in Ireland) as set out in the Statement of Directors' Responsibilities.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Acts, 1963 to 2006. We also report to you our opinion as to: whether proper books of account have been kept by the company; whether, at the balance sheet date, there exists a financial situation which may require the convening of an extraordinary general meeting of the company; and whether the information given in the Directors' Report is consistent with the financial statements. In addition, we state whether we have obtained all the information and explanations necessary for the purposes of our audit and whether the financial statements are in agreement with the books of account.

We also report to you if, in our opinion, any information specified by law regarding directors' remuneration and other transactions is not disclosed and, where practicable, include such information in our report.

We read the Directors' Report and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgments made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

INDEPENDENT AUDITORS' REPORT TO THE MEMBERS OF SHANNON LNG LIMITED

Opinion

In our opinion the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of affairs of the company as at 31 December 2007 and of its loss for the year then ended and have been properly prepared in accordance with the Companies Acts, 1963 to 2006.

We have obtained all the information and explanations we consider necessary for the purposes of our audit. In our opinion proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion the information given in the Directors' Report is consistent with the financial statements.

In our opinion, the balance sheet shows an excess of liabilities over assets and, in our opinion, on that basis there did exist at 31 December 2006 a financial situation which under Section 40(1) of the Companies (Amendment) Act, 1983 may require the convening of an extraordinary general meeting of the company.

Emphasis of Matter – Going Concern

In forming our opinion, which is not qualified, we have considered the adequacy of the disclosures made in Note 1 to the financial statements concerning the uncertainty over the ability of the company to continue as a going concern. In view of the significance of this uncertainty we consider that it should be drawn to your attention. The financial statements do not include the adjustments that would result if the company was unable to continue as a going concern.

Ernst & Young
Registered Auditors
Limerick

Date:

Shannon LNG Limited

PROFIT AND LOSS ACCOUNT for the year ended 31 December 2007

	Note	2007 €'000	2006 €'000
Sales		-	-
Cost of sales		-	-
GROSS PROFIT		-	-
Other (losses)/gains		-	-
Administrative expenses		-	-
Other income		-	-
Other expenses		(8,490)	(2,550)
(Loss) before income tax	2	(8,490)	(2,550)
Income tax expense	4	-	-
LOSS RETAINED FOR THE PERIOD		(8,490)	(2,550)

The company has no other recognised gains or losses in the current financial year other than those dealt with in the profit & loss account.

On behalf of the board on

Directors

Rly Shear *J. Power*

Shannon LNG Limited

BALANCE SHEET for the year ended 31 December 2007

	Note	2007 €'000	2006 €'000
FIXED ASSETS			
Intangible fixed assets	5	1,233	493
Deposits		32	32
		<u>1,265</u>	<u>525</u>
CURRENT ASSETS			
Debtors	6	257	155
Cash and cash equivalents		261	39
		<u>518</u>	<u>194</u>
CREDITORS: amounts falling due within one year	7	(766)	(464)
NET CURRENT LIABILITIES		<u>(248)</u>	<u>(270)</u>
TOTAL ASSETS LESS CURRENT LIABILITIES		<u>1,017</u>	<u>255</u>
CREDITORS: amounts falling due after more than one year	8	(12,408)	(3,156)
NET (LIABILITIES)		<u>(11,391)</u>	<u>(2,901)</u>
CAPITAL AND RESERVES			
Share capital	10	1	1
Retained loss		(11,392)	(2,902)
Shareholders' deficit (all equity interests)	9	<u>(11,391)</u>	<u>(2,901)</u>

On behalf of the board on

Directors

R. G. Shearer *M. J. Mullen*

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2007

1. ACCOUNTING POLICIES

(a) *Going concern*

The accompanying financial statements have been prepared on a going concern basis. As shown in the Profit and Loss account and Balance Sheet, the company has a limited amount of cash, has incurred losses and has accumulated a deficit during the development stage. These factors indicate the company may be unable to continue as a going concern. The financial statements do not include any adjustments that might be necessary should the company be unable to continue as a going concern.

The directors recognize that continuing as a going concern is dependent on among other factors, obtaining funding from Hess LNG. The company has an interest free loan agreement with Hess LNG. Through the end of 2007, the company has borrowed €12,408k under this agreement, with a further €6,540k borrowed since the end of 2007. The loan agreement provides project funding up to €30,000k. The directors believe that the funding through the loan agreement will be sufficient to allow the company to continue as a going concern.

(b) *Basis of preparation*

The financial statements are prepared in accordance with generally accepted accounting principles under the historical cost convention and comply with financial reporting standards of the Accounting Standards Board, as promulgated by the Institute of Chartered Accountants in Ireland.

(c) *Start up costs*

All project startup costs incurred to date have been charged to expenses, with the exception of option payments for the project site in Shannon and deposits for office space.

(d) *Cash and cash equivalents*

Cash equivalents consist of highly liquid investments, which are readily convertible into cash and have maturities of three months or less when acquired.

(e) *Taxation*

The company has not generated any income to date, and as a result has not incurred any corporation taxes.

(f) *Cash Flow*

Financial Reporting Standard Number 1, "Cash Flow Statements", exempts small companies as defined in the companies' legislation from preparing cash flow statements. The company has availed of this exemption.

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2007

2. PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION

	2007 €'000	2006 €'000
The profit before taxation is stated after charging:		
Directors' emoluments	394	276
Auditors' remuneration	38	42
	<hr/>	<hr/>

3. WAGES & SALARIES

The average number of persons employed by the company in the financial year was 3 (2006: 1) and is analysed into the following categories:

	2007 Number	2006 Number
No. of staff	3	1
	<hr/>	<hr/>
	2007 €'000	2006 €'000
The staff costs comprise:		
Wages and salaries	621	299
Social welfare costs	67	32
	<hr/>	<hr/>
	688	331
	<hr/>	<hr/>

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2007

4. TAX ON (LOSS) ON ORDINARY ACTIVITIES

(a)	Analysis of profit and loss account charge:	2007 €'000	2006 €'000
	Current tax:		
	Republic of Ireland corporation tax on profits of the period at 12.5% (see reconciliation below)	-	-
	Tax on (loss) on ordinary activities	-	-

(b) Reconciliation of the expected tax charge at the standard tax rate to the actual tax charge at the effective rate

The tax assessed for the year is lower than the standard rate of corporation tax in the Republic of Ireland (12.5%).
The differences are explained below:

	2007 €'000	2006 €'000
(Loss) on ordinary activities before tax	(8,490)	(2,550)
(Loss) on ordinary activities multiplied by the standard rate of corporation tax in the Republic of Ireland of 12.5% (2006: 12.5%)	(1,061)	(319)
Effects of: Increase in losses forward	1,061	319
Tax on (loss) on ordinary activities	-	-

5. INTANGIBLE FIXED ASSETS

	Property, plant & equipment €'000	Total €'000
Opening balance	493	493
Additions	740	740
Amortisation	-	-
Net book value	1,233	1,233

The intangible asset arises on the option to purchase land from Shannon Free Airport Development Company Limited.

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2007

6. DEBTORS

	2007 €'000	2006 €'000
Amounts falling due within one year:		
Trade and other receivables	257	155

7. CREDITORS: amounts falling due within one year

	2007 €'000	2006 €'000
Trade and other payables	766	464

8. CREDITORS: amounts falling due after more than one year

	2007 €'000	2006 €'000
Amounts due to parent undertaking	12,408	3,156

The company has entered into an interest free loan agreement with Hess LNG to provide funding for project development. The facility provides funding up to €30,000k. As at 31 December 2007 the company had a loan balance with Hess LNG of €12,408k.

9. RECONCILIATION MOVEMENTS IN SHAREHOLDERS' FUNDS

	2007 €'000	2006 €'000
(Loss) retained for the year	(8,490)	(2,550)
Opening shareholders' deficit	(2,901)	(351)
Closing shareholders' deficit	(11,391)	(2,901)

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2007

10. CALLED UP SHARE CAPITAL

	2007	2006
Authorised:		
1,000,000 ordinary shares of €0.01 each	10,000	10,000
20,000 deferred ordinary shares of €0.01 each	200	200
Allotted, called up and fully paid:		
40,000 ordinary shares of €0.01 each	400	400
20,000 deferred ordinary shares of €0.01 each	200	200
	600	600
Rounded amount	€'000	€'000
Allotted, called up and fully paid	1	1

Each of the Ordinary Shares and the Deferred Ordinary Shares shall rank *pari passu* in all respects save as specifically set out below:-

As Regards Dividend

- Each of the Ordinary Shares shall rank *pari passu* in all respects as to dividends.
- The Deferred Ordinary Shares shall confer upon the holders thereof no right to receive any dividend thereon.

As Regards a Return of Capital

- In the event of any liquidation, dissolution or winding-up of the Company, either voluntarily or involuntarily, the assets and retained profits available for distribution to the holders of Ordinary Shares in the capital of the Company shall be distributed with equal priority among the holders of Ordinary Shares in the same proportions as the holders hold such Ordinary Shares.
- The holders of Deferred Ordinary Shares shall have no rights to share in the assets or retained profits of the Company in the event of any liquidation, dissolution or winding-up of the Company.

As Regards Voting at General Meetings

- The holders of Ordinary Shares shall each be entitled to receive notice of, and to attend and speak and vote at, general meetings of the Company.
- The Deferred Ordinary Shares shall not confer upon the holders thereof the right to receive notice of or to attend or vote at general meetings of the Company.

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2007

10. CALLED UP SHARE CAPITAL (continued)

As Regards Conversion of the Deferred Ordinary Shares

The following rights shall attach to Deferred Ordinary Shares as regards conversion:

- (a) All of the Deferred Ordinary Shares held by a Deferred Ordinary Shareholder shall automatically convert into Ordinary Shares in accordance with the Conversion Rate specified in Article 4.4(b) in the Memorandum and Articles of Association, on the occurrence of the Final Investment Decision.
- (b) Each holder of Deferred Ordinary Shares shall be entitled to receive one Ordinary share, and the corresponding share certificate for each Deferred Ordinary share held by him on the date of the Final Investment Decision

11. CONTROLLING PARTIES

Shannon LNG Limited is a wholly owned subsidiary undertaking of Hess LNG Limited, an undertaking incorporated in the Cayman Islands. The parent undertaking of the smallest group of undertakings for which group financial statements are drawn up, and of which the company is a member, is Hess Corporation. Copies of its group financial statements are available from 1185 Avenue of the Americas, New York, NY 10036, United States.

Hess LNG Limited is a joint venture between Hess Oil and Gas Holdings Inc. (HOGHI), a subsidiary of Hess Corporation (HESS) and Midstream Beta Limited, a subsidiary of Poten & Partners Group LLC (POTEN). The ultimate controlling parties are both incorporated in the United States. Copies of the group financial statements for Hess Corporation are available from 1185 Avenue of the Americas, New York, NY 10036, United States.

12. RELATED PARTIES

A summary of all material transactions between the company and its members and affiliates follows:

<u>Services Agreement</u>	<u>2007</u> <u>€'000</u>	<u>2006</u> <u>€'000</u>
Hess LNG	859	330

The company has entered into a services agreement with Hess LNG to provide certain services including coordination of project development, as well as legal and accounting support.

Shannon LNG Limited

NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 December 2007

13. CONTINGENCIES

The company is subject to contingent liabilities with respect to existing or potential claims, lawsuits and other proceedings. The company considers these routine and incidental to its business and not material to its financial position or results of operations. The company accrues liabilities when the future costs are probable and reasonably estimable.

14. DEFERRED TAXATION

A deferred taxation asset of €1m, which has arisen due to accumulated pre trading tax losses, has not been recognised on the grounds that there is insufficient evidence that the asset will be recoverable. These pre trading losses would become recoverable in the future only if the company became profitable within the next three years.

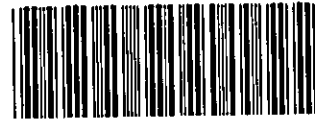
15. APPROVAL OF FINANCIAL STATEMENTS

The directors approved the financial statements on

Companies Registration Office

Annual Return

Sections 125, 127, 128 Companies Act, 1963
Section 7 Companies (Amendment) Act 1986
Section 26 Electoral Act 1997
Sections 43, 44 Companies (Amendment)(No 2) Act 1999
Section 249A Companies Act 1990 (inserted by section
107 Company Law Enforcement Act 2001)
Companies Act 1990 (Form and Content of Documents
Delivered to Registrar) Regulations 2002



3372597

date stamp

Companies Acts, 1963 to 2006

Tick box if bond
is attached ☐
note sixteen

Company Number

3 6 8 2 3 6

B1

Please complete using black typescript or BOLD CAPITALS, referring to explanatory notes

Company Name

in full

SHANNON LNG LIMITED

Return made up to

note one

Day Month Year
0 6 0 9 2 0 0 8

If the return is made up to a date earlier than the existing ARD, do you wish
to retain the anniversary of the existing ARD for next year? note two

Yes

No

☐☐

Financial Year

note three

From Day Month Year To Day Month Year
0 1 0 1 2 0 0 7 3 1 1 2 2 0 0 7

The company is claiming the exemption from audit in respect of the financial year covered by the accounts
attached to this return.

☐

Registered Office

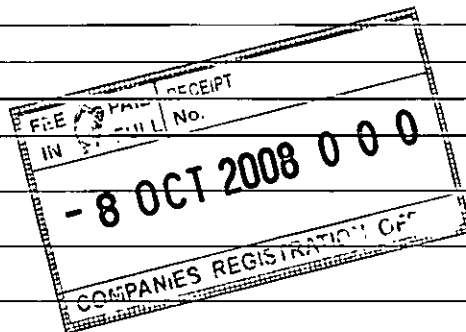
note four

70 Sir John Rogerson's Quay, Dublin 2, Ireland

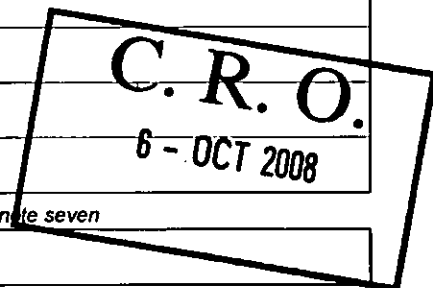
Other Addresses

note five

Address



Register(s)/documents held at this address



Secretary

note six

Surname

MATSACK TRUST LIMITED

Former Surname note seven

None

note six

Forename

Former Forename note seven

None

Residential Address

note six

70 Sir John Rogerson's Quay, Dublin 2, Ireland

Donations for Political Purposes

note eight

Name of person or political party to whom donation was made

None

Value of donation € / _

Presenter Details

Name

Person to whom queries can be addressed

Matheson Ormsby Prentice

Address

70 Sir John Rogerson's Quay, Dublin 2, Ireland

DX Number

DX Exchange

Telephone Number

01 232 2000

Fax Number 01 232 3333

Email

mop@mop.ie

Reference Number 54665

Authorised Share Capital
note nine

Total	€ / _	10,200.00	made up as follows:	Nominal Value
Class			Number of Shares	Per Share € / _
DEFERRED ORDINARY			20,000	0.01
ORDINARY			1,000,000	0.01

Issued Share Capital
(insert nominal values)

Total	€ / _	600.00	made up as follows:
Paid up on shares issued for cash	€ / _	600.00	
Considered paid on other shares	€ / _	0.00	
Total calls unpaid	€ / _	0.00	(E)
Total not yet called	€ / _	0.00	(F)

The sum of these figures must equal the total issued share capital.

Shares Issued
Consideration - all cash

		Total standing to credit of Capital Conversion Reserve Fund <i>note ten</i>	€ / _	0.00
Class	Number of Shares	Total Nominal Value € / _	Total Premium Paid € / _	Total Amount Paid € / _
DEFERRED ORDINARY	20,000	200.00	0.00	200.00
ORDINARY	40,000	400.00	0.00	400.00
Totals (A)	60,000		(C)	600.00

Consideration - not all cash

Class	Number of Shares	Total Nominal Value € / _	Total Premium Considered Paid € / _	Total Amount Considered Paid € / _
Totals (B)	0		(D)	0.00

Totals

Total number of shares issued (A) + (B) 60,000 Total paid and unpaid and considered paid (C) + (D) + (E) + (F) € / _ 600.00

This total must agree with the total number of shares held by existing members as stated in the List of Past and Present Members section of the return.

Other Share / Debenture Details
note eleven
BLUEPRINT
2000

List of Past and Present Members

Persons holding shares on the date to which the annual return has been made up for 20 08 (insert year) and of persons who have held shares therein at any time since the date of the last return, or in the case of the first return, the date of incorporation of the company. *note twelve*

☐

Tick box if the list of past and present members is submitted on CD.

notes six and thirteen

Name and Address	Share Class	Numbers Held <i>note fourteen</i>	Number Transferred and Date <i>note fifteen</i>	Particulars of Transferee <i>note fifteen</i>
Name Address Folio No.				
Hess LNG Limited c/o Caledonian Bank & Trust Limited, Caledonian House, Dr. Roy's Drive , PO Box 1043 GT, George Town, Grand Cayman BWI, Cayman Islands	€0.01 ORDINARY	40,000		
Name Address Folio No.				
Hess LNG Limited c/o Caledonian Bank & Trust Limited, Caledonian House, Dr. Roy's Drive , PO Box 1043 GT, George Town, Grand Cayman BWI, Cayman Islands	€0.01 DEFERRED ORDINARY	20,000		
Name Address Folio No.				
KATE POWER 8 Trafalgar Terrace , Monkstown , Co. Dublin	€0.01 DEFERRED ORDINARY	0	5,000 24/06/2008	Hess LNG Limited
Name Address Folio No.				
JOHN POWER 14 Cliff Road, Tramore, Co. Waterford, Ireland	€0.01 DEFERRED ORDINARY	0	5,000 24/06/2008	Hess LNG Limited
Name Address Folio No.				
PATRICK POWER 8 TRAFALGAR TERRACE, MONKSTOWN, CO. DUBLIN	€0.01 DEFERRED ORDINARY	0	5,000 24/06/2008	Hess LNG Limited
Name Address Folio No.				
SARAH POWER 8 Trafalgar Terrace , Monkstown , Co. Dublin	€0.01 DEFERRED ORDINARY	0	5,000 24/06/2008	Hess LNG Limited
Name Address Folio No.				
Name Address Folio No.				
Name Address Folio No.				
Name Address Folio No.				

Total number held

The total number of shares held must agree with the total number of issued shares given in the **Shares Issued** section (total of (A) plus (B)).

Directors

including shadow/alternate directors if any

note six

Surname

POWER

Former Surname note seven

None

Forename

PATRICK

Former Forename note seven

None

Day Month Year

Date of Birth

23 02 1948

Irish Resident note sixteen

☒

Alternate Director note seventeen

☐Residential Address
note six

8 TRAFALGAR TERRACE, MONKSTOWN, CO. DUBLIN

Business Occupation

C.E.O.

Nationality

IRISH

Company note eighteen

Place of Incorporation note nineteen

Company Number

Other Directorships

See continuation sheet

note six

Surname

SHEARER

Former Surname note seven

None

Forename

GORDON

Former Forename note seven

None

Day Month Year

Date of Birth

11 08 1954

Irish Resident note sixteen

☐

Alternate Director note seventeen

☐Residential Address
note six

101 West 55th Street, Apt. 10H, New York 10019, United States

Business Occupation

BUSINESS EXECUTIVE

Nationality

AMERICAN

Company note eighteen

Place of Incorporation note nineteen

Company Number

Other Directorships

None

note six

Surname

Former Surname note seven

Forename

Former Forename note seven

Day Month Year

Date of Birth

Irish Resident note sixteen

☐

Alternate Director note seventeen

☐Residential Address
note six

Business Occupation

Nationality

Company note eighteen

Place of Incorporation note nineteen

Company Number

Other Directorships

Certification

note twenty

We hereby certify that (i) this form has been completed in accordance with the Notes on Completion of Form B1, (ii) contains the particulars in respect of the company as at the date to which the return is made up and that (iii)

The company is not a private company.

The company is a private company and has not since the date of its annual return (or the date of incorporation if this is the first return) issued any invitation to the public to subscribe for shares or debentures in the company.

The company is a private company with more than 50 members, the excess of the number of members over 50 consisting wholly of persons who, under section 33(1)(b) Companies Act 1982, are not included in reckoning the number of 50.

Signed

Director

Secretary

Name
in bold capitals or typescript

PATRICK POWER, DIRECTOR

MATSACK TRUST LIMITED

NOTES ON COMPLETION OF FORM B1

These notes should be read in conjunction with the relevant legislation.

- General** This form must be completed correctly, in full and in accordance with the following notes. Every section of the form must be completed. Where "not applicable", "nil" or "none" is appropriate, please state. Where € / _ appear, please insert/ delete as appropriate. Where / _ applies, give the relevant currency, if not euro. Where the space provided on Form B1 is considered inadequate, the information should be presented on a continuation sheet in the same format as the relevant section in the form. The use of a continuation sheet must be so indicated in the relevant section.
- Note one** A company is required to file with this return any returns that may be outstanding in respect of previous years. There must be no gap between the effective date of the previous year's return (if applicable) and the period covered by this return. Pursuant to s127 Companies Act 1963, a company's return must be made up to a date not later than its Annual Return Date (ARD). However, a new company filing its first return post-incorporation must make that return up to its ARD. The return must be filed with the Registrar within 28 days of the company's ARD, or, where the return has been made up to a date earlier than the company's ARD, within 28 days of that earlier date. S127 sets out the manner in which a company's ARD is determined and in which it may be altered. There are severe penalties for late filing of the return. *Returns made up to a date prior to 1 March 2002:* If this form is being used to file such a return, the return ought to be made up to the date which was 14 days after the company's AGM for the year in question and was required to have been delivered to the CRO within 60 days of the AGM. All other notes are also applicable to such returns. The late filing penalty will be charged in respect of any such return.
- Note two** This section must be completed if this return is being made up to a date earlier than the company's existing ARD. Where the company elects to retain the anniversary of its existing ARD for next year, the "Yes" box must be ticked. Where it elects that its ARD in the following year will be the anniversary of the date to which this return is made up, the "No" box must be ticked. If neither box is ticked, the form will be returned for correction. This section does not apply to a new company filing its first return post-incorporation.
- Note three** (i) If the return is filed with Form B73, or it is the first return of a company incorporated since 1 March 2002, no accounts need be attached and financial year details are not required. Otherwise, give the date of the commencement and completion of the financial year covered by the accounts presented or to be presented to the AGM of the company for that year. Pursuant to s7(1A) Companies (Amendment) Act 1986 (inserted by s64 Company Law Enforcement Act 2001), the accounts must be made up to a date **not earlier by more than nine months** than the date to which the return is made up. In the case of the first return since the company's incorporation, the period since incorporation is required to be covered by the accounts. In any other case, the accounts are required to cover the period since the last set of accounts filed with the CRO.
- (ii) Certain unlimited companies are required to prepare accounts and annex them to Form B1: Unlimited companies and partnerships where all the members, who do not have a limit on their liabilities, are companies limited by shares or guarantee, or their equivalent if not covered by the laws of the State, or a combination of these undertakings; unlimited companies and partnerships where all the members, who do not have a limit on their liabilities, are themselves unlimited companies or partnerships of the type aforementioned that are governed by the laws of the State or equivalent bodies governed by the laws of an EU Member State or combinations of these undertakings. Unlimited companies which do not come under either of these categories do not have to file accounts nor give details of their financial year.
- (iii) To avail of an audit exemption, certain conditions must be satisfied. For further information see CRO Information Leaflet No. 10.
- (iv) Private unlimited companies, private not-for-profit companies and certain companies with charitable objects, while exempt from annexing accounts to Form B1, are required by section 128(6B) Companies Act 1963 to annex a special auditor's report to Form B1.
- Note four** Give the address at the date of this return. Any change of registered office must be notified to the CRO. Form B2 ought to be used for this purpose.
- Note five** If not kept at the registered office, state the address(es) where the register of members, register of debenture holders, and register of directors' and secretary's interests in shares and debentures of the company are kept, and where copies of directors' service contracts/memoranda of same (if applicable) are retained. Where the records are retained at an accessible website, the CRO should be notified of the relevant website address.
- Note six** Insert the full name (initials will not suffice) and usual residential address. Where the secretary is a body corporate, its company name and registered office must be stated. Where the secretary is a firm, and all the partners are joint secretaries of the company, the name and principal office of the firm will be accepted.
- Note seven** Any former forename and surname must also be stated. This does not include (a) in the case of a person usually known by a title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or (b) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained age 18 years or has been changed or disused for a period of not less than 20 years; or (c) in the case of a married woman, the name or surname by which she was known prior to the marriage.
- Note eight** S26 Electoral Act 1997 requires details of contributions for political purposes, in excess of €5,079 in the aggregate, to any political party, member of the Dáil or Seanad, MEP or candidate in any Dáil, Seanad or European election, made by the company in the year to which the annual return relates (i.e. the period since the effective date of the previous year's annual return, up to and including the effective date of the current return), to be declared in the annual return and directors' report of the company in respect of that year. The particulars must be sufficient to identify the value of each such donation and the person to whom the donation was made. A wide definition of donation is set out in s22/s46 of the 1997 Act and includes services supplied without charge, a donation of property or goods, or the free use of same.
- Note nine** Where a company has converted any of its shares into stock, then, where appropriate, the references to shares shall be taken as references to stock and references to number of shares shall be taken as references to amount of stock. The second page does not apply to a guarantee company without a share capital.
- Note ten** Insert, where applicable. (If share capital has been renominialised pursuant to s26 Economic and Monetary Union Act 1998 and there has been a decrease in the whole or part of the authorised and issued share capital or in a class of shares as a result of the renominialisation (26(4)(a).)
- Note eleven** Details of shares forfeited, shares/debentures issued at a discount, or on which a commission was paid including share class, number of shares and amounts in each case.
- Note twelve** A full list is required with all returns. However, this requirement does not apply to a guarantee company without a share capital. Where joint shareholders exist, name either all joint shareholders or the first shareholder and "Another".
- Note thirteen** Where there are more than seven shareholders, the list should be given on a continuation sheet in alphabetical order.
- Note fourteen** Give the total number of shares held by each member.
- Note fifteen** Applicable to private companies only. Furnish particulars of shares transferred, the date of registration of each transfer and the number of shares transferred on each date since the date of the last return, or in the case of the first return, of the incorporation of the company, by persons who are still members and persons who have ceased to be members.

Note sixteen Every company must have at least one full-time Irish resident director or a bond or certificate in place pursuant to s43(3) and s44 Companies (Amendment)(No.2) Act 1999. Note that an Irish resident alternate director is not sufficient for the purposes of s43. Place a tick in the "Irish resident" box if the director is resident in the State in accordance with s43 of the 1999 Act as defined by s44(8) and (9) of that Act. If no full-time director is so resident and no certificate has been granted, a valid bond must be furnished with the return, unless same has already been delivered to the CRO on behalf of the company. (Please note that "Irish resident" means resident in the Republic of Ireland.) For further information see CRO Information Leaflet No. 17.

Note seventeen Please tick the box if the director is an alternate (substitute) director. If the company's articles so permit and subject to compliance with those articles, a director may appoint a person to be an alternate director on his/her behalf. The appointment of any person to act as director is notifiable by a company to the CRO, regardless of how the appointment is described. The company is statutorily obliged to notify the CRO of the addition to and removal of each person from its register. In the event that a full-time director who has appointed an alternate director ceases to act as director, the company is required to notify the CRO of the termination of appointment of the full-time director and of his/ her alternate. Note: The CRO accepts no responsibility for maintaining the link between a full-time director and his/ her alternate.

Note eighteen Company name and number of other bodies corporate, whether incorporated in the State or elsewhere, except for bodies (a) of which the person has not been a director at any time during the past ten years; (b) of which the company is (or was at the relevant time) a wholly owned subsidiary; or (c) which are (or were at the relevant time) wholly owned subsidiaries of the company. Pursuant to s45(1) Companies (Amendment)(No.2) Act 1999, a person shall not at a particular time be a director of more than 25 companies. However, under s45(3), certain directorships are not reckoned for the purposes of s45(1).

Note nineteen Place of incorporation if outside the State.

Note twenty Tick the relevant box(es).

Checklist of documents annexed

Balance Sheet S 128 Companies Act 1963 (CA 63); S7 & S18 Companies (Amendment) Act 1986 (CAA 86) ☐

Profit and Loss Account S7 and S18 CAA 86 ☐

Notes to the Accounts Schedule of CAA 86 (refer specifically to s12 for notes required in the case of small / medium sized businesses) ☐

Directors' Report S128 CA 63; S7 & S18 CAA 86 ☐

Auditor's Report S128 CA 63; S7 & S18 CAA 86 ☐

Special Auditor's Report Duly certified by a director and secretary to be a true copy of the report S128(6B) CA 63 ☐

Overall Certification The Acts require that the balance sheet, profit and loss account, directors' report and auditor's report be certified by both director and secretary to be a true copy as laid or to be laid before the A.G.M. or sent to the sole member in accordance with the single member private limited company regulations. In the case of full accounts, an overall certification will be sufficient. ☐

Guarantee by parent undertaking of the liabilities of subsidiary undertaking S17 CAA 86 as amended ☐

Declaration of consent by shareholders of subsidiary to exemption S17 CAA 86 as amended ☐

Notification to shareholders of Guarantee S17 CAA 86 as amended ☐

Note stating company has availed of exemptions in s17 CAA 86 as amended ☐

Accounting documents

Reg 39 E.C. (Companies: Group Accounts) Regulations 1992 ☐

Reg 7 E.C. (Credit Institutions: Accounts) Regulations 1992 ☐

Reg 7 E.C. (Accounts) Regulations 1993 ☐

Regs 5, 17 E.C. (Insurance Undertakings: Accounts) Regulations 1996 ☐

Section 43 Bond See note sixteen above. ☐

Form B73 Nomination of a new ARD ☐

Further Information

Professional Advice If you have a problem completing this annual return, and in particular are unclear of the requirements pertaining to a company's ARD, you should consult your professional adviser.

Change in Details Where applicable, the particulars given on Form B1 must accord with the particulars contained in the documentation already delivered to the CRO. The most common forms used to notify the CRO of any changes to the company details are:

- B2 Notice of change in the situation of the registered office
- B3 Notice of places where register of members, register of debenture holders, register of directors' and secretary's interests in shares and debentures, and directors' service contracts/ memoranda are kept
- B4 / G1 Notice of increase in authorised capital
- B5 Return of allotments (increase in issued share capital)
- B10 Notice of change of directors or secretaries or in their particulars

CRO Address When you have completed and signed the form, please send with the prescribed fee to the Registrar of Companies at:

Parnell House, 14 Parnell Square, Dublin 1 - DX 145001 Parnell House

Please carefully study the explanatory notes overleaf. A Form B1 that is not completed correctly or is not accompanied by the correct documents or fee is liable to be rejected and returned to the presenter by the CRO pursuant to section 249A Companies Act 1990 (Inserted by section 107 Company Law Enforcement Act 2001). Unless the document, duly corrected, is relogged in the CRO within 14 days, it will be deemed to have never been delivered to the CRO.

FURTHER INFORMATION ON COMPLETION OF FORM B1, INCLUDING THE PRESCRIBED FEE, IS AVAILABLE FROM www.cro.ie OR BY E-MAIL Info@cro.ie

Other Directorships

Company Number 368236

Form B1 Continuation sheet

Director's Name PATRICK POWER

Other directorships

Company Name <i>note eighteen</i>	Place of Incorporation <i>note nineteen</i>	Company Number	Resigned
Conocophillips Ireland Limited		341156	30/11/2002
Irish National Petroleum Corporation Limited		69757	16/07/2001
Petroplus Holdings Ag	Switzerland		
The Multiple Sclerosis Society Society of Ireland		296573	



Kilcolgan Residents Association
Safety Before LNG
Protecting the Shannon Estuary

Kilcolgan Residents Association
Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

11 November 2008

For Attention of:
David Waddell
Commission Secretary,
Standards in Public Office Commission,
18 Lower Leeson Street,
Dublin 2.

By Email only to: sipo@sipo.gov.ie

Re: Complaint against Councillor John Brassil and Senator Ned O'Sullivan.

Dear Mr. Waddell,

In response to your letter of November 5th 2008 I am hereby formally complaining to the Standards in Public Office Commission of what I consider may have been a breach of ethics and a conflict of interest by Senator Ned O'Sullivan and Councillor John Brassil of Kerry County Council as outlined in my letter to you dated 30 September 2008 and attached below.

I am making this complaint under section 4(1)(a) and section 4(1)(b) of the Standards in Public Office Act, 2001.

I am complaining under section 4(1)(a) of the Standards in Public Office Act, 2001 that both Ned O'Sullivan and John Brassil did specified acts as outlined in my complaint of 30 September 2008 which contravened the Local Government Act 2001 and which were of significant public importance because it dealt with the rezoning of land for a proposed Seveso II development (an LNG terminal).

I am complaining under section 4(1)(b) of the Standards in Public Office Act, 2001 that both Ned O'Sullivan and John Brassil contravened Part 15 of the Local Government Act 2001 also as outlined in my complaint of 30 September 2008. Section 180(2) of the Local Government Act 2001 provides that the Ethics Acts shall apply in relation to a local authority.

The Tánaiste's response on September 23rd 2008 as Minister for Enterprise, Trade and Employment regarding the complaint about Mr. Brassil's role as director of Shannon Development was that my complaint "relates more to Mr. Brassil's role as a member of Kerry County Council".

Likewise, the Clerk of the Seanad, Deirdre Lane, replied on October 10th 2008 that the acts of Mr. O'Sullivan as councillor did not come within its remit as follows:

"This aspect of the complaint falls outside my jurisdiction in that Senator O'Sullivan was not, at the time of the incident, the subject matter of the complaint, a member within the meaning of the legislation. 'Member' is defined in section 2 of the aforementioned legislation as "a member of Dáil Éireann or a member of Seanad Éireann". Senator O'Sullivan was elected to the Labour Panel of Seanad Éireann on 25th July, 2007 and was not, therefore, a member of Seanad Éireann within the meaning of the legislation on the date specified, being March 12th, 2007".

The Ethics Registrar of Kerry County Council stated that our complaint "had the bona fides to demand a formal referral to the County Manager and the Mayor"¹ which is all he could do under the Local Government Act, 2001.

Since my complaint of September 30th 2008 I have received the detailed response from Kerry County Council to my complaint. Kerry County Council is basically saying that the councillors acted in the common good. However, there is no definition of the common good in the Local Government Act 2001 and this is not an excepted reason for contravening Part 15 of that Act and it is precisely to maintain transparency in the planning system that councillors should declare their interest, even if they are directors of state-owned companies. They both had beneficial interests in these companies as defined in the Local Government Act 2001 which were declarable interests.

The council also fails to point out that if the two councillors were deemed to have acted unethically and contrary to the Ethical Framework for the Local Government Service as per Part 15 of the Local Government Act, 2001 then this could seriously bring into question the planning process for the proposed LNG terminal at Tarbert and therefore significantly jeopardise the millions of euros in rates the council would expect to gain each year from such a dangerous facility. I therefore seriously question their motivation in the response they have given.

Finally, I understand from section 23(1A)(b) of the Ethics in Public Office Act, 1995 as amended by section 7 of the Standards in Public Office Act 2001 that the commission can carry out an investigation into a complaint under subsection 1 of section 4 of the Standards in Public Office Act 2001 that a person did a specified act. I believe that the commission should use this power because I have established prima facie evidence that both councillors contravened the local government Act part 15.

¹ See Section 2 Email Communication with Kerry County Council, the Oireachtas and the Office of An Tanáiste on Ethics complaint on Councillors Brassil and Sullivan.

This is the response from Kerry County Council:

Oifig Bainisteoir an Chontae

Comhairle Contae Chiarraí,
Áras an Chontae,
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ
KERRY COUNTY COUNCIL**

County Manager's Office

Kerry County Council,
County Buildings,
Tralee, Co. Kerry.

Guthán | Tel 066 7183500 Faics | Fax 066 7122466 Rphost | Email manager@kerrycoco.ie Suíomh | Web www.kerrycoco.ie

TC/DG/Memo to Ethics Regr re J Brassil - 080925

25th September, 2008

Mr. Brian Looney
Ethics Registrar, Kerry Local Authorities

RE: Referral of Ethics Complaint – Cllr. John Brassil

Dear Brian,

I refer to the above complaint from Mr. Johnny McElligott of Kilcolgan Residents Association of 4th September, 2008, in relation to a possible breach in ethics by Councillor Brassil which you referred to the Mayor of Kerry, Councillor Tom Fleming, and the County Manager, Mr. Tom Curran, on 10th September, 2008. Having brought the matter to our attention we are obliged under Section 174.8(b) of the Local Government Act, 2001, to:

- (i) cause a report to be prepared of their joint consideration, and
- (ii) cause such report to be sent to and retained by the Ethics Registrar.

The following is our report on the matter.

Issue 1: Councillor Brassil, being a member of Shannon Development, voted in favour of the rezoning of lands in Kilcolgan, owned by Shannon Development, at the monthly Council meeting held on 12th March, 2007.

- (a) The rezoning process was initiated by the executive of Kerry County Council and not the elected members.
- (b) The rezoning proposal was put on public display from 2nd February, 2007, to 8th March, 2007, as part of the public consultation process and at which time any interested party may submit an observation/observations.



- (c) A total of six observations were received as follows:
 - (i) 4 No. Government Departments – citing no observations.
 - (ii) An Taisce – stating that the rezoning was appropriate for most, not all, of the lands and that some of the lands currently zoned as Secondary Special Amenity should be retained for amenity purposes.
 - (iii) Clare County Council – citing possible impacts on Mid-West region, etc.
- (d) A Manager's Report, considering the submissions made, was prepared by Mr. Michael McMahon, Director of Service, and Delegated Manager for the Planning function, dated 8th March, 2007.

Main issues in this report were:

- (i) Section 5.2.9. of County Development Plan 2003-2009 states that "Lands have been identified at Ballylongford/Tarbert as suitable for development as a premier deepwater port and for major industrial development and employment creation."
- (ii) Objective ECO 5.5 of County Development Plan 2003-2009 states "it is an objective of Kerry County Council to identify lands in key strategic locations that are particularly suitable for development that may be required by specific sectors. Land in such locations will form part of a strategic reserve that will be protected from inappropriate development that would prejudice its long term development for these uses."
- (iii) Text of the County Development Plan, as outlined above, facilitated industrial development on the lands in question.
- (iv) The relevant zoning maps did not reflect this objective.
- (v) The variation proposed will regularize the maps.
- (vi) Recommendation of Manager to Council to approve the proposed rezoning from rural and secondary special amenity to industrial.
- (e) Councillor Brassil did vote in favour of Manager's recommendations.

It is the considered view of the signatories to this report that there is no breach in the Code of Conduct for Councillors by Councillor John Brassil in this case as:

1. Shannon Development Company, which Councillor Brassil was a member of on 12th March, 2007, is not a private profit making organisation, but a state body with a common good remit in economic development in the region.
2. Councillor Brassil is appointed to the Board, but does not personally gain from any transaction of this public body.

3. The rezoning of the lands was initiated and recommended by the executive of the Council on the basis of the proper planning and sustainable development of the county and although the rezoning of lands is a reserved function, Councillor Brassil was supporting and subsequently approving a recommendation of the executive in this instance.


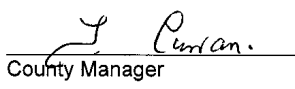
Issue 2:

Councillor Brassil, as Chairman of Shannon Development, withdrew from the meeting of the Council on 26th November, 2007, which a report on a proposed LNG Terminal under consideration by An Bord Pleanála, under the Strategic Infrastructure Act, 2006, was being considered by the members. Councillor Brassil stated that he was Chairman of Shannon Development, who owned the site, but did not have any beneficial interest in the site.

Councillor Brassil's withdrawal was considered appropriate, as in this instance a specific application for a particular development was being considered by the Council, whereas, in the previous case on 12th March, 2007, it was a general zoning for industrial purposes in the common good in accordance with the objectives of the County Development Plan 2003-2009. Indeed as the specific application was under the Strategic Infrastructure Act which provides that the comments of the elected members by way of the minutes be considered by An Bord Pleanála in their deliberations, it is clear that on this occasion it was appropriate for Councillor Brassil to leave the meeting.

Having carefully examined the complaint and the facts relating to same, we are fully satisfied that Councillor John Brassil did not contravene the Ethics legislation or the Code of Conduct for Councillors.

We are, however, concerned that where elected members are members of other public bodies, nominated by their Council and have no personal beneficial interest in the public body and are only acting in the common good, that these members should feel that they have to withdraw from Council Meetings where issues relating to the other public body is being discussed. This, we believe, is not in accordance with Section 15 of the Local Government Act, 2001, and recommend that you seek clarification on this matter from the Minister for the Environment, Heritage and Local Government.

	
Mayor of Kerry	County Manager

Oifig Bainisteoir an Chontae

Comhairle Contae Chiarraí,
Áras an Chontae,
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ
KERRY COUNTY COUNCIL**

County Manager's Office

Kerry County Council,
County Buildings,
Tralee, Co. Kerry.

Guthán | Tel 066 7183500 Faics | Fax 066 7122466 Rphost | Email manager@kerrycoco.ie Suíomh | Web www.kerrycoco.ie

Our Ref: TC/LS

MEMORANDUM

DATE: 30th September 2008

TO: Mr. Brian Looney, Ethics Register

FROM: Mr. Tom Curran, County Manager

Re: Referral of Ethics Complaint – Senator Ned O'Sullivan

I refer to your memo to me of the 29th September 2008 in relation to a complaint from Mr. Johnny McElligott concerning a possible breach in ethics by Senator Ned O'Sullivan (being a Councillor at the time of the alleged breach), which you referred to the Mayor of Kerry, Cllr. Tom Fleming, and the County Manager, Mr. Tom Curran.

Section 174.7(e) refers to the Ethic's Register, in relation to a Councillor, bringing the matter to the attention of the Mayor and Manager.

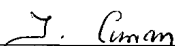
Section 174.8(a) refers to action that Mayor and Manager can take including disciplinary procedures.

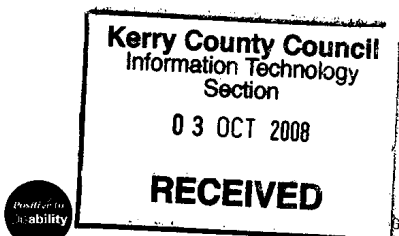
On considered reflection one can only assume that the Mayor and Manager is dealing with a person who is a current member of the Council. We would have no powers to investigate and sanction, if appropriate, an ex-councillor.

On this basis we believe we cannot deal with this matter.

However, were we to deal and report on the matter we believe we would find in a similar fashion, as that of Cllr. John Brassil i.e. no case to answer


Mayor of Kerry


County Manager



GAELGE AGUS FÁILTE



I await your feedback.

Yours sincerely,

Johnny McElligott

5 November 2008

Mr Johnny McElligott
Island View
Convent Street
Listowel
Co Kerry

Complaint against Councillor John Brassil and Senator Ned O'Sullivan

Dear Mr McElligott,

I refer to previous correspondence in connection with your complaints against Councillor John Brassil and Senator Ned O'Sullivan.

Senator Ned O'Sullivan

As I understand it, you have four complaints against Senator O'Sullivan, namely:

that while a member of Kerry County Council, he breached his obligations under section 177 of the Local Government Act 2001 in voting to support a variation to the Kerry County Development Plan to rezone lands at Kilcolgan for the development of an LNG terminal, while a member of Shannon Foynes Port Company;
that while a member of the Council, he breached sections 168 and 177(4) of the Local Government Act 2001 by seeking to influence the decision of Kerry County Council to support the Shannon LNG project;
that as a Senator, he accepted an appointment to the Joint Committee on Climate Change and Energy Security which KRA considers would not have been offered had he voted against rezoning and that in doing so he breached section 180 of the Local Government Act 2001 which prohibits rewards or favours;
that he abused his position as a Senator and member of the Joint Committee on Climate Change and Energy Security in alleging that KRA had been briefed by the "Shell to Sea people", which KRA alleges was "an abdication of his responsibility and duty to be fair to all as obliged under Article 168 of the Local Government Act 2001".

In relation to Senator O'Sullivan's alleged actions as a Councillor, (i.e., numbers 1 and 2 above), the Standards in Public Office Commission recommends that you await the outcome of Kerry County Council's deliberations as to whether it has the competence to investigate these matters under the Local Government Act 2001.

In relation to Senator O'Sullivan's alleged actions as a Senator, (i.e., numbers 3 and 4 above), the Standards Commission does not have any authority to examine complaints against members of the Seanad. In this regard, the Committee on Members' Interests of Seanad Éireann is the appropriate body to which you should forward any complaint about Senators. The name of the person to whom you should write is Ms Deirdre Lane, Clerk of Seanad Éireann, Leinster House, Kildare Street, Dublin 2.

Councillor John Brassil

As I understand it, you have made three complaints against Councillor Brassil, namely:

that he breached his obligations under section 177 of the Local Government Act 2001 in voting to support a variation to the Kerry County Development Plan to rezone lands in Kilcolgan for the development of an LNG terminal, while a member of Shannon Development;

that he accepted an appointment by the Minister for Enterprise, Trade and Employment, Micheál Martin TD, as Chairman of Shannon Development, two months after the rezoning, which the KRA considers would not have been offered had he voted against the rezoning, and that in so doing he breached section 170 of the Local Government Act 2001 which prohibits rewards or favour;

that he breached sections 168 and 177(4) of the Local Government Act 2001 by seeking to influence the decision of Kerry County Council to support the Shannon LNG project.

While I appreciate that you have gone to considerable effort to detail your complaints, the Standards Commission requires those wishing to make a complaint to set out complaints in accordance with section 4 of the Standards in Public Office Act 2001. I trust the following information will help you to submit your complaint in accordance with the legislative provisions.

Section 4 of the Standards in Public Office Act 2001

Complaints under the Ethics Acts fall under two headings:

- (a) complaints about a failure by a person to observe a provision of the Ethics in Public Office Act 1995, as amended by the 2001 Act (e.g. failure to disclose an interest), and
- (b) complaints about a "specified act" by a "specified person". The matters you have raised in your correspondence relate to the latter type of complaints. Section 4(1)(a) of the 2001 Act makes provision in this regard.

Section 4(1)(a) provides:

"Where a person ("the complainant") considers that a specified person or a person who, in relation to a specified person, is a connected person may have done an act or made an omission after the commencement of section 2 (i.e. after 10 December 2001) that is, or the circumstances of which are, such as to be inconsistent with the proper

performance by the specified person of the functions of the office or position by reference to which he or she is such a person or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance,... the complainant may make a complaint in relation to the matter to the Commission"

An act or omission referred to in section 4(1)(a) is referred to in the 2001 Act as a "specified act".

Section 4(2) provides:

"Subsection (1) does not apply to an act or omission of a specified person or a person who, in relation to a specified person, is a connected person if it—

- (a) relates to a private matter and is unrelated to the functions of the office or position by reference to which the specified person is such a person, or*
- (b) results from incompetence or inefficiency in the performance of, or from failure to perform, such a function, on the part of the specified person.*

The definition of a "specified person" is set out in section 4(6)(a) as follows:

"In subsection (1), "specified person" means a person who—

- (i) is or, at the time to which the complaint concerned relates, was an office holder or the holder of the office of Attorney General but not a member,*
- (ii) is or, at the time aforesaid, was a special adviser or held a designated directorship of, or occupied a designated position, in a public body, or*
- (iii) holds or occupies or, at the time aforesaid, held or occupied a directorship or a position of employment in a public body.*

Section 4(6)(b) provides:

"Without prejudice to the generality of the expression "significant public importance" in subsection (1), a matter shall, if the Commission consider it appropriate to do so having regard to all the circumstances, be deemed by it to be of significant public importance if it relates to a benefit alleged to have been received by a specified person or a person who, in relation to a specified person, is a connected person and, in the opinion of the Commission, the value of the benefit was, is, or might have been, or be expected to be, or to become, not less than £10,000" (i.e. €12,697).

Where a complaint is made by a person under section 4 of the 2001 Act, the Standards Commission must consider whether to carry out an investigation under the Ethics Acts as to whether a "specified act" was done by a "specified person". The Standards Commission shall not carry out such an investigation unless it becomes of the opinion that there is sufficient evidence to establish a *prima facie* case in relation to the alleged

specified act concerned and that, if it was in fact done, it is an act falling within section 4(a)(i).

I am enclosing a copy of our "Statement of Intended Procedures" which will also assist with your submission of a complaint in relation to the above.

Yours sincerely,

David Waddell
Commission Secretary



Kilcolgan Residents Association
Protecting the Shannon Estuary

Kilcolgan Residents Association
Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

30 September 2008

For Attention of:
Standards in Public Office Commission,
18 Lower Leeson Street,
Dublin 2.

By Email only to: sipo@sipo.gov.ie

Re: Complaint on possible breach of ethics and conflict of interest by Councillor John Brassil and Senator Ned O'Sullivan.

Dear Sir / Madam,

We are hereby formally complaining to the Standards in Public Office Commission of what we consider may have been a breach of ethics and a conflict of interest by Senator Ned O'Sullivan and Councillor John Brassil of Kerry County Council as follows:

Article 175 (f) of the Local Government Act 2001 clearly defines a directorship as a declarable interest. Article 176 (2) of the same Act clearly defines a declarable interest as a beneficial interest. A directorship is therefore a beneficial interest.

1. We are complaining of what we consider may have been a breach of ethics and a conflict of interest by Councillor John Brassil as outlined in Section 1 below and as follows:
 - a) in his voting in support of the variation number 7 to the Kerry County Development Plan 2003-2009 that rezoned lands in Kilcolgan from 'Rural General' and 'Secondary Special Amenity' to 'Industrial' on March 12th 2007 for the development of an LNG terminal while he was both a county councillor and a director of Shannon

Development (the owner of the lands to be rezoned).² This is contrary to Article 177 of The Local Government Act 2001 in our opinion.

- b) in Mr. Brassil accepting the appointment of Chairman of Shannon Development by the then Minister for Enterprise, Trade and Employment (Mr Micheál Martin T.D.) on May 4th 2007 - a mere 2 months after the rezoning. The post of Chairman of Shannon Development is a highly-prestigious position which has enhanced Mr. Brassil's profile locally and which cannot hurt his political ambitions if he decides to run for higher office. Our fear is that this is a political "thank-you" position, a reward, for ensuring that the Shannon LNG project proceeded as quickly as possible contrary to Article 170 of The Local Government Act 2001. To put it another way, we feel that John Brassil would not have been appointed Chairman of Shannon Development if he had voted against the rezoning of the Shannon Development land.³
- c) in seeking to influence the decision of the Kerry County Council planning authority to support the Shannon LNG project on land owned by Shannon Development (of which he was a director) contrary to Article 168 of the Local Government Act 2001 which states:

*"In carrying out their functions under this or any other enactment, it is the duty of every member and every employee of a local authority and of every member of every committee to maintain proper standards of integrity, conduct and concern for the public interest."*⁴

and Article 177 (4) of the Local Government Act 2001 which states:

"A member of a local authority or of any committee, joint committee or joint body of a local authority shall neither influence nor seek to influence a decision of the authority in respect of any matter which he or she has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, any matter which is proposed, or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment."

This is supported by the following 3 points:

- i. In June 19, 2006 ⁵: John Brassil asked a meeting of Kerry County Council – *"In light of the major announcement made by Minister Micheal Martin regarding the development of the Shannon Development owned Ballylongford land bank that Kerry County Council put a team of people together to specifically deal with the infrastructure development and planning issues that will be associated with this project."* And he said **"that this has the potential**

² See section 1: Complaint to Kerry County Council on possible breach of ethics and conflict of interest by Councillor John Brassil

³ See section 3: Complaint to Kerry County Council on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan point 11.

⁴ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

⁵ Minutes of June 19th 2006 Meeting of Kerry County Council - <http://www.kerrycoco.ie/minutedocs/Item%202b%20Ordinary%20Minutes%20June%202006.pdf>

to be a huge project for North Kerry and he called on the Executive to give it every support.”⁶

- ii. In our complaint to the Office of the Ombudsman⁷ concerning the refusal by Kerry County Council to carry out an SEA (Strategic Environmental Assessment) on variation No 7 of 2007 to Kerry County Development Plan (reference L18/07/2518), the company undertaking the SEA screening report, RPS, stated that it did not know the site was earmarked for an LNG terminal. RPS therefore recommended that no SEA was needed. We are complaining that, in our opinion, Mr. Brassil’s representations, detailed above, **effectively prejudiced a Strategic Environmental Assessment Screening report**. The screening report did not take into consideration the proposed Shannon LNG terminal in determining whether the proposed rezoning would have an effect on the environment and therefore require a full Strategic Environmental Assessment. We believe that it was a negligent act that RPS was not informed by Kerry County Council that an LNG terminal was proposed for the land to be rezoned. This would also constitute negligent behaviour contrary to Article 168 of the Local Government Act 2001.
- iii. On September 11th 2008, following our complaint of a possible breach of ethics by Councillor Brassil in his voting to rezone the land while a director of the company that owned the land, Councillor Brassil replied as follows to the “Kerryman” Newspaper⁸:

“At all times I have acted in a proper manner in any business with Kerry County Council,” he said. “I have always acted for the benefit of the people I serve and bringing 500 jobs and a €500 million investment to north Kerry is absolutely what I’m elected for.”

2. We are complaining of what we consider may have been a breach of ethics and a conflict of interest by Senator Ned O’Sullivan as outlined in Section 3 below⁹:

- a) in his proposing and voting in support of the variation number 7 to the Kerry County Development Plan 2003-2009 that rezoned lands in Kilcolgan from Rural General and Secondary Special Amenity to Industrial on March 12th 2007 for the development of an LNG terminal while he was both a county councillor and a director of Shannon Foynes Port Company (a company that will control all port development in the

⁶ Minutes of June 19th 2006 Meeting of Kerry County Council -

<http://www.kerrycoco.ie/minutedocs/Item%202b%20Ordinary%20Minutes%20June%202006.pdf>

⁷ See section 4: Complaint to The Office of the Ombudsman concerning the refusal by Kerry County Council to carry out an SEA on variation No 7 of 2007 to Kerry County Development Plan (reference L18/07/2518)

⁸ <http://www.kerryman.ie/news/cllr-brassil-rejects-any-lng-wrongdoing-1473917.html> Kerryman”
Thursday September 11 2008

⁹ See section 3: Complaint to Kerry County Council on possible breach of ethics and conflict of interest by Senator Ned O’Sullivan

rezoned area and realise a revenue boost if the Shannon LNG project goes ahead). This is contrary to Article 177 of The Local Government Act 2001 in our opinion.

- b) in Mr. O'Sullivan accepting the appointment to the Seanad and Joint Committee on Climate Change a few months after the successful rezoning of 600 acres of Shannon Development Land (which we now estimate is worth 60 million Euros) in an area which would be under the control of the Shannon Foynes Port Company, of which Mr. O'Sullivan was a director. To be quite clear on our fears, they are that Mr. O'Sullivan may have possibly obtained a political "thank-you" position, a reward, less than 5 months after he voted for the rezoning of the Tarbert lands contrary to Article 170 of The Local Government Act 2001. To put it another way, we feel that Mr. O'Sullivan would not have been appointed to the Seanad or the Oireachtas Joint Committee on Climate Change if he had voted against the rezoning of the Shannon Development land.
- c) in the performance of his functions as a senator and a member of the Oireachtas Joint Committee on Climate Change and Energy Security. We feel that Senator O'Sullivan abused his position when he stated in the Oireachtas Joint Committee meeting of November 29th 2007:

"This project has been fairly well received by the public in Kerry but there are rumblings of concern. I notice that a small group of people has been briefed by the Shell to Sea people. I hope we do not go down that road.."¹⁰

These comments were made by Senator O'Sullivan a mere two weeks after RTE's current affairs programme "Prime Time" ran a documentary on the proposed LNG terminal which contradicted serious safety issue claims which the Shannon LNG developer had made. The LNG expert interviewed by 'Prime Time' (Dr. Tony Cox) concluded that vapour clouds do not evaporate harmlessly into the air as was claimed by Shannon LNG in its publicity documents¹¹. For a senator to claim that we had been "**briefed by the Shell to Sea people**" was disingenuous in the extreme and an abdication of the Senator's responsibility and duty to be fair to all as obliged under Article 168 of the Local Government Act 2001. In any case, ours were serious safety and environmental concerns and this personal agenda to push the Shannon LNG project was outside the terms of reference of the Joint Committee on Climate Change. To reinforce this point, even after the evidence shown on the 'Prime Time' video of a major LNG accident in Algeria 3 years previously which resulted in the deaths of about 27 people and another massive LNG explosion which levelled a square mile of Cleveland in 1941, killing 128 people, Senator O' Sullivan persisted in his naïve and misleading LNG questions in the same meeting, when he asked:

"Is it true there has never been an accident in an LNG transmission?"¹²

¹⁰ <http://debates.oireachtas.ie/DDebate.aspx?F=CLJ20071129.XML&Ex=All&Page=4> and Appendix 2

¹¹ "Prime Time" video of November 15th 2007 c.f. <http://www.rte.ie/news/2007/1115/primetime.html>

¹² <http://debates.oireachtas.ie/DDebate.aspx?F=CLJ20071129.XML&Ex=All&Page=5> and Appendix 2

- d) in seeking to influence the decision of the Kerry County Council planning authority to support the Shannon LNG project on land which would be controlled by Shannon Foynes Port Company (of which he was a director) contrary to Article 168 of the Local Government Act 2001 which states:

“In carrying out their functions under this or any other enactment, it is the duty of every member and every employee of a local authority and of every member of every committee to maintain proper standards of integrity, conduct and concern for the public interest.”¹³

and Article 177 (4) of the Local Government Act 2001 which states:

“A member of a local authority or of any committee, joint committee or joint body of a local authority shall neither influence nor seek to influence a decision of the authority in respect of any matter which he or she has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, any matter which is proposed, or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment.”

This is supported by the following 3 points:

- i. On March 12th 2007 Councillor O’Sullivan **both proposed and voted in favour of the rezoning** at the Kerry County Council meeting which saw the value of the lands of Shannon Development sold to Shannon LNG transform to Industrial Zoning and completed the first step to be overcome by Shannon LNG in obtaining planning. The lands, we believe, were sold for approximately 28.1 million Euros (open to verification) but proposing the vote was effectively an attempt to influence the rezoning.
- ii. On September 17th 2008, following our complaint of a possible breach of ethics by Senator O’Sullivan in his voting to rezone the land while a director of the company that would control all shipping to the site, Senator O’Sullivan replied as follows to the “Kerryman” Newspaper:
“I was doubly obliged to assist the LNG project as both a member of Kerry County Council and as a member of the port company”
- iii. In our complaint to the Office of the Ombudsman¹⁴ concerning the refusal by Kerry County Council to carry out an SEA (Strategic Environmental Assessment) on variation No 7 of 2007 to Kerry County Development Plan (reference L18/07/2518), the company undertaking the SEA screening report, RPS, stated that it did not know the site was earmarked for an LNG terminal. RPS therefore recommended that no SEA was needed. We are complaining that, in our opinion, in Mr O’Sullivan’s role as director of Shannon Foynes Port Company and his admission that he was “doubly obliged to assist the

¹³ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

¹⁴ See section 4: Complaint to The Office of the Ombudsman concerning the refusal by Kerry County Council to carry out an SEA on variation No 7 of 2007 to Kerry County Development Plan (reference L18/07/2518)

LNG project”, **he may have prejudiced a Strategic Environmental Assessment Screening report.** The screening report did not take into consideration the proposed Shannon LNG terminal in determining whether the proposed rezoning would have an effect on the environment and therefore require a full Strategic Environmental Assessment. We believe that it was a negligent act that RPS was not informed by Kerry County Council that an LNG terminal was proposed for the land to be rezoned. This would also constitute negligent behaviour contrary to Article 168 of the Local Government Act 2001.

- iv. Ned O’Sullivan has continued to actively promote the virtues of the LNG terminal even after the land was rezoned without any genuine concern for the huge safety, environmental, planning and regional impact of the development.¹⁵

The Ethics Registrar of Kerry County Council stated that our complaint “had the bona fides to demand a formal referral to the County Manager and the Mayor”¹⁶ which is all he could do under the Local Government Act, 2001.

It is our contention that the decision to build an LNG terminal was decided at the highest levels in the Irish Government and now the different statutory bodies are retrospectively approving this without any concern for safety, environmental or strategic issues.

In our opinion Kerry County Council refused to carry out an SEA on the lands about to be rezoned for the proposed LNG terminal because there was an option to purchase conditional on obtaining planning permission for an LNG terminal within 2 years on land zoned ‘rural general’ and ‘secondary special amenity’ for a price we believe to be in the region of 28 million euros. A full SEA would have taken upwards on 1 year to complete alone. Therefore, it is our view that the refusal was motivated by this condition to the detriment of the people of the south west on health, safety, environmental and strategic planning grounds.

The current Minister for Energy, Mr. Eamon Ryan T.D., issued the following statement, on the announcement of the proposed LNG terminal on May 22, 2006¹⁷:

“Govt must give clear position on proposed LNG facility in North Kerry -

Spokesperson on Communications, Energy and Natural Resources

The Green Party today welcomed the announcement of the proposed new Liquefied Natural Gas (LNG) facility in North Kerry. Green Party Energy spokesperson Eamon Ryan TD said: This proposed (LNG) facility will help reduce our reliance on gas coming on long distance pipelines running all the way from Siberia.

¹⁵ <http://archives.tcm.ie/irishexaminer/2007/07/23/story37943.asp>

¹⁶ See Section 2 Email Communication with Kerry County Council, the Oireachtas and the Office of An Tanáiste on Ethics complaint on Councillors Brassil and Sullivan.

¹⁷

http://www.greenparty.ie/en/news/latest_news/govt_must_give_clear_position_on_proposed_lng_facility_in_north_kerry

However, today's announcement seems to be more of a solo run from Micheál Martin, the Minister of Enterprise, Trade and Employment, rather than a real signal of Government plans. No firm analysis has been presented as to how such a facility would work in the Irish market.

The lack of any involvement by Energy Minister Noel Dempsey in today's announcement shows how disjointed the Government has become when it comes to energy policy. We are now calling on Minister Dempsey to outline whether he believes such a facility should be developed and to say whether he agrees with the location and arrangements being promoted by Minister Martin, concluded deputy Ryan."

In this complaint we believe the acts specified above by the specified individuals, Brassil and O'Sullivan constitute a serious and deliberate breach of Ethics legislation and an attempt to override transparency and accountability in the planning process to the detriment of the residents adjacent to the proposed LNG terminal.

We await your feedback.

Your faithfully,

Johnny McElligott

SECTION 1

Complaint to Kerry County Council on possible breach of ethics and conflict of interest by Councillor John Brassil



Kilcolgan Residents Association
Protecting the Shannon Estuary

Kilcolgan Residents Association
Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

04 September 2008

For Attention of:

Ms. Beth Reidy,
Complaints Section,
Kerry County Council,
Áras an Chontae,
Tralee,
County Kerry.

Email: breidy@kerrycoco.ie

cc. margaret.ohanlon@kerrycoco.ie

cc. padraig.corkery@kerrycoco.ie

cc. Mr Brian Looney, Head of IS and Ethics Registrar, Kerry Local Authorities.

(Brian.Looney@kerrycoco.ie)

Re: Complaint on possible breach of ethics and conflict of interest by Councillor John Brassil

Dear Ms. Reidy,

We are hereby formally complaining of what we consider may have been a breach of ethics and a conflict of interest by Councillor John Brassil in his voting in support of the variation number 7 to the Kerry County Development Plan 2003-2009 that rezoned lands in Kilcolgan from Rural General and Secondary Special Amenity to Industrial on March 12th 2007.

John Brassil became Chairman of Shannon Development on May 4th 2007. A press release from Shannon Development¹⁸ made the announcement as follows:

"Mr Michael Martin TD, Minister for Enterprise Trade and Employment, has today (4th May 2007) appointed Cllr John Brassil as Chairman of Shannon Development. Cllr Brassil, from Ballyheigue, County Kerry, is a qualified civil engineer and pharmacist."

¹⁸ <http://www.offalytechnologycentre.ie/News/NewsReleases2007/Title,4913,en.html> and
<http://archives.tcm.ie/irishexaminer/2007/05/05/story31991.asp>

He has been an elected member of Kerry County Council since 1999, and a member of the Shannon Development Board since 2004.”

In May 2006¹⁹ Shannon LNG announced an option to purchase, subject to planning, the lands at Kilcolgan owned by Shannon Development, the board of which Councillor Brassil was a member (and also a director, we believe) as follows:

“Shannon LNG, an Irish subsidiary of Hess LNG Limited, which is a 50/50 joint venture of Hess Corporation and Poten & Partners, is at the early stages of a major development which will help secure Ireland’s long-term supply of natural gas. The company has entered into an ‘option-to-purchase’ agreement with Shannon Development, the regional development agency, in relation to 281 acres of the 600-acre state-owned land bank between Tarbert and Ballylongford, County Kerry. Subject to feasibility studies, technical assessments and in due course, planning and other approvals, it will become the site for a major 400 million Euro liquefied natural gas (LNG) import terminal.”

The Shannon Foynes Port Company described the development as follows:

*“The development site is located immediately to west of Ardmore Point. It is on State (Shannon Airport Development Co) owned land and is designated for development with a four year option. Shannon LNG is the developer. The company is required to achieve planning permission within 2 years.”*²⁰

On March 12th 2007 Councillor Brassil voted in favour of the rezoning at the Kerry County Council meeting which saw the value of the lands of Shannon Development sold to Shannon LNG transform to Industrial Zoning and completed the first step to be overcome by Shannon LNG in obtaining planning The lands, we believe, were sold for approximately 28.1 million Euros (open to verification).

The minutes of the March 12th 2007 meeting stated the following:²¹

*“07.03.12.06 Proposed variation No. 7 of the County Development Plan 2003-2009
Mr. M. McMahon, Director of Planning, referred members to his report on this item which was circulated and he briefed them on the report. Cllr. N. O’Sullivan PROPOSED that this Council having considered the County Manager’s Report on submissions received in relation to proposed Variation No. 7 of the Kerry County Development Plan 2003 – 2009 in respect of lands in the townlands of Reenturk, Rallappane and Kilcolgan Lower (Ballylongford) approves the making of this variation to the Kerry County Development Plan 2003 – 2009 pursuant to Section 13 of the Planning and Development Act, 2000.
Cllr. R. Beasley SECONDED this proposal.*

¹⁹ <http://www.shannonlngplanning.ie/files/Newsletters/Issue1.pdf> page 1

²⁰ http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

²¹ [http://www.kerrycoco.ie/minutedocs/Item%20No%202\(a\)%20Minutes%20of%20March%20Meeting.pdf](http://www.kerrycoco.ie/minutedocs/Item%20No%202(a)%20Minutes%20of%20March%20Meeting.pdf) pages 6 and 7

A vote was taken which resulted as follows:-

For: Cllrs. Beasley, Brassil, Buckley, Cronin, Ferris, S. Fitzgerald, Foley, Gleeson, M. Healy-Rae, Leahy, McCarthy, McEllistram, Miller, O'Sullivan, Purtill, T. Fitzgerald (16)

Against: None (0)

Not Voting: None (0)

Absent: Cllrs. Cahill, Connor-Scarteen, Fleming, D. Healy-Rae, MacGearailt, O'Brien, O'Connell, O'Connor, O'Donoghue, O'Shea and Sheahan (11)

The Mayor declared the resolution carried."

In a further meeting of Kerry County Council on November 26th 2007 to discuss the proposed LNG terminal Councillor Brassil left the meeting as follows:²²

"Proposed Liquefied Natural Gas (LNG) regassification terminal at Ralappane and Kilcolgan Lower.

Cllr. J. Brassil informed the meeting that he is Chairman of Shannon Development who own this land and while he has no beneficial interest in it he would withdraw from the meeting while this item was being dealt with. Cllr. Brassil then left the Chamber."

Our complaint is that the real damage was done in the rezoning of the lands industrial for the LNG terminal and that Councillor Brassil should equally have absented himself from this meeting which saw his organisation achieve a value for land it owned of, we believe, 100,000 Euros an acre through rezoning. The actual planning permission was dealt directly through the fast-track planning by An Bord Pleanala which defended its decision by emphasising the Industrial zoning of the land.

Our understanding is that only lands owned by Shannon Development were rezoned with this variation to the County Development Plan.

We await your feedback.

Kind Regards,

Johnny McElligott

²² <http://www.kerrycoco.ie/minutedocs/Minutes%20Nov2007.pdf> page 9

SECTION 2:

Email Communication with Kerry County Council, the Oireachtas and the Office of An Tanáiste on Ethics complaint on Councillors Brassil and Sullivan.

From: Kilcolgan Residents Association [mailto:safetybeforelng@hotmail.com]
Sent: 12 September 2008 11:50
To: Margaret O'Hanlon
Cc: Beth Reidy; Padraig Corkery; Brian Looney
Subject: Complaint on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan

For Attention of:
Ms. Margaret O'Hanlon,
Complaints Section,
Kerry County Council,
Áras an Chontae,
Tralee,
County Kerry.
Email: margaret.ohanlon@kerrycoco.ie
cc. breidy@kerrycoco.ie
cc. padraig.corkery@kerrycoco.ie
cc. Mr Brian Looney, Head of IS and Ethics Registrar, Kerry Local Authorities
.Brian.Looney@kerrycoco.ie

Dear Ms. O'Hanlon,

Could you please acknowledge receipt of the attached complaint?

Kind Regards,
Johnny McElligott

Kilcolgan Residents Association
<http://www.safetybeforelng.com>
e-mail: safetybeforelng@hotmail.com
Tel.: +353-87-2804474
Address: Island View, Convent Street, Listowel, County Kerry, Ireland

Date: Fri, 12 Sep 2008 14:02:04 +0100
From: Brian.Looney@kerrycoco.ie
Subject: RE: Complaint on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan
To: safetybeforelng@hotmail.com
CC: breidy@kerrycoco.ie; padraig.corkery@kerrycoco.ie; margaret.ohanlon@kerrycoco.ie
[Dear Mr. McElligott,](#)

[As the nature of your complaint refers to a possible breach of Ethics, I will be dealing with your complaint as Ethics Registrar.](#)

Please note that as the matter relates to someone who is not a current Council member we may not have authority to proceed with any investigation under Part 15 of the Local Govt Act, in that section 167 of the Local Govt Act applies to “a member of a local authority”.

I will seek clarification on this matter early next week when I have an opportunity to discuss with the County Solicitor.

With regard to your two other complaints, both are currently being progressed and you will be advised of further developments in due course.

Le buíochas,

Brian Looney / Briain Ó Luanaigh
Head of IS / Ceannasaí Teic. Faisnéise
Kerry Local Authorities / Údarais Áitiúil Chiarraí
<http://www.kerrycoco.ie/>

From: Kilcolgan Residents Association [mailto:safetybeforelng@hotmail.com]
Sent: 17 September 2008 15:13
To: Brian Looney
Subject: RE: Complaint on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan

Dear Mr. Looney,

Thank you for your mail of September 12th 2008.

Reports in the "Irish Times" and "Kerryman" newspapers out today seem to indicate that a decision has already been made regarding our complaint about Councillor Brassil (c.f. <http://www.irishtimes.com/newspaper/ireland/2008/0917/1221599424149.html>) where it is quoted that:

<<“As far as we are concerned there is no issue at stake and we will be reporting back accordingly,” Mr Curran said. Mayor of Kerry Tom Fleming (FF) told the meeting Mr Brassil had acted “for the common good and had no beneficial interest”.>>

The Local Government Act 2001 articles 175(f) and 176(2) clearly states that a directorship of a company is a declarable and beneficial interest and there are no Ministerial declarations that negate those requirements.

The requirements of Standards of integrity in Article 168 apply to all members and employees of Kerry County Council and we feel that the health and safety threat to residents near the proposed LNG terminal at Tarbert are being overlooked in this affair.

Also, as stated in a subsequent letter to you on September 12th 2008, we are complaining of the following:

"Councillor John Brassil, who was a director and member of the board of Shannon Development, the owners of the rezoned land, at the time of the vote, like councillor O'Sullivan, did not disclose his interest at the meeting, did not withdraw from the meeting and also voted for the variation. Mr. Brassil was subsequently appointed Chairman of Shannon Development by the then Minister for Enterprise, Trade and Employment (Mr Micheál Martin T.D.) on May 4th 2007 - a mere 2 months after the rezoning. The post of Chairman of Shannon Development is a highly-prestigious position which has enhanced Mr. Brassil's profile locally and which cannot hurt his political ambitions if he decides to run for higher office. Our fear is that, this too, is a political "thank-you" position, a reward, for ensuring that the Shannon LNG project proceeded as quickly as possible." We want this complaint of our fear of a possible link with his promotion and his support for the LNG project investigated by the council also under Article 170 (1) of the Local Government Act 2001 also.

If, as reported in the media, the decisions on Councillor Brassil and Senator Ned O'Sullivan have already been made by the council, then we would be grateful if you could please send us a formal confirmation so that we may forward it on to the next stage with the Standards in Public Office Commission and with Minister Gormley.

We would also be grateful if you could forward us an electronic copy of the County Manager's Report on the matter as well as a copy of the Kerry County Council Code of Conduct.

Kind Regards,

Johnny McElligott

Kilcolgan Residents Association

<http://www.safetybeforelng.com>

e-mail: safetybeforelng@hotmail.com

Tel.: +353-87-2804474

Address: Island View, Convent Street, Listowel, County Kerry, Ireland

Date: Thu, 18 Sep 2008 17:03:50 +0100

From: Brian.Looney@kerrycoco.ie

Subject: RE: Complaint on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan

To: safetybeforelng@hotmail.com

Mr. McElligott,

I felt that your complaint had the *bona fides* to demand a formal referral to the

County Manager and the Mayor, and so I referred your complaint to them on Sept 10th, under my obligations as Ethics Registrar in Part 15 of the Local Govt Act, 2001.

I subsequently met the Manager and the Mayor in advance of Monday's Council meeting, as part of their considerations on the matter.
I understand that they also interviewed Councillor Brassil.

Based on the Manager's declaration at the Council meeting as reported, it is clear that they found no breach of the Ethics framework by Councillor Brassil.

I await their formal report on the matter and once in my possession, it is my duty to place it on the Ethics Register. I will of course also forward you a soft copy as requested.

The *Code of Conduct for Councillors* (I presume this is what you mean by "Kerry County Council Code of Conduct") is available for download from:
www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownload,1956,en.pdf

Regarding your complaint concerning former Councillor and current Senator Ned O'Sullivan,

I have referred the matter to County Solicitor John J Daly.

As he is no longer a Councillor, I am not certain if we have powers to investigate, and the matter may have to be referred elsewhere.

Once I have this legal advice, I will advise you of my actions.

A final update on your initial complaint concerning Fehily Timoney and a Conflict of Interest

on their part in the County Development Plan SEA, having a relationship with two companies.

I am still awaiting documents from the Planning Section and will update you further.

Le buíochas,

Brian Looney / Briain Ó Luanaigh
Head of IS / Ceannasaí Teic. Faisnéise
Kerry Local Authorities / Údarais Áitiúil Chiarraí
<http://www.kerrycoco.ie/>

To: safetybeforelng@hotmail.com
Subject: Re: Complaint on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan
From: Michael.McKenna@Oireachtas.ie
Date: Thu, 25 Sep 2008 14:33:43 +0100

Dear Mr McElligott,

Please see my letter attached in connection with the correspondence you sent to me on 12 September.

Yours Sincerely,

Michael McKenna

From the desk of Michael McKenna
Clerk to Joint Committee on Climate Change and Energy Security

Direct Dial: 00 353 (1) 6183147
eMail: michael.mckenna@oireachtas.ie
Web: www.oireachtas.ie

An Comhchoiste um
Athrú Aeráide agus
Áirithiú Fuinnimh,
**Teach Laighean,
Baile Átha Cliath 2**



Joint Committee on
Climate Change and
Energy Security,

Leinster House,
Dublin 2
Phone (01) 618 3147
Fax (01) 618 4123

Mr. Johnny McElligott,
Kilcolgan Residents Association
c/o Island View
Convent Street
Listowel,
Co. Kerry

**Complaint about a member of the Joint Committee on Climate Change and
Energy Security**

Dear Mr McElligott,

I refer to your email communication of 12 September 2008 regarding the above.

As the subject matter of your complaint does not come within the Orders of Reference of the Joint Committee it is not possible for the Committee to consider it.

You may wish to refer to the Ethics in Public Office Acts 1995 and 2001 to ascertain if you have grounds for a complaint under those Acts. If you consider that you have such grounds you should contact the Clerk of the Seanad.

Yours sincerely,

**Michael McKenna
Clerk to the Joint Committee
on Climate Change and Energy Security
25 September 2008**

To: safetybeforelng@hotmail.com
Subject: RE: Complaint on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan
From: Michael.McKenna@Oireachtas.ie
Date: Thu, 25 Sep 2008 15:56:57 +0100

Dear Mr McElligott,

The contact details for the Clerk of the Seanad are:

Deirdre Lane,
Clerk of the Seanad,
Seanad Eireann
Leinster House,
Dublin 2.
Tel 01-6183357
deirdre.lane@oireachtas.ie

From the desk of Michael McKenna
Clerk to Joint Committee on Climate Change and Energy Security

Direct Dial: 00 353 (1) 6183147
eMail: michael.mckenna@oireachtas.ie
Web: www.oireachtas.ie

Tanáiste and Office of the Minister for Enterprise, Trade and Employment.
Our Ref: 080522/MIN
23 September 2008

Mr. Johnny McElligott
Kilcolgan Residents Association,
c/o Island View,
Convent Road,
Listowel,
Co. Kerry.

Dear Mr. McElligott

The Tanáiste and Minister for Enterprise, Trade and Employment, Ms. Mary Coughlan, T.D., has asked me to refer to your e-mail and attachment of 5th September 2008 regarding Mr. John Brassil's role in relation to the rezoning by Kerry County Council of land at Tarbert, Co. Kerry which was owned by Shannon Development.

The Tanáiste is anxious to ensure that all members of State Bodies under her remit adhere to the highest standards and to this end each Board Member has been given a copy of the "Code of Practice for the Governance of State Bodies" and must perform their duties according to the highest ethical standards. This Code provides inter alia that all State Bodies should have written Codes of Business Conduct for Directors and Employees. Such a Code is in place in Shannon Development and is available on the Company's website. Moreover, the Tanáiste has procedures in place within her Department, to ensure insofar as is possible, that her Department's agencies adhere to the Code. She is satisfied that Mr. Brassil, in his role as Chairman of Shannon Development, has no case to answer in relation to this issue. She understands that Shannon Development have also investigated your complaint and the Company Secretary has replied direct to you.

It appears from the correspondence that your relates more to Mr. Brassil's role as a member of Kerry County Council and the Tanáiste understands that the Council has conducted its own enquiry in the matter. You will appreciate that it would be inappropriate for the Tanáiste, as Minister for Enterprise, Trade and Employment, to intervene in relation to any local authority or planning matters.

Yours sincerely,

Bridget Flynn

Private Secretary.

SECTION 3:

Complaint to Kerry County Council on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan



Kilcolgan Residents Association
Protecting the Shannon Estuary

Kilcolgan Residents Association
c/o Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

12 September 2008

For Attention of:

Ms. Margaret O'Hanlon,
Complaints Section,
Kerry County Council,
Áras an Chontae,
Tralee,
County Kerry.

Email: margaret.ohanlon@kerrycoco.ie

cc. breidy@kerrycoco.ie

cc. padraig.corkery@kerrycoco.ie

cc. Mr Brian Looney, Head of IS and Ethics Registrar, Kerry Local Authorities
Brian.Looney@kerrycoco.ie.

Re: Complaint on possible breach of ethics and conflict of interest by Senator Ned O'Sullivan

Dear Ms. O'Hanlon,

We are hereby formally complaining of what we consider may have been a breach of ethics and a conflict of interest by Senator Ned O'Sullivan:

- d) in his voting in support of the variation number 7 to the Kerry County Development Plan 2003-2009 that rezoned lands in Kilcolgan from Rural General and Secondary Special Amenity to Industrial on March 12th 2007 for the development of an LNG terminal while he was both a county councillor and a director of Shannon Foynes Port Company and
- e) in the performance of his functions as a senator and a member of the Oireachtas Joint Committee on Climate Change and Energy Security

1. Senator O'Sullivan was a member of the board of directors of Shannon Foynes Port Company and was a director of this company until his election to the Seanad in July 2007.²³
2. On June 2004 plans were announced by the Shannon Foynes Port Company to invest 53 million euros in port facilities along the Shannon Estuary, which would include a major transshipment terminal at Ballylongford on the site of the proposed LNG terminal²⁴. A local newspaper, "Kerry's Eye", described it as follows²⁵:

"New hopes for Ballylongford - €10m development included in new Shannon Foynes Plan

The Shannon Foynes Port Company has drawn up a five year plan for Limerick and Foynes Ports and a portion of the landbank at Ballylongford.

The three part project will involve the redevelopment of the Limerick Docks, jetty extension and further reorganisation in Foynes. In Kerry, plans include the provision of a jetty, cranes and hardcore development of 20 acres of the 600 acres landbank at Ballylongford, for the transshipment of containers to Limerick and Foynes. The project will begin with the jetty at the deepest point feasible, at a cost of €10m. After this, the storage surface on land will be prepared leading to the construction of the on short cargo handling facilities, including cranes.

"I want to thank my fellow directors on the Board of Shannon Foynes Port Company for being big enough to cut out parochial thinking and taking a broad view of the Estuary", said Cllr. Ned O'Sullivan, the only representative from Kerry on the Board. The entire project is expected to cost €250 million. It is understood that the company has identified private partners with regard to the Ballylongford proposals at this stage.

Development of the landbank at Ballylongford / Tarbert has been retarded by the poor roads, no rail link and no mains water. The use of the new jetty for transshipment means that these deficits will be of little consequence. "All you want is cranes, a surface and a jetty", Cllr. O'Sullivan said.

The company foresees that on average one feeder ship will arrive each week and a smaller number of boats will handle the broken up containers into Limerick and elsewhere into Europe. "There is almost a three day delay getting into Rotterdam, Antwerp or Bremerhaven; we will be able to do a one tide turnaround in Ballylongford", Cllr. O'Sullivan said. "I don't see that this will result in too many jobs initially, to be honest. But in two or three years, when it is up and running, I think it will generate quite a number of jobs", he forecast. Shannon Development

²³ IRIS OIFIGIUIL, APRIL 18th, 2008 page 35 c.f.

<http://www.oireachtas.ie/documents/publications/RegofInterestsSeanad2007.pdf>

²⁴ <http://www.sfpc.ie/news023-articles.htm>

²⁵ <http://www.sfpc.ie/news023-articles.htm>

has recently advertised for 'expressions of interest' in developing the 600 acre site. "We are currently evaluating some of the enquiries but it is early days yet", he added."

However, since the LNG terminal was proposed, all plans for this transshipment facility have mysteriously been shelved.

3. Some time after the April 2007 General Election, not later than October 2007, Senator O'Sullivan was appointed to the Joint Committee on Climate Change, the functions of which were:

*"to consider medium and long term climate change targets; the role of the Agriculture sector in providing bio-fuel and biomass crops; the levels of power supply which can be generated from renewables or other new power supplies; the projected energy demand from transport and the implications for energy security and emissions targets."*²⁶

4. In May 2006²⁷ Shannon LNG announced an option to purchase, subject to planning, the lands at Kilcolgan owned by Shannon Development, as follows:

"Shannon LNG, an Irish subsidiary of Hess LNG Limited, which is a 50/50 joint venture of Hess Corporation and Poten & Partners, is at the early stages of a major development which will help secure Ireland's long-term supply of natural gas. The company has entered into an 'option-to-purchase' agreement with Shannon Development, the regional development agency, in relation to 281 acres of the 600-acre state-owned land bank between Tarbert and Ballylongford, County Kerry. Subject to feasibility studies, technical assessments and in due course, planning and other approvals, it will become the site for a major 400 million Euro liquefied natural gas (LNG) import terminal."

5. The Shannon Foynes Port Company, of which Ned O'Sullivan was a director at the time of the rezoning, described the development as follows:

*"The development site is located immediately to west of Ardmore Point. It is on State (Shannon Airport Development Co) owned land and is designated for development with a four year option. Shannon LNG is the developer. The **company is required to achieve planning permission within 2 years.**"*²⁸

²⁶ Houses of Oireachtas Commission, Annual Report 2007 – page 18 c.f.
<http://www.oireachtas.ie/documents/commission/reports/2007.pdf>

²⁷ <http://www.shannonlngplanning.ie/files/Newsletters/Issue1.pdf> page 1

²⁸ http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

6. Shannon Foynes Port Company is the estuarial port authority with responsibility for the entire Shannon Estuary²⁹. The development of an LNG terminal on the Shannon Estuary would therefore bring a huge revenue boost to the Port Company due to as many as 125 of the largest ships in the world docking in its area of control yearly.³⁰

7. On March 12th 2007 Councillor O'Sullivan **both proposed and voted in favour of the rezoning** at the Kerry County Council meeting which saw the value of the lands of Shannon Development sold to Shannon LNG transform to Industrial Zoning and completed the first step to be overcome by Shannon LNG in obtaining planning. The lands, we believe, were sold for approximately 28.1 million Euros (open to verification). The minutes of the March 12th 2007 meeting stated the following:³¹

“07.03.12.06 Proposed variation No. 7 of the County Development Plan 2003-2009

*Mr. M. McMahon, Director of Planning, referred members to his report on this item which was circulated and he briefed them on the report. **Cllr. N. O'Sullivan PROPOSED** that this Council having considered the County Manager's Report on submissions received in relation to proposed Variation No. 7 of the Kerry County Development Plan 2003 – 2009 in respect of lands in the townlands of Reenturk, Rallappane and Kilcolgan Lower (Ballylongford) approves the making of this variation to the Kerry County Development Plan 2003 – 2009 pursuant to Section 13 of the Planning and Development Act, 2000.*

*Cllr. R. Beasley **SECONDED** this proposal.*

A vote was taken which resulted as follows:-

***For:** Cllrs. Beasley, Brassil, Buckley, Cronin, Ferris, S. Fitzgerald, Foley, Gleeson, M. Healy-Rae, Leahy, McCarthy, McEllistram, Miller, **O'Sullivan**, Purtill, T. Fitzgerald (16) **Against:** None (0) **Not Voting:** None (0) **Absent:** Cllrs. Cahill, Connor-Scarteen, Fleming, D. Healy-Rae, MacGearailt, O'Brien, O'Connell, O'Connor, O'Donoghue, O'Shea and Sheahan (11)*

The Mayor declared the resolution carried.”

8. Our grievance is that the real damage was done in the rezoning of the lands from 'Rural General' and 'Secondary Special Amenity' to 'Industrial' for the LNG terminal without any strategic environmental assessment (SEA) being undertaken. Councillor O'Sullivan should have:
 - a. Disclosed the nature of his interest as a director of Shannon Foynes Port Company at the meeting,
 - b. Withdrawn from the meeting,
 - c. Taken no part in the discussion and
 - d. Refrained from voting.

²⁹ <http://www.sfpc.ie/>

³⁰ http://www.shannonlngplanning.ie/files/EIS/ShannonLNG_Terminal_EIS_Vol_1_of_4_Issue1.pdf page 5

³¹ [http://www.kerrycoco.ie/minutedocs/Item%20No%20\(a\)%20Minutes%20of%20March%20Meeting.pdf](http://www.kerrycoco.ie/minutedocs/Item%20No%20(a)%20Minutes%20of%20March%20Meeting.pdf) pages 6 and 7

Shannon Development achieved a value for land it owned of, we believe, 100,000 Euros an acre through this rezoning. This rezoning immediately increased the future estimated earnings of Shannon Foynes Port Company, of which Ned O’Sullivan was a director at the time. The actual planning permission was dealt directly through the new fast-track planning act – the Strategic Infrastructure Act 2006 - by An Bord Pleanála, whose inspector defended its decision by emphasising the Industrial zoning of the land as follows:

“Of eight sites examined in the Shannon Estuary, the present site was chosen on the basis of its water depth, topography, infrastructure and zoning”³².

9. Our understanding is that only lands owned by Shannon Development were rezoned with this variation to the County Development Plan.
10. Furthermore, we are concerned that there may be a link between the appointment of Ned O’Sullivan to the Seanad and Joint Committee on Climate Change and the successful rezoning of 600 acres of Shannon Development Land (which we now estimate is worth 60 million Euros) in an area which would be under the control of the Shannon Foynes Port Company and which Mr. O’Sullivan voted in favour of at the Kerry County Council meeting on March 12th. 2007. To be quite clear on our fears, they are that Mr. O’Sullivan may have possibly obtained a political “thank-you” position, a reward, less than 5 months after he voted for the rezoning of the Tarbert lands.
11. Councillor John Brassil, who was a director and member of the board of Shannon Development, the owners of the rezoned land, at the time of the vote, like councillor O’Sullivan, did not disclose his interest at the meeting, did not withdraw from the meeting and also voted for the variation. Mr. Brassil was subsequently appointed Chairman of Shannon Development by the then Minister for Enterprise, Trade and Employment (Mr Micheál Martin T.D.) on May 4th 2007 - a mere 2 months after the rezoning. The post of Chairman of Shannon Development is a highly-prestigious position which has enhanced Mr. Brassil’s profile locally and which cannot hurt his political ambitions if he decides to run for higher office. Our fear is that, this too, is a political “thank-you” position, a reward, for ensuring that the Shannon LNG project proceeded as quickly as possible.
12. We are of the understanding that it is common practice for the Kerry county councillors to follow the lead of the opinions of the councillors attached to the immediate area under concern at a council meeting. For this reason the participation of the 2 North Kerry Councillors from the total number of 6 councillors from the Listowel Electoral Area, Brassil and O’Sullivan, carried great importance in the councillors’ decision not to oppose the rezoning of North Kerry land.

³² An Bord Pleanála, Inspector’s Report into the proposed LNG terminal reference PA0002, page 20
<http://www.pleanala.ie/casenum/PA0002.htm>

13. We are of the understanding that Shannon Foynes Port Company does not permit or encourage in any part of its Articles of Association for its Directors to vote for rezoning of lands which would bring it financial gain.
14. We are equally concerned at how Shannon Development could sign an “option-to-purchase” agreement with a developer conditional on obtaining planning permission for a top-tier Seveso II hazardous LNG terminal within 2 years³³. It is highly questionable how Shannon Development could guarantee that planning permission could be obtained within 2 years for lands that, at the time, were zoned Rural General and Secondary Special Amenity.
15. We are also concerned that Shannon Foynes Port Company is the only party to be aware of and to have made publicly available, in June 2008, the information of the option-to-purchase agreement with Shannon LNG being conditional on obtaining planning permission within 2 years³⁴. As this two-year condition is a fact, its directors would also have been aware of, we fear that this may have influenced the decision not to undertake an SEA, especially if director Ned O’Sullivan was aware of this information at the time of the vote. In any case, John Brassil, as a director and member of the Shannon Development board, would certainly have been aware of this 2-year condition.
16. Finally, it has to be highlighted that we have never once seen any genuine concerns being expressed by either the Shannon Foynes Port Company, Shannon Development, Senator O’Sullivan, or John Brassil, for the Environmental or Safety Impacts for such a massive development of an LNG spill on water and this has been to the detriment of other stakeholders in the Lower Shannon Estuary Region.
17. Our complaint of a Breach of Ethics, we feel, needs to take the following points on board, as well as the issues already raised above:
 - a. Clare County Council, as stated in the Manager’s Report circulated to the Council Meeting, wanted an SEA screening report and complained about the negative environmental impact such a massive development would have. These environmental concerns were completely ignored and not even noted in the minutes of the council meeting. The Clare County Council submission stated the following in the Manager’s Report :

“the proposed rezoning is likely to have a significant impact on the future development of the region, and will have a direct impact on the planned objectives for the Mid West Regional guidelines for the Shannon Estuary and in particular the Planning, Economic and Service Infrastructural development objectives for zone 5 of the plan. Any industrial development including the construction of a deepwater harbour will have a major impact on both the visual and ecological amenities of the area, and potentially on the Lower Shannon Estuarine Environment, including the foreshore of County Clare. Clare County Council would like an appraisal of any SEA

³³ http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

³⁴ http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

investigation which may have been undertaken in respect of the proposed variation.”³⁵

- b. No SEA was undertaken and we feel that this was influenced by the representations made by both the Chairman of Shannon Development, John Brassil, and Ned O Sullivan, director of Shannon and Foynes Port Company because:
 - i. the option-to-purchase was conditional on obtaining planning permission for an LNG on lands zoned rural within 2 years,
 - ii. an SEA could have taken up to 1 year to complete alone, and
 - iii. both councillors voted on the issue proving they were making representations directly and indirectly on the issue.
- c. Ned O’Sullivan did not withdraw from the meeting. He proposed the approval of the rezoning (therefore definitely taking part in the discussion on the matter). He voted for it and did not declare his interest in Shannon and Foynes port company even though that should have been done (as it would have been declared in the minutes as obliged under Article 177(3) of the Local Government Act 2001)
- d. Ned O’Sullivan has continued to actively promote the virtues of the LNG terminal even after the land was rezoned without any genuine concern for the huge safety, environmental, planning and regional impact of the development.³⁶ The KRA, on the other hand, had raised such concerns at the planning stage as follows:

“We objected that the rezoning of land for promoting the installation of an LNG terminal that will only secure 50 long-term jobs so blatantly contravenes the objectives of the current county development plan of the “development as a premier deep-water port facility and for major industrial development and employment creation.”³⁷ that an attempt is being made to remove the central reason for developing the land bank in the first place. We are of the opinion that as per its obligations under Article 12.1 of the Seveso II Directive the councillors at the very least should have debated the type of developments that will be allowed near the LNG terminal. In Massachusetts, the state House of Representatives unanimously approved a bill on July 24th 2008 prohibiting construction of LNG terminals within 5,000 feet of residences, schools, hospitals, elderly housing complexes, businesses and developments.³⁸ It also prohibits LNG tankers from passing within 1,500 feet of populated shorelines. This law increases and formalises the protection afforded to

³⁵ Appendix 1: County Manager’s Report on the proposed variation No 7 to the Kerry County Development Plan 2003- 2009

³⁶ <http://archives.tcm.ie/irishexaminer/2007/07/23/story37943.asp>

³⁷

<http://www.kerrycoco.ie/planning/devplan/5.%20Employment%20and%20Economic%20Activityplan.pdf>
section 5.2.9

³⁸ Patrick signs LNG buffer bill into law

<http://www.heraldnews.com/news/x153381548/Patrick-signs-LNG-buffer-bill-into-law>

communities. It gives clarity and certainty to all - to residents, developers, safety and planning authorities, saving time, expense and much community anguish. We are of the opinion that if the LNG terminal is to go ahead then no other development should take place within 3 miles of this development”.

For a senator to completely ignore and omit such significant mounting international concern for the siting of LNG terminals shows either a blatant incompetent ignorance of the issues or a negligent and express intention to ignore the consequences.

- e. Our complaint is not spurious and this is supported by the simple fact that the proposed LNG terminal is a significant top-tier Seveso II establishment, which by its very designation, is accepted in law as a hazardous installation, with the consequence area of a worst-case scenario accident of 12.4 kilometres. In addition, world renowned LNG expert, Dr. Jerry Havens has stated on record at the An Bord Pleanála oral hearing in Tralee in January 2008³⁹:

“If an LNG C[ontainer] were to be attacked in the proximity of the shoreline, either while docked at the terminal or in passage in or out of the estuary, and cascading failures of the ship’s containments were to occur, it could result in a pool fire on water with magnitude beyond anything that has been experienced to my knowledge, and in my opinion could have the potential to put people in harm’s way to a distance of approximately three miles from the ship. I have testified repeatedly that I believe that the parties that live in areas where this threat could affect them deserve to have a rational, science-based determination made of the potential for such occurrences, no matter how unlikely they may be considered.”

- f. Our fear is that his appointment to the Seanad and to the Oireachtas Joint Committee on Climate Change was a reward (contrary to Article 170(1) of the Local Government Act 2001) for promoting the rezoning and for continuing to push the positive sides of LNG in the Oireachtas speeches he has given for the following reasons:
 - i. Councillor John Brassil, who, coincidentally, also voted in favour of the rezoning, was made Chairman of Shannon Development less than 2 months after the rezoning
 - ii. We question the qualifications of Senator O’Sullivan, with no relevant experience in climate change, to be on such a technical committee.
- g. We feel that Senator O’Sullivan abused his position when he stated in the Oireachtas Joint Committee meeting of November 29th 2007:

³⁹ <http://www.safetybeforelng.com/docs/DAY%203%20012308%20TRALEE%20LNG.PDF> page 49

“I am interested in the gas situation because I recently read that gas will be the new oil, but I am not sure that was meant as a compliment. I am especially interested in liquified natural gas. As the Chairman is aware, plans for the establishment of a LNG terminal in Ballylongford on the Shannon Estuary, which is near where I live, are well developed. How new is the science of LNG? Is it well established? To what extent will LNG be a serious contributor to the overall gas supply? For example, what percentage of the gas supply is derived from LNG at the moment? How secure is that supply? This project has been fairly well received by the public in Kerry but there are rumblings of concern. I notice that a small group of people has been briefed by the Shell to Sea people. I hope we do not go down that road. Perhaps this is a micro-question for a forum such as this, but I would like to know more about it.”⁴⁰

These comments were made by Senator O’Sullivan a mere two weeks after RTE’s current affairs programme “Prime Time” ran a documentary on the proposed LNG terminal which contradicted serious safety issue claims which the Shannon LNG developer had made. The LNG expert interviewed by ‘Prime Time’ (Dr. Tony Cox) concluded that vapour clouds do not evaporate harmlessly into the air as was claimed by Shannon LNG in its publicity documents⁴¹. For a senator to claim that we had been “briefed by the Shell to Sea people” was disingenuous in the extreme and an abdication of the Senator’s responsibility and duty to be fair to all as obliged under Article 168 of the Local Government Act 2001. In any case, ours were serious safety and environmental concerns and this personal agenda to push the Shannon LNG project was outside the terms of reference of the Joint Committee on Climate Change. To reinforce this point, even after the evidence shown on the ‘Prime Time’ video of a major LNG accident in Algeria 3 years previously which resulted in the deaths of about 27 people and another massive LNG explosion which levelled a square mile of Cleveland in 1941, killing 128 people, Senator O’ Sullivan persisted in his naïve and misleading LNG questions in the same meeting, when he asked:

“Is it true there has never been an accident in an LNG transmission?”⁴²

- h. Ned O Sullivan did not act with integrity in our opinion. The Local Government Act 2001 clearly states its requirement of Standards of integrity in Article 168 as follows:

“In carrying out their functions under this or any other enactment, it is the duty of every member and every employee of a local authority and of every member of every committee to maintain proper

⁴⁰ <http://debates.oireachtas.ie/DDebate.aspx?F=CLJ20071129.XML&Ex=All&Page=4> and Appendix 2

⁴¹ “Prime Time” video of November 15th 2007 c.f. <http://www.rte.ie/news/2007/1115/primetime.html>

⁴² <http://debates.oireachtas.ie/DDebate.aspx?F=CLJ20071129.XML&Ex=All&Page=5> and Appendix 2

*standards of integrity, conduct and concern for the public interest.”*⁴³

- i. Article 170 (1) of the same Act clearly forbids any reward for a councillor in his duties as follows:

*“An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under section 169 may include guidance for the purposes of this subsection”.*⁴⁴

- j. Article 175 (f) of the same Act clearly defines a directorship as a declarable interest as follows:

*“Each of the following interests is a declarable interest for the purposes of this Part: -(f) a directorship or shadow directorship of any company held by the person concerned at any time during the appropriate period, and in this paragraph “shadow directorship” means the position held by a person who is a shadow director for the purposes of the Companies Acts, 1963 to 1999.”*⁴⁵

- k. Article 176 (2) of the same Act clearly defines a declarable interest as a beneficial interest in the following situation:

*“A person shall also be deemed to have a beneficial interest which has to be disclosed under this Part if he or she has actual knowledge that he or she or a connected person has a declarable interest (within the meaning of [section 175](#)) in, or which is material to, a resolution, motion, question or other matter which is proposed, or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment..”*⁴⁶

- l. Article 177 of the same Act clearly defines the duties of disclosure by a member of a local authority of pecuniary or other beneficial interests as follows:

“(1) Where at a meeting of a local authority or of any committee, joint committee or joint body of a local authority, a resolution, motion, question or other matter is proposed or otherwise arises either—(a) as a result of any of its functions under this or any other

⁴³ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

⁴⁴ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

⁴⁵ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

⁴⁶ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

enactment, or (b) as regards the performance by the authority, committee, joint committee or joint body of any of its functions under this or any other enactment,

then, a member of the authority, committee, joint committee or joint body present at such meeting shall, where he or she has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, the matter—(i) disclose the nature of his or her interest, or the fact of a connected person's interest at the meeting, and before discussion or consideration of the matter commences, and (ii) withdraw from the meeting for so long as the matter is being discussed or considered,

and, accordingly, he or she shall take no part in the discussion or consideration of the matter and shall refrain from voting in relation to it.”⁴⁷

18. In conclusion, we feel that this decision to build an LNG terminal was decided at the highest levels in the Irish Government and now the different statutory bodies are retrospectively approving this without any concern for safety, environmental or strategic issues. In written answers in May 2006 in the Dail the following was noted:

“Energy Resources.

88. Ms B. Moynihan-Cronin asked the Minister for Communications, Marine and Natural Resources the developments on plans for a strategic gas reserve; if the Kinsale reservoir will be utilised in this regard; and if he will make a statement on the matter. [20650/06]

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): Responsibility for monitoring the security of Ireland's natural gas supply lies with the Commission for Energy Regulation (CER). The CER publishes annually a 7-year rolling forecast of capacity, flows and customer demand ('the Gas Capacity Statement'). The forecast also assesses whether projected supplies of gas from indigenous sources, imports and storage, are sufficient to meet forecast demand. A key finding of the 2005 Gas Capacity Statement is that, even under unusually cold weather conditions, the Irish gas transmission system can cope with forecast demand.

The issue of a strategic gas reserve is one of the issues to be addressed by means of an all-island study, which will assess the potential for natural gas storage on the island and the possible contribution of LNG to security of supply on an all island basis. While Ireland does not currently maintain a strategic gas reserve, commercial reserves of natural gas are held by licensed natural gas shippers and suppliers, including Bord Gáis E'ireann (BGE'). Indeed, at current levels, BGE's Kinsale reserves can supply 50% of nondaily metered customer requirements, i.e.

⁴⁷ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

small business and domestic for up to 50 days. This is in addition to stocks held by BGE' in the UK, which operates a similar regime to Ireland.

Also, BGE', as the natural gas Transmission System Operator, has developed contingency plans in the event of any curtailment in gas supplies. These plans include switching gas-fired power generation plant to alternative fuels, voluntary reductions from large industrial gas consumers and using its reserves from the South-West Kinsale reservoir.

The CER is in the process of issuing a licence to Marathon Oil Limited to operate a storage facility at the depleting gas fields off the Kinsale Head in Co. Cork. This facility, the first such in the country, with considerable storage capacity, will come into operation in the coming weeks. It will be an important enhancement of security of supply.

Work is well advanced in finalising transposition of EU Directive 2004/67 on measures to Safeguard Security of Natural Gas Supply. This will serve to further define the roles and responsibilities of gas market players relative to security of supply in the context of the liberalised natural gas market.

Another welcome development is the announcement on 22 May last that Shannon Development has entered into an 'option-to-purchase' agreement with Shannon LNG. This Irish subsidiary of Fortune 500 Company Hess LNG Limited is developing a project to build a €400 million liquefied natural gas (LNG) receiving terminal near Tarbert on the Shannon Estuary. The project could potentially provide up to 40% of Ireland's gas requirements and I am certainly interested in exploring the scope for realising that potential with all concerned, bearing in mind that this is a commercial venture. The estimated date for completion of the project is 2011." ⁴⁸

This project was therefore being promoted from the highest levels of the government in the Dail from as early as May 2006, **before the land was even rezoned**. However, the All-Island Gas Storage study document referred to above by Minister Dempsey was completed in November 2007. The All-Island Strategy document for Gas Storage - "Study on Common Approach to Natural Gas Storage and Liquefied Natural Gas on an All Island Basis – November 2007"⁴⁹ jointly commissioned by the Department of Communications, Energy and Natural Resources and the Department of Enterprise, Trade and Investment, Northern Ireland, was published in November 2007 but, in spite of our requests, only released in Executive Summary format to the general public at the end of March 2008, when the planning decision had already been made by An Bord Pleanála to allow the LNG terminal go ahead⁵⁰. This represents a serious breach of Article 3 of the EIA Directive because it contained valuable information on high potential alternative storage sites and strategies.

- a) The "North Celtic Sea Basin" and the "East Irish Sea Basin" were identified in the strategy document as high potential offshore gas

⁴⁸ <http://historical-debates.oireachtas.ie/D/0620/D.0620.200605300043.html>

⁴⁹ <http://www.dcmnr.gov.ie/NR/rdonlyres/8AD0EDDB-3237-4157-B230-2D467A3C1F9C/0/4DCENRGasStorageExecutiveSummary.pdf>

⁵⁰ <http://www.pleanala.ie/casenum/PA0002.htm>

storage options⁵¹; This potential is already being harnessed in the UK part of the East Irish Sea by the Norwegian Høegh LNG company in its proposed PORT MERIDIAN OFFSHORE LNG TERMINAL⁵² and by Stag Energy in its GATEWAY GAS STORAGE PROJECT⁵³

- b) The offshore depleted gas fields of the Kinsale gas field represent a storage capacity almost three times the size of the proposed LNG Storage tanks at Kilcolgan;
- c) Other storage options such as Salt Caverns and LNG Re-gasification vessels are also considered.

At the oral hearing we requested that the planning authority await the publication of this strategy document publication as it would represent a government policy document that would be a statutory basis for a planning decision. At the oral hearing the inspector was at a loss on who to believe about the alternative sites and options available and we feel that he came under undue pressure to make a decision due to the fast-track planning process without all environmental facts at his, or the general public's, disposal, contrary to the EIA Directive

19. We believe, therefore, that the actions of Senator O'Sullivan are a blatant breach of ethics and a conflict of interest because they involve deliberately pushing a political decision to site a dangerous LNG terminal to the exclusion of democratic input to a process highlighting any negative points to the project until it is too late. As the Senator, therefore, may possibly have contravened the Ethical Framework for the Local Government Service provisions of Part 15 of the Local Government Act 2001, the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001 and the relevant codes of conduct of councillors and members of the Oireachtas and Committees and all other legislation governing behaviour of elected officials, we are requesting that this complaint be investigated thoroughly as we believe we have provided prima facie evidence to sustain this complaint.

We await your feedback on how you propose to deal with this complaint.

Yours sincerely,

Johnny McElligott

⁵¹ <http://www.dcmnr.gov.ie/NR/rdonlyres/8AD0EDDB-3237-4157-B230-2D467A3C1F9C/0/4DCENRGasStorageExecutiveSummary.pdf> page 5

⁵² http://www.hoegh.com/lng/business_development/focus/

⁵³ <http://www.stagenergy.com/Gateway/index.html>

Appendix 1: County Manager's Report on the proposed variation No 7 to the Kerry County Development Plan 2003- 2009:

**County Manager's Report on
Proposed Variation No 7
to the Kerry County Development Plan 2003 – 2009**

Variation No 7

This variation proposes to rezone 188.8ha (466.53 acres) of land, comprising 105ha (261.43 acres) currently zoned as Rural General and 83ha (205.1 acres) currently zoned as Secondary Special Amenity, in the townlands of Reenturk, Rallappane and Kilcolgan Lower, to industrial zoning.



Kerry County Council
Planning Policy Unit

Introduction

1.0 Legal Preamble

In accordance with Section 13(2a) of the Planning and Development Act 2000 (as amended), Kerry County Council propose to make a variation to the Kerry County Development Plan 2003-2009 to facilitate the development of industrial uses on lands in Reenturk, Rallappane and Kilcolgan Lower.

2.0 Proposed Variation

The Kerry County Development Plan 2003-2009 was adopted by the Council in November 2003, and came into effect on 9 December 2003. This variation proposes to rezone 188.8ha (466.53 acres) of land, comprising 105ha (261.43 acres) currently zoned as Rural General and 83ha (205.1 acres) currently zoned as Secondary Special Amenity, in the townlands of Reenturk, Rallappane and Kilcolgan Lower, to industrial zoning.

The purpose of this variation is to facilitate consideration of suitable development of these lands in accordance with the provisions of section 5.2.9 of the Kerry County Development Plan 2003 – 2009 which states: 'Lands have been identified as Ballylongford/Tarbert as suitable for development as a premier deepwater port and for major industrial development and employment creation'. The adoption of this variation will also give effect to Objective ECO 5-5 of the Kerry County Development Plan 2003 - 2009 which states: 'It is an objective of Kerry County Council to identify lands in key strategic locations that are particularly suitable for development that may be required by specific sectors. Land in such locations will form part of a strategic reserve that will be protected from inappropriate development that would prejudice its long-term development for these uses'.

3.0 Public Consultation

In accordance with Section 13 (2) of the Planning and Development Act 2000 (as amended) notice of the proposed variation was published in the local papers inviting observations and submissions. Copies of the variation were put on display from the 2nd February to the 8th of March 2007.

4.0 Statutory Bodies

Under Section 13 (2) of the Planning and Development Act 2000 (as amended) the planning authority is required to consult the prescribed authorities listed under Part 3 Section 13 of the Planning and Development regulations 2001 (as amended).

5.0 Submissions Received

Written Submission No. 1 – No. 4

**An Bord Pleanála.
Department of Education
and Science.
Department of the
Environment, Heritage and
Local Government.
Office of the Minister for
Agriculture and Food.**

Submission

No observations on the proposed variation.

Written Submission No. 5

**Catherine McMullen, An
Taisce, Kerry Association,
5 Glenashe, Killorglin,
County Kerry.**

This submission raises the following issues –

1. The proposed zoning is appropriate for the majority but not all of the lands. The submission proposes that half of the lands currently zoned as Secondary Special Amenity should be retained for amenity uses such as walking and recreation to meet the needs of local people.
2. Positioning amenity lands at either end of the land bank would provide a buffer between houses in the vicinity of the industrial site and the site itself.
3. Public access to the shore line should be maintained particularly in view of the likely loss of public access to Kilcolgan Strand from the public road following the development of the site.
4. Sufficient land should be zoned residential in Tarbert and Ballylongford to meet the housing requirements of any workforce.

Response

1. An extensive area of land to the west of the site is designated as Secondary Special Amenity and includes a walking route to Carrig Island. It is considered therefore, that sufficient natural amenity lands have been reserved. The adopted Tarbert Local Area Plan makes adequate provision for the amenity requirements

of the village. In addition, a draft local area plan for Ballylongford is in the process of being prepared and will make provision for amenity uses to serve the towns catchment area.

2. The impact of development on the residential amenity of houses in the vicinity of zoned industrial lands will be dealt with at the planning application stage.
3. It is recognised that industrial and public amenity uses are incompatible due to reasons of health, safety and utility. Extensive foreshore lands from Richards Rock to Reenturk Point are however, excluded from the proposed industrial zoning and remain designated as Secondary Special Amenity.
4. The adopted Tarbert Local Area Plan makes adequate provision for an increase in demand for residential development. In addition, a draft local area plan for Ballylongford is in the process of being prepared and sufficient land will be zoned to cater for increased demand.

Written Submission No.6

**Clare County Council
New Road,
Ennis
Co. Clare**

The submission makes the following points:

The proposed rezoning is likely to have a significant impact on the future development of the Region, and will have a direct impact on the planned objectives for the Mid West Regional Guidelines for the Shannon Estuary and in particular the Planning, Economic and Service Infrastructural development objectives for zone 5 of the plan.

Any industrial development including the construction of a deepwater harbour will have a major impact on both the visual and ecological amenities of the area, and potentially on the whole lower Shannon estuarine environment, including the foreshore of County Clare. Clare County Council would like an appraisal of any SEA investigation which may have been undertaken in respect of the proposed variation.

Response

Any future application on these lands will be subject of an Environmental Impact Assessment. This process will ensure that any proposals will take into account impacts on the visual and ecological amenities of the area. A copy of the SEA screening report for the proposed variation will be forwarded to Clare County Council.

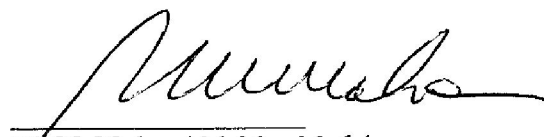
The lands subject of this variation have been in the ownership of Shannon Development for a number of years. While the text of the County Development Plan 2003-2009

facilitated industrial development on the land, the relevant zoning map did not reflect this objective. This variation will regularise the zoning maps with the text of the Plan. It is considered therefore that the proposed variation will not alter or impact to any additional extent on the objectives of the Mid West Regional Planning Guidelines.

6.0 Recommendation

Having considered the submissions received it is recommended that the variation to rezone 188.8ha (466.53 acres) of land, comprising 105ha (261.43 acres) currently zoned as Rural General and 83ha (205.1 acres) currently zoned as Secondary Special Amenity, in the townlands of Reenturk, Rallappane and Kilcolgan Lower, to Industrial zoning is adopted.

Signed:



M. McMahon/ M. Mac Mathúna,

Director of Services/Stiúrthóir Seirbhísí,

Planning & Sustainable Development/Pleanáil Agus Forbairt Inbhuanaithe

Date: 8/3/07

Appendix 2: Statements by Senator Ned O’Sullivan in the Seanad and in the Oireachtas Joint Committee on Climate Change and Energy Security Meetings

<http://historical-debates.oireachtas.ie/S/0187/S.0187.200710250003.html>

Seanad Éireann - Volume 187 - 25 October, 2007

Order of Business.

Senator Ned O’Sullivan: I ask the Leader to refer two matters to the Minister for the Envir[757]onment, Heritage and Local Government. The first concerns salary and expense remuneration for county and town councillors who are members of regional water boards, of which there are many — I had the privilege of being chairman of the Shannon basin water board in its first year. It is extraordinary that whereas the officials who attend these board meetings are fully covered for expenses, in many cases the elected members are not. An anomaly has arisen whereby some county managers reimburse councillors for their out-of-pocket expenses. As these are important boards, I ask the Leader to pursue the matter with the Minister, who gave me a favourable response as late as yesterday.

The second matter I want referred to the Minister concerns the proposal to establish a liquified natural gas, LNG, terminal at Ballylongford on the Shannon estuary in north Kerry. This project, which is of great importance for the nation, will greatly enhance our energy options while providing badly needed employment in north Kerry and west Limerick, particularly in towns such as Listowel, Abbeyfeale and Newcastle West.

Senator Joe O’Toole: Why west Limerick?

Senator Jerry Buttimer: We have a new candidate.

An Cathaoirleach: Senator O’Sullivan, without interruption.

Senator Ned O’Sullivan: Will the Leader raise this matter with the Minister and invite him to the Chamber to brief us on this important project for the nation as well as north Kerry and west Limerick?

http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Homepage.htm

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Clerk to the Committee: Mr. Michael McKenna

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**COMHCHOISTE UM ATHRÚ
AERÁIDE AGUS ÁIRITHIÚ
FUINNEAMH**

**JOINT COMMITTEE ON
CLIMATE CHANGE AND
ENERGY SECURITY**

Senator Ned O'Sullivan: I find this discussion quite interesting and the two presentations were very stimulating. It is clear this committee has more than enough work to do. I will respond to Mr. Brendan Halligan's challenge regarding what Ireland can hope to achieve because he approaches this matter from a pessimistic point of view, deeming Ireland so small that our tiny footprint makes little difference to the global situation. My grandmother said that many a mickle makes a muckle and Ireland has a contribution to make to this issue that could see it in an exciting situation of giving leadership as a small country. This is what we did during the information technology, IT, revolution and if we did so in this regard, we could make an important contribution in the process.

Efficiency is an area that must be more closely examined because I believe there is always a deficit in this regard. I come from a background of working in local authorities and I am not aware of any emphasis on green issues and energy efficiency in planning regulations imposed by local authorities. I have dealt with planners all my life on issues such as the size of houses, locations and so on but I am not aware that local government and the commercial sector are serious about energy conservation. This must be examined.



I am especially interested in tidal energy because Ireland is an island nation and there is room for growth in this sector. What is happening in terms of wind energy? There was a big surge — excuse the pun — in the construction of wind farms and it has become common to see planning applications for them in the newspapers. Has this waned and, if so, why? Surely the popularity of wind energy has not already peaked. I would like to know more about this.

I am interested in the gas situation because I recently read that gas will be the new oil, but I am not sure that was meant as a compliment. I am especially interested in liquified natural gas. As the Chairman is aware, plans for the establishment of a LNG terminal in Ballylongford on the Shannon Estuary, which is near where I live, are well developed. How new is the science of LNG? Is it well established? To what extent will LNG be a serious contributor to the overall gas supply? For example, what percentage of the gas supply is derived from LNG at the moment? How secure is that supply? This project has been fairly well received by the public in Kerry but there are rumblings of concern. I notice that a small group of people has been briefed by the Shell to Sea people. I hope we do not go down that road. Perhaps this is a micro-question for a forum such as this, but I would like to know more about it.

In the same vein, what do the representatives of SEI think is the future of a plant such as Moneypoint, which is a major polluter? Do we have to suffer from this for much longer? I do not propose to close it down but I wonder about its future. Can we reshape or refit it in some way so that it can make a serious and meaningful contribution to output without polluting the whole area?

I was interested in the Chairman's comments about opinions on the nuclear option. We should have grasped that nettle 25 years ago when it came up first. It is not too late. There is a different climate out there now, if listeners will pardon the pun. There is a different view about where we are in terms of energy. The debate should be reopened and I would certainly welcome the chance to participate in it.

<http://debates.oireachtas.ie/DDebate.aspx?F=CLJ20071129.XML&Ex=All&Page=5>

Senator Ned O'Sullivan:   Is it true there has never been an accident in an LNG transmission?

Mr. David Taylor: I cannot comment. I have no knowledge about it but have no reason to believe there is a particular danger. With regard to Moneypoint, the committee should bear in mind the price of carbon. The European initiative to establish a carbon market for the electricity sector and large emitters is an important development in the sense that it sends a price signal as to the value of capturing and sequestering carbon and for the viability of coal under conditions of constrained emissions. It is an important instrument that we must see develop. The committee is aware of my views on nuclear power.

**AN COMHCHOISTE UM ATHRÚ
AERÁIDE AGUS ÁINITHIÚ
FUINNEAMH**

**JOINT COMMITTEE ON CLIMATE CHANGE AND
ENERGY SECURITY**

Senator Ned O'Sullivan: While many of the points I intended to raise have been answered, as the Cathaoirleach noted, it is clear there is a duplication of services in this respect. There appear to be layers of bureaucracy and the message for the Government arising from the excellent presentation and highly stimulating discussion is that it must get its act together and achieve some cohesion in this regard. However, I am slightly confused in that Mr. Britton stated that production will reach 1,000 MW in the current year. Consequently, the witnesses appear to be doing fairly well, despite the existing challenges and obstacles. Is it simplistic to ask why not simply keep going, thereby making more energy and more money? While such an approach is probably simplistic, every mickle makes a muckle. As they continue, the witnesses probably will do better, despite the obstacles.

Specifically, what do the witnesses require the Government to do for them? Is this primarily a request for funding or do their needs pertain to the licensing issue and the clearing of obstacles? Is NOW Ireland a group that is exclusive to its five component parts or is it an all-embracing group for everyone in Ireland who is in this business? In other words, are other competitors such as the ESB or others, also working in this field? I seek information in this regard.

What is the ratio between cost and productivity in respect of offshore wind power generation? While everyone desires renewable energy, there are costs associated with all energy production, including energy costs. **How does offshore wind power generation compare with onshore wind power generation? Alternatively, how would it compare with the proposed new liquefied natural gas, LNG, terminal that is to be established in my neck of the woods in County Kerry? How will that compare in respect of its output and the costs that are needed to drive such output?**

I revert to the environmental issues on which members have not focused greatly. There must be some environmental impact associated with a development of this nature. I am from County Kerry, which is a centre for tourism. Some time ago, one of the local newspapers printed an imaginary montage showing what massive turbines would look like five or six miles off the Ring of Kerry, Ballybunion Beach or similar locations. The topic gave rise to major scares in the local newspapers at the time. Are such concerns real and could there be a negative effect on tourism, fishing or navigation in general? Is there a downside in this regard? What is in it for the local population and are there potential spin-offs at local level?

As the Chairman noted, members made a highly instructive trip to Galway Bay last week to view the wave generation project. It might be a good idea for members to view some

of the witnesses' operations in practice. It should be on a day on which the sea is particularly calm as not all members are great sailors

The generation of power by wind and wave offshore is closely physically aligned. Are there meaningful partnerships or linkages between the two? Obviously NOW Ireland considers wind power to be a much stronger generator. It probably is considerably more advanced than wave power in technology etc. Presumably however, the aim is the same, namely, the creation of energy from the sea and the same problems probably arise. This certainly is the case in respect of interconnecting with the grid and so on, as both forms of generation operate in the same territory. Can a case be made for a link-up in this regard?

SECTION 4:

Complaint to The Office of the Ombudsman concerning the refusal by Kerry County Council to carry out an SEA on variation No 7 of 2007 to Kerry County Development Plan (reference L18/07/2518)



Kilcolgan Residents Association
Protecting the Shannon Estuary

Kilcolgan Residents Association
c/o Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

26 September 2008

David Ryan, Investigator,
The Office of the Ombudsman,
18 Lr. Leeson Street, Dublin 2
By Email to: david_ryan@ombudsman.gov.ie
c.c. ombudsman@ombudsman.gov.ie

Re: Complaint concerning refusal to carry out an SEA on variation No 7 of 2007 to Kerry
County Development Plan (reference L18/07/2518)

Dear Mr. Ryan,

It is our contention that the decision to build an LNG terminal was decided at the highest levels in the Irish Government and now the different statutory bodies are retrospectively approving this without any concern for safety, environmental or strategic issues.

In our opinion Kerry County Council refused to carry out an SEA on the lands about to be rezoned for the proposed LNG terminal because there was an option to purchase conditional on obtaining planning permission for an LNG terminal within 2 years on land zoned 'rural general' and 'secondary special amenity' for a price we believe to be in the region of 28 million euros. A full SEA would have taken upwards of 1 year to complete alone. Therefore, it is our view that the refusal was motivated by this condition to the detriment of the people of the south west on health, safety, environmental and strategic planning grounds.

The Local Government Act 2001 clearly states its requirement of Standards of integrity in Article 168 as follows:

*"In carrying out their functions under this or any other enactment, it is the duty of every member and every employee of a local authority and of every member of every committee to maintain proper standards of integrity, conduct and concern for the public interest."*⁵⁴

⁵⁴ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/print.html>

We are therefore now requesting that you determine that proper standards of integrity, conduct and concern for the public interest were not maintained by Kerry County Council employees as required of them under Article 168 of the Local Government Act 2001. From your letter dated April 3rd 2008, Kerry County Council claimed that:

“Kerry County Council is unaware as to whether or not the consultants were aware of the LNG proposal as it was in the public arena at that time.”

From your letter dated September 1st 2008, Kerry County Council confirmed that:

“RPS have confirmed that they were unaware of the proposed LNG proposal at the time of the screening process”

RPS should have been told about the proposed LNG terminal by Kerry County Council. Not to do so, if indeed that is the truth, was **NEGLIGENT BEHAVIOUR and a breach of procedure and ethics obliged of council members and employees by Article 168 of the Local Government Act 2001**. because the legislation obliges the SEA screening process to take into account developments “likely” to have an effect on the environment.

Who was in the Subcommittee of the senior management team created to deal with the Shannon LNG project as outlined in point 4 below? Those members had a duty under Article 168 of the Local Government Act 2001 to disclose to RPS who undertook the SEA screening report in November 2006 that the site was earmarked for an LNG terminal 6 months earlier. An EIS is not an SEA. EIS is project specific; an SEA is region and strategic specific.

It might be an idea to get all email communications between the council and RPS to confirm the veracity of the council’s claims.

The EPA⁵⁵ and Clare County Council⁵⁶ could not confirm receipt of the SEA screening Report. Why not get proof of whether these were given or not?

It is misleading for Kerry County Council to state that:

“To have considered Shannon LNG as part of the screening process would have involved a different type of specific zoning e.g. zoned specifically for a gas storage and importation terminal”.

This is because the lands only needed to be zoned “Industrial” for an LNG terminal (as that is what they are zoned at now for the LNG terminal). No other specific zoning was needed.

Please find the following timeline of events regarding this complaint which we believe to be accurate:

⁵⁵ Email communication with Kerry County Council submitted to the Ombudsman’s Office on November 19th 2007 as attachment 8

⁵⁶ Email confirmation by John Bradley of Clare County Council forwarded to the Ombudsman’s office on November 21st 2007

20. June 2004: Plans were announced by the Shannon Foynes Port Company to invest 53 million euros in port facilities along the Shannon Estuary, which would include a major transshipment terminal at Ballylongford on the site of the proposed LNG terminal⁵⁷. However, since the LNG terminal was proposed, all plans for this transshipment facility have mysteriously been shelved
21. May 2006: The decision to build an LNG terminal, a top-tier Seveso II development, was announced in the Dail by Minister Dempsey as follows:
*“Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): Another welcome development is the announcement on 22 May last that Shannon Development has entered into an ‘option-to-purchase’ agreement with Shannon LNG. This Irish subsidiary of Fortune 500 Company Hess LNG Limited is developing a project to build a €400 million liquefied natural gas (LNG) receiving terminal near Tarbert on the Shannon Estuary. The project could potentially provide up to 40% of Ireland’s gas requirements and I am certainly interested in exploring the scope for realising that potential with all concerned, bearing in mind that this is a commercial venture. The estimated date for completion of the project is 2011.”*⁵⁸
22. May 2006: Shannon LNG equally announced an option to purchase, subject to planning, the lands at Kilcolgan owned by Shannon Development, as follows⁵⁹:
“Shannon LNG, an Irish subsidiary of Hess LNG Limited, which is a 50/50 joint venture of Hess Corporation and Poten & Partners, is at the early stages of a major development which will help secure Ireland’s long-term supply of natural gas. The company has entered into an ‘option-to-purchase’ agreement with Shannon Development, the regional development agency, in relation to 281 acres of the 600-acre state-owned land bank between Tarbert and Ballylongford, County Kerry. Subject to feasibility studies, technical assessments and in due course, planning and other approvals, it will become the site for a major 400 million Euro liquefied natural gas (LNG) import terminal.”

The Shannon Foynes Port Company, of which then Councillor Ned O’Sullivan was a director at the time of the rezoning, described the development as follows:

*“The development site is located immediately to west of Ardmore Point. It is on State (Shannon Airport Development Co) owned land and is designated for development with a four year option. Shannon LNG is the developer. The **company is required to achieve planning permission within 2 years.**”*⁶⁰

⁵⁷ <http://www.sfpc.ie/news023-articles.htm>

⁵⁸ <http://historical-debates.oireachtas.ie/D/0620/D.0620.200605300043.html>

⁵⁹ <http://www.shannonlngplanning.ie/files/Newsletters/Issue1.pdf> page 1

⁶⁰ http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

Shannon Development's Annual Report 2006⁶¹ even publicises a photo opportunity on the announcement with Councillor John Brassil, Minister Martin and senior vice president of Hess Corporation Gordon Shearer holding a map of the Greenfield rural site in North Kerry where the LNG terminal is proposed.



Pictured at the announcement by Micheál Martin TD, Minister for Enterprise, Trade and Employment, that Shannon Development has signed an 'option to purchase' agreement with Shannon LNG, a subsidiary of Hess LNG, for a portion of Shannon Development land bank at Tarbert/Ballylongford, Co Kerry, were (l-r): Kevin Thompstone, Chief Executive, Shannon Development; John Brassil, Board Member, Shannon Development, Eugene Brennan, Development and Marketing Director, Shannon Development, Gordon Shearer CEO, Hess LNG, and Minister Micheál Martin.

We are concerned at how Shannon Development could sign an “option-to-purchase” agreement with a developer conditional on obtaining planning permission for a top-tier Seveso II hazardous LNG terminal within 2 years⁶². It is highly questionable how Shannon Development could guarantee that planning permission could be obtained within 2 years for lands that, at the time, were zoned Rural General and Secondary Special Amenity.

We are also concerned that Shannon Foynes Port Company is the only party to be aware of and to have made publicly available, in June 2008, the information of the option-to-purchase agreement with Shannon LNG being conditional on obtaining planning permission within 2 years⁶³. As this two-year condition is a fact, we feel, its directors would also have been aware of, we fear that this may have influenced the decision not to undertake an SEA, especially if director Ned O’Sullivan was aware of this information at the time of the vote. In any case, John Brassil, as a director and member of the Shannon Development board, would certainly have been aware of this 2-year condition.

⁶¹ <http://www.shannonireland.com/media/Media,6816,en.pdf> The Annual Report 2006 of Shannon Development, page 12 (real page 14)

⁶² http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

⁶³ http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

23. June 19, 2006⁶⁴: Kerry County Council Meeting discusses the Shannon LNG project as follows:

*“20. Establishment of a committee to deal with infrastructural development and Planning issues relating to the Ballylongford Land Bank Pursuant to notice duly given **Cllr. J. Brassil** proposed:-*

“In light of the major announcement made by Minister Micheal Martin regarding the development of the Shannon Development owned Ballylongford land bank that Kerry County Council put a team of people together to specifically deal with the infrastructure development and planning issues that will be associated with this project.”

Mr. C. O’Sullivan, SEO Corporate Services read the following report:-

The Ministers announcement in relation to the proposals for Ballylongford is to be welcomed. Preplanning discussion with Shannon LNG will shortly commence. The necessary planning and infrastructure teams will be put in place as discussions develop more fully the particular project proposal and the needs of the Ballylongford Land Bank generally. Project progress will be overseen by Sub Committee of Senior Management Team. The situation will be kept under review as the project progresses.

Cllr. J. Brassil welcomed the report and said that this has the potential to be a huge project for North Kerry and he called on the Executive to give it every support.

Cllr. L. Purtill welcomed the recent announcement for the development of part of Ballylongford Land Bank and supported Cllr. Brassil’s motion. “

24. June 19th – 24th 2006: County Manager with 3 officials (Mr. Michael McMahon Director of Planning & Sustainable Development, Mr. Tom Sheehy Snr. Engineer – Planning Policy and Mr. Declan O’Malley S.E.P. Planning Management (North Kerry)) visit the Everett LNG terminal in Boston USA. The cost of the trip amounted to 5,786.00 Euros (4160.00 Euros for flights and 1,626 Euros for accommodation). They also claimed 3,092.05 Euros in expenses. 8,878.05 Euros was the total cost of the trip. This proves that the LNG terminal development was being taken seriously by the council and that all rezoning was retrospective to accommodate the planning application by Shannon LNG.
25. 18 September 2006: Shannon LNG apply to Kerry County Council for a Weather Station on a 10M. High mast with Security fencing by Shannon LNG at the site of the proposed LNG terminal in Kilcolgan⁶⁵
26. November 2006: RPS publishes Strategic Environmental Assessment Screening Report on the proposed variation to the Kerry County Development Plan. No mention was made of the Shannon LNG proposal. The criteria for determining whether a variation to a

⁶⁴ Minutes of June 19th 2006 Meeting of Kerry County Council -

<http://www.kerrycoco.ie/minutedocs/Item%202b%20Ordinary%20Minutes%20June%202006.pdf>

⁶⁵

http://www.kerrycoco.ie/ePlan/InternetEnquiry/rpt_ViewApplicDetails.asp?validFileNum=1&app_num_file=063428

development plan requires an SEA is clearly defined in Schedule 2A of the Planning and Development (Strategic Environmental Assessment) Regulations 2004⁶⁶. Seveso sites by their definition are dangerous and subject to the SEVESO Major Accidents Directive and as such fall under Schedule 2A (2) (the risks to human health or the environment (e.g. due to accidents). The full Schedule 2A underlines starkly how an LNG terminal cannot but have a significant effect on the environment and therefore require an SEA. 10 hectares of the proposed LNG development are for building 2 jetties and completing dredging works and ALL of these 10 hectares are on SAC waters. In addition the site surrounds and is surrounded by SAC, NHA and SPA land and water subject to Irish and European Environmental protection legislation. This is seen clearly on the map of the Environmental Designated Areas in the Shannon LNG EIS volume 1 page 2.⁶⁷



27. February 7th 2007 (at the latest): Kerry County Council publishes notice of proposed variation No 7 to the Kerry County Development Plan 2003-2009.
28. February 7th 2007: An Bord Pleanála formally wrote to the County Manager on February 7th, 2007 notifying them of Shannon LNG's request for pre-application consultations

⁶⁶ C.f. <http://www.irishstatutebook.ie/2004/en/si/0436.html#article12> Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I No 436 of 2004)

⁶⁷ Shannon LNG Terminal EIS volume 1 page 2 submitted to the Ombudsman's Office on November 19th 2007 c.f.

http://www.shannonlngplanning.ie/files/EIS/ShannonLNG_Terminal_EIS_Vol_1_of_4_Issue1.pdf

under the planning and Development (Strategic Infrastructure) Act 2006 for an LNG terminal on the said site. This was not a preliminary, speculative request for information but a formal application to bypass Kerry County Council and apply directly for permission from An Bord Pleanála through the new Strategic Infrastructure Act 2006 reference PC0002.⁶⁸

29. Feb 7th to March 8th 2007: Clare County Council, as stated in the Manager's Report circulated to the Council Meeting of March 12th 2007, wanted an SEA screening report and complained about the negative environmental impact such a massive development would have. These environmental concerns were completely ignored and not even noted in the minutes of the council meeting. The Clare County Council submission stated the following in the Manager's Report :

*"the proposed rezoning is likely to have a significant impact on the future development of the region, and will have a direct impact on the planned objectives for the Mid West Regional guidelines for the Shannon Estuary and in particular the Planning, Economic and Service Infrastructural development objectives for zone 5 of the plan. Any industrial development including the construction of a deepwater harbour will have a major impact on both the visual and ecological amenities of the area, and potentially on the Lower Shannon Estuarine Environment, including the foreshore of County Clare. Clare County Council would like an appraisal of any SEA investigation which may have been undertaken in respect of the proposed variation."*⁶⁹

30. March 8th 2007: Kerry County Council Director of Services, Michael McMahon, publishes the County Manager's Report on Variation No 7 to the Kerry County Development Plan 2003-2009.
31. March 12th 2007: Councillor Ned O'Sullivan **both proposed and voted in favour of the rezoning** along with the other councillors present at the Kerry County Council meeting which saw the value of the lands of Shannon Development sold to Shannon LNG transform to Industrial Zoning and completed the first step to be overcome by Shannon LNG in obtaining planning⁷⁰. The lands, we believe, were sold for approximately 28.1 million Euros (open to verification). The area would be under the control of the Shannon Foynes Port Company. The successful rezoning of 600 acres of land, owned only by Shannon Development, we now estimate is worth 60 million Euros.
32. May 4th 2007 : Councillor John Brassil, who was a director and member of the board of Shannon Development, the owners of the rezoned land, at the time of the vote, like councillor O'Sullivan, did not disclose his interest at the meeting, did not withdraw from

⁶⁸ An Bord Pleanála case reference PL08. PC0002 Pre-application consultation lodged 06/07/2007 and deemed Strategic Infrastructure Development on 07/09/2007 c.f. <http://www.pleanala.ie/casenum/PC0002.htm>

⁶⁹ Appendix 1: County Manager's Report on the proposed variation No 7 to the Kerry County Development Plan 2003- 2009

⁷⁰ [http://www.kerrycoco.ie/minutedocs/Item%20No%202\(a\)%20Minutes%20of%20March%20Meeting.pdf](http://www.kerrycoco.ie/minutedocs/Item%20No%202(a)%20Minutes%20of%20March%20Meeting.pdf) pages 6 and 7

the meeting and also voted for the variation. Mr. Brassil was subsequently appointed Chairman of Shannon Development by the then Minister for Enterprise, Trade and Employment (Mr Micheál Martin T.D.) on May 4th 2007 - a mere 2 months after the rezoning.

33. July 2007: Councillor Ned O’Sullivan, who was a member of the board of directors of Shannon Foynes Port Company stepped down as director of this company following his election to the Seanad in July 2007.⁷¹

34. April-October 2007: Some time after the April 2007 General Election, not later than October 2007, Senator O’Sullivan was appointed to the Joint Committee on Climate Change, the functions of which were:

“to consider medium and long term climate change targets; the role of the Agriculture sector in providing bio-fuel and biomass crops; the levels of power supply which can be generated from renewables or other new power supplies; the projected energy demand from transport and the implications for energy security and emissions targets.”⁷²

35. January 2008: Our complaint is not spurious and this is supported by the simple fact that the proposed LNG terminal is a significant top-tier Seveso II establishment, which by its very designation, is accepted in law as a hazardous installation, with the consequence area of a worst-case scenario accident of 12.4 kilometres. In addition, world renowned LNG expert, Dr. Jerry Havens has stated on record at the An Bord Pleanála oral hearing in Tralee in January 2008⁷³:

“If an LNG C[ontainer] were to be attacked in the proximity of the shoreline, either while docked at the terminal or in passage in or out of the estuary, and cascading failures of the ship’s containments were to occur, it could result in a pool fire on water with magnitude beyond anything that has been experienced to my knowledge, and in my opinion could have the potential to put people in harm’s way to a distance of approximately three miles from the ship. I have testified repeatedly that I believe that the parties that live in areas where this threat could affect them deserve to have a rational, science-based determination made of the potential for such occurrences, no matter how unlikely they may be considered.”

36. September 11th 2008: Following our complaint of a possible breach of ethics by Councillor Brassil in his voting to rezone the land while a director of the company that owned the land he replied as follows to the “Kerryman” Newspaper⁷⁴:

⁷¹ IRIS OIFIGIUIL, APRIL 18th, 2008 page 35 c.f.

<http://www.oireachtas.ie/documents/publications/RegofInterestsSeanad2007.pdf>

⁷² Houses of Oireachtas Commission, Annual Report 2007 – page 18 c.f.

<http://www.oireachtas.ie/documents/commission/reports/2007.pdf>

⁷³ <http://www.safetybeforelng.com/docs/DAY%203%20012308%20TRALEE%20LNG.PDF> page 49

⁷⁴ <http://www.kerryman.ie/news/cllr-brassil-rejects-any-lng-wrongdoing-1473917.html> Kerryman”

Thursday September 11 2008

“At all times I have acted in a proper manner in any business with Kerry County Council,” he said. “I have always acted for the benefit of the people I serve and bringing 500 jobs and a €500 million investment to north Kerry is absolutely what I’m elected for.”

This statement from Councillor Brassil is an admission by the man himself that he was strongly motivated in bringing the LNG project to North Kerry.

His statement at the Kerry County council meeting discussing the Shannon LNG project on June 19th 2006⁷⁵ that:

“In light of the major announcement made by Minister Micheal Martin regarding the development of the Shannon Development owned Ballylongford land bank that Kerry County Council put a team of people together to specifically deal with the infrastructure development and planning issues that will be associated with this project.”

proves that he made representations to the council in favour of the LNG project. The duty was to disclose the proposed LNG terminal, at the very least as a development “likely” to occur, to the consultants RPS undertaking the SEA screening report.

Furthermore, in the “Kerryman” Newspaper of September 17th 2008, Senator Ned O’Sullivan is quoted as stating:

“I was doubly obliged to assist the LNG project as both a member of Kerry County Council and as a member of the port company”.

In the “Irish Times”, County Manager Tom Curran is quoted as having told a meeting of the council on September 15th 2008 that:

*“As far as we are concerned there is no issue at stake and we will be reporting back accordingly”.*⁷⁶

We await your feedback.

Kind Regards,

Johnny McElligott

⁷⁵ Minutes of June 19th 2006 Meeting of Kerry County Council -

<http://www.kerrycoco.ie/minutedocs/Item%202b%20Ordinary%20Minutes%20June%202006.pdf>

⁷⁶ <http://www.irishtimes.com/newspaper/ireland/2008/0917/1221599424149.html>

> Subject: RE: Complaint on possible conflict of interest in SEA of draft Kerry County Development Plan (previous related reference L18/07/2518)

> To: safetybeforelmg@hotmail.com

> From: david_ryan@ombudsman.gov.ie

> Date: Mon, 1 Sep 2008 15:07:41 +0100

>

>

>

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>

>

> Johnny

>

> I cannot supply you with a copy .We are precluded by the terms of the Act
> from doing so.

>

> The examination of this complaint may also take some considerable time
> having regard to its complexity and the other complaints that have been
> received prior to its submission.

>

>

> Having said this, I will however let you know the details of the Council's
> reply to the greatest extent possible.

>

> A summary of its response is :

>

> It is unclear why the An Bord Pleanála inspector made his remarks as it
> was known by the general public that the lands were owned by Shannon
> Development and were to be developed for industrial purposes.

> Lands were identified for industrial development as far back as 1996;

> Variation was to zone the lands for industrial use not LNG

> The Scoping process did not recommend an SEA;

> All of the bodies that were required to be contacted as part of the
> process were contacted. Clare County Council was not one of these
> bodies.

> There is no prohibition on development on SAC's, SPA's NHA's. The zoned
> land is not in any of these areas.

> RPS have confirmed that they were unaware of the proposed LNG proposal
> at the time of the screening process.

> It is normal practice in assessing development proposals to inspect
> similar facilities.

>

>

> The lands in question had been designated for industrial development going
> back to 1996 The ownership of the land, the purpose of its purchase for
> industrial development and the history of previous planning applications in
> the area were widely known. The lands subject of the variation, part of
> which include the subsequent Shannon LNG application were zoned for
> industry. Notwithstanding the fact that there were already objectives in
> the plan relating to promoting major industrial development on these lands,
> Kerry County Council, in the knowledge of the possible Shannon LNG
> application, proceeded to formally zone the lands by variation of the Kerry
> County Development Plan 2003-2009. While this was not absolutely necessary
> in view of the existing development plan provisions, in the interest of
> transparency and to remove any ambiguity it was decided to propose the
> variation. In accordance with the statutory requirements of the Planning &
> Development Act 2000 this variation was advertised in the public papers and
> a copy of the variation including maps was made available for public
> inspection.

>

> All statutory procedures were followed in the process at varying the County

> Development Plan. There was no breach of legislation or procedure. It is
> clear that Kerry County Council were in no way remiss in their obligations
> regarding the zoning of these lands either statutorily, procedurally or in
> giving the public opportunity to comment. The proposed variation was
> adopted by the Elected Members having considered the managers report on the
> submissions received by the council.

>
> In relation to the SEA and the fact that the Shannon LNG project was not
> assessed as part of the screening process, it is worth noting that the area
> of lands zoned for industrial development was far in excess of the land
> required for the Shannon LNG proposal. It was a variation for industrial
> rezoning and not project specific for Shannon LNG. To have considered
> Shannon LNG as part of the screening process would have involved a
> different type of specific zoning e.g. zoned specifically for a gas storage
> and importation formed. There was no guarantee that any application would
> be lodged for this purpose and Kerry County Council was not about to
> undermine the industrial potential of the land for alternative uses.

>
> All statutory procedures and guidelines were followed by the consultants in
> the preparation of the SEA screening report and the decision not to prepare
> an SEA is correct. For the reasons stated, Kerry County Council
> deliberately did not want to zone lands specifically for a gas importation
> terminal. There was no breach of procedure or otherwise.

>
>
> Can you tell me if the case before the Commercial Court been heard yet ?

>
>
> Dave Ryan

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>
> Kilcolgan Residents Association <safetybeforelng@hotmail.com> on 01/09/2008
> 13:46:19

>
> To: <david_ryan@ombudsman.gov.ie>
> cc:
> Subject: RE: Complaint on possible conflict of interest in SEA of draft
> Kerry County Development Plan (previous related reference
> L18/07/2518)

>
>
> Thank you David,

>
> I have sent the complaint to the Council already and will revert to you
> when I receive their reply.

>
> Could you forward me a copy of their letter of July 2008 in order that I
> can reply to what they now say?

>
> Kind Regards,
> Johnny

>
> Kilcolgan Residents Association
> <http://www.safetybeforelng.com>
> e-mail: safetybeforelng@hotmail.com
> Tel.: +353-87-2804474
> Address: Island View, Convent Street, Listowel, County Kerry, Ireland

>
> > Subject: Re: Complaint on possible conflict of interest in SEA of draft

> Kerry County Development Plan (previous related reference L18/07/2518)
> > To: safetybeforelng@hotmail.com
> > From: david_ryan@ombudsman.gov.ie
> > Date: Mon, 1 Sep 2008 13:12:31 +0100
> >
> >
> >
> >
> >
> > Thank you for your email which I received this morning.
> >
> > Before this Office would be in a position to examine, what you correctly
> > indicate is a new complaint ,you would need to allow the Council an
> > opportunity to respond.
> >
> > You should therefore make the complaint directly to the Council. If you
> are
> > dissatisfied with the response you may refer the matter to this Office ,
> > for consideration.
> >
> >
> > I had incidentally received a detailed further response from the Council
> > during July 2008 in which it refutes the points made in your last letter.
> > After I have had an opportunity to consider this response in detail I
> will
> > be in touch.
> >
> >
> >
> > Dave
> >



Kilcolgan Residents Association
Protecting the Shannon Estuary

Kilcolgan Residents Association
Island View
Convent Street
Listowel
County Kerry

Telephone: +353-87-2804474
Email: safetybeforelng@hotmail.com
Web: www.safetybeforelng.com

29 August 2008

David Ryan, Investigator,
The Office of the Ombudsman,
18 Lr. Leeson Street, Dublin 2

By Email to: david_ryan@ombudsman.gov.ie
c.c. ombudsman@ombudsman.gov.ie

Re: Complaint on possible conflict of interest in SEA of draft Kerry County Development Plan
(previous related reference L18/07/2518)

Dear Mr. Ryan,

We have now a new complaint to add to our original complaint reference L18/07/2518.

We have serious concerns that there is now a conflict of interest in the SEA undertaken by Fehily, Timoney and Company for the draft Kerry County Development Plan 2009-2015 as detailed in our press release of Friday August 22nd 2008 which stated the following:

“KRA raises concerns on Draft County Development Plan.

The KRA is expressing reservations about the draft Kerry County Development Plan 2009-2015 on the discovery that the Strategic Environmental Assessment (SEA) of the draft plan is being undertaken by Cork-based Fehily Timoney and Company. The KRA is concerned about possible conflicts of interest due to the company’s links with the transportation, construction and energy sectors.

The SEA is a systematic process for predicting, evaluating and mitigating, at the earliest appropriate stage, the environmental effects of a plan before it is finalised. It is effectively a seal of approval required by the council before the plan can be officially adopted.

Fehily Timoney and Co. have claimed that the development of the landbank - which includes Ireland’s first proposed LNG terminal, a top-tier Seveso II major hazardous installation - will “permanently positively impact on improving people’s quality of life based on high quality living environments, working and recreational facilities”.

Fehily Timoney and Co. who signed off on the SEA owns 50% of Fehily Timoney Ramboll.

In 2004, the Ramboll group signed a 5-year contract with US operator Amerada Hess for the engineering of upgrades on the Syd Arne oil platform off the shores of Denmark⁷⁷.

Shannon LNG is a wholly owned Irish subsidiary of Hess LNG Limited, which is a joint venture of Hess Corporation and Poten & Partners.

Fehily Timoney and Company equally boasts on its website of a client base that includes numerous players in the Irish waste management, transportation, construction and energy sectors.⁷⁸

Gerard O'Sullivan of Fehily Timoney and Co is also a former senior executive engineer in the environment section of Kerry County Council⁷⁹.

The KRA is of the opinion that, at the very least, the consultants appointed by Kerry County Council in the evaluation of the county plan should be seen to be impartial and independent because the outcome of the plan will be the enrichment of certain developers in all these sectors. It is now calling for an immediate and urgent investigation into these concerns."

In addition to the details disclosed by us in the press release, it is our understanding that Gerard O'Sullivan, the director of Fehily Timoney and Co. who signed off on the SEA, also became a director of Fehily Timoney Ramboll in 2004⁸⁰. It is also our understanding that, in 2004, the Ramboll group signed a 5-year contract with US operator Amerada Hess (known as Hess Corporation since 2006) for the engineering of upgrades on the Syd Arne oil platform off the shores of Denmark⁸¹. It is our understanding that Shannon LNG Director, Gordon Shearer, is a senior vice-president of Hess Corporation. It is our understanding that Soren Holm Johansen became a member of the executive board of the Ramboll Group⁸² and we understand that he was also, at one time, a director of Fehily Timoney Ramboll, along with Gerard O'Sullivan. We stand open to correction on these details but urge that you obtain clarification on this information as, if proved correct, it would mean that the SEA cannot be guaranteed to be independent. A new SEA would therefore have to be undertaken by a more independent body and this is what we request.

Our view is that every effort is being made to rubberstamp, retrospectively a decision to build an LNG terminal without following any nationally or internationally recognised standards of integrated planning procedures and assessments. The very least that we can expect to have is an independent strategic environmental assessment. We await your feedback on our complaint as to whether or not there is a conflict of interest and on whether or not ethics guidelines were breached in the SEA process for the draft development plan. Please find attached our full submission to the draft County Development Plan for your information.

⁷⁷ <http://www.offshorecenter.dk/log/nyhedsbreve/On%20off%204-5.pdf> ,
http://www.ramboll.com/about%20us/financialinformation/~media/Files/RGR/Documents/Finance/AnnualReport/Annual_report_2004.ashx page 19

⁷⁸ <http://www.fehilytimoney.ie/>

⁷⁹ <http://ireland.iol.ie/kerrycco/staffing.html>

⁸⁰ Fehily Timoney Ramboll Company Number 389916

⁸¹ <http://www.offshorecenter.dk/log/nyhedsbreve/On%20off%204-5.pdf> ,
http://www.ramboll.com/about%20us/financialinformation/~media/Files/RGR/Documents/Finance/AnnualReport/Annual_report_2004.ashx page 19

⁸² <http://www.ramboll.com/search.aspx?q=soren%20holm%20johansen>

Yours sincerely,
Johnny McElligott



Kilcolgan Residents Association
Protecting the Shannon Estuary

Kilcolgan Residents Association
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Convent Street
Listowel
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Ireland

Telephone: 068-23730
Mob: 087-2804474
Mob 086-6887402
Email: Kilcolgan@gmail.com

16 April 2008

Your Reference : L18/07/2518

By Email only to david_ryan@ombudsman.gov.ie

Dear Mr. Ryan,

Thank you for your letter dated April 3rd 2008 outlining Kerry County Council's response to our complaint.

Before you make your final decision please note that we consider the Council's response as one written with the express intention of attempting to mislead the Ombudsman's Office by the use of half truths and downright lies which we can prove incorrect with a corroborating paper trail.

Please find below our replies to Kerry County Council's answers to the questions you asked them highlighted below each answer below between the points "**KRA Response Start**" to "**KRA Response End**".

We await your feedback which we need for an appeal to be sent to An Bord Pleanala before April 28th, 2008.

Yours sincerely,
Johnny McElligott

Our Reference : L18/07/2518
3 April 2008

Mr John McElligott
Kilcolgan Residents Association
Island View
5 Convent Street
Listowel
Co Kerry

Dear Mr. McElligott

I refer to previous correspondence, and your recent telephone conversations with both myself and my colleague, Ms. Aimee Tallon, in connection with your complaint to this Office regarding Kerry County Council's decision not to carry out a Strategic Environmental Assessment (SEA) in relation to Variation No. 7 of the Kerry County Development Plan relating to the rezoning of 188.8 hectares of land at Ballylongford.

The Council's Report

Following receipt of your complaint this Office requested and received a report on the matter from Kerry County Council. The following is the Council's position on the matter. I have set out in bold type the questions the Council was requested to address:

1. The Background to this case:

The lands in question are located between Tarbert and Ballylongford in North Kerry. The site is bordered to the North by the Shannon Estuary and to the South by the coast road connecting Tarbert to Ballylongford. The area is rural in nature and the site is currently in pasture with some wet lands adjacent to the Shannon Estuary. The lands and adjacent lands have been owned for a number of years by Shannon Development/IDA. There is a considerable landbank to the East owned previously by Aran Energy on which planning permission was granted over 20 years ago for an oil refinery tank farm and marine terminal. The lands have long been identified as a strategic location for large scale industrial type development which would take advantage of the deep water available and the sheltered nature of the Estuary. The Kerry County Development Plans 1989 and 1996 identified the site and adjacent lands for industrial use. The current Kerry County Development Plan 2003-2009, which was adopted in November 2003, includes an objective EC02-6 to "identify lands in key strategic locations that are particularly suitable for development that may be required by specific sectors. Land in such locations will form part of a strategic reserve that

will be protected from inappropriate development that would prejudice its long term development for these uses".

KRA RESPONSE Start

The **full** stated purpose of the variation was as follows:

“The purpose of the variation is to facilitate consideration of suitable development of these lands in accordance with the provisions of section 5.2.9 of the Kerry County Development Plan 2003-2009 which states: ‘lands have been identified at Ballylongford/Tarbert as suitable for development as a premier deep-water port and for major industrial development and employment creation’. The adoption of this variation gives effect to objective ECO 5-5 of the Kerry County Development Plan 2003-2009 which states: ‘It is an objective of Kerry County Council to identify lands in key strategic locations that are particularly suitable for development that may be required by specific sectors. Land in such locations will form part of a strategic reserve that will be protected from inappropriate development that would prejudice its long-term development for these uses.’”⁸³

The An Bord Pleanála’s Inspector’s Report on the proposed LNG terminal at the site granted permission through the new fast track planning laws of the Strategic Infrastructure Act 2006 clearly stated:

Overall, it is difficult to avoid the suspicion, as in the case of many other site selection processes that the entire process has been retrospective, rather than having been carried out from first principles. ⁸⁴

KRA RESPONSE End

In early 2006, Kerry County Council received preliminary enquiries from Shannon LNG regarding the possibility of locating a Liquefied Natural Gas (LNG) import terminal and re-gasification plant on part of these lands. Formal pre-planning discussions commenced in June, 2006 and continued until the enactment of the Planning and Development (Strategic Infrastructure) Act 2006 when it became apparent that this application would probably come within the remit of that Act. The variation of the County Development Plan must be considered in this context. However, at the time of the variation no application for such a development had been lodged. In proposing the variation Kerry County Council had to be cognisant of the possibility that the project might not proceed to application stage and the proposed variation for industrial zoning could not therefore be assessed on a project specific basis.

KRA RESPONSE Start

It was known at the time of the report that Shannon LNG had an option to buy the lands subject to planning permission for the LNG terminal with the serious

⁸³ County Manager’s report on proposed variation No 7 to the Kerry County Development Plan 2003 -2009 (dated March 8th 2007) submitted to the Ombudsman’s office on November 19th 2007

⁸⁴ An Bord Pleanála Inspector’s Report into the Liquefied Natural Gas (LNG) regasification terminal on the southern shore of the Shannon Estuary in the townlands of Ralappane & Kilcolgan Lower, County Kerry Reference PA0002 c.f. <http://www.pleanala.ie/casenum/PA0002.htm>

consequential effects on the environment as detailed above. Indeed, An Bord Pleanála formally wrote to the County Manager on February 7th, 2007 notifying them of Shannon LNG's request for pre-application consultations under the planning and Development (Strategic Infrastructure) Act 2006 for an LNG terminal on the said site.

This was not a preliminary, speculative request for information but a formal application to bypass Kerry County Council and apply directly for permission from An Bord Pleanála through the new Strategic Infrastructure Act 2006 reference PC0002.⁸⁵ Therefore it is incorrect for Kerry County Council to state that "at the time of the variation no application for such a development had been lodged" because the statutory body An Bord Pleanála had informed the Council on February 7th, 2007 that formal obligatory consultations had become for an LNG terminal on the site. The County Manager's Report⁸⁶ made its conclusions following the SEA screening report on March 8th 2007, which was one month after being informed by An Bord Pleanála that a formal application had been lodged for an LNG terminal on February 7th, 2007.

The Board Pleanála's Inspector's report on the LNG applications outlined this statutory obligation:

"Pre-application discussions were held with the Board under section 37B of the Act of 2000, as amended by the Act of 2006. On 11th September 2007, the Board served notice under section 37B(4)(a) that it was of the opinion that the proposed development would fall within the scope of paragraphs 37A(2)(a) and (c) of the Act, i.e. it would be of strategic economic or social importance to the State or the region in which it would be situate and it would have a significant affect on the area of more than one planning authority."⁸⁷

KRA RESPONSE End

2. The Councils comments on Mr. McElligott's claim that the screening process was inadequate as it did not refer to the option of Shannon LNG to purchase the site subject to planning permission.

The Council is satisfied that the screening process undertaken accords in full with the criteria set out in Schedule 2(a) of the Planning & Development (Strategic Environmental Assessment) Regulations (S.1 No. 436 of 2004). This scoping exercise was carried out by independent consultants RPS Planning and Environmental Ltd. on behalf of the Council. The Screening Report concluded that "the policy and objectives contained within

⁸⁵ An Bord Pleanála case reference PL08. PC0002 Pre-application consultation lodged 06/07/2007 and deemed Strategic Infrastructure Development on 07/09/2007 c.f. <http://www.pleanala.ie/casenum/PC0002.htm>

⁸⁶ Kerry County Manager's Report on Variation no. 7 to the Kerry County Development 2003-2009 of March 8th 2007

⁸⁷ An Bord Pleanála Inspector's Report into the Liquefied Natural Gas (LNG) regasification terminal on the southern shore of the Shannon Estuary in the townlands of Ralappane & Kilcolgan Lower, County Kerry Reference PA0002 c.f. <http://www.pleanala.ie/casenum/PA0002.htm>

the Kerry County Development Plan 2003-2009 will ensure the appropriate assessment of any proposed developments on the lands so as to prevent any adverse effect. The nature of the proposed variation is considered to be

relatively minor. Therefore, it does not appear that there is a need for a Strategic Environmental Assessment (SEA) in this instance as the proposed variation is unlikely to result in development which would have significant effect on the environment".

This assessment must be viewed in the context of the lands already being identified in the County Development Plan 2003-2009 for major industrial development.

KRA RESPONSE Start

This response by Kerry County Council does not address the central point here that the screening report did not consider the Shannon LNG option to purchase the land subject to planning permission for an LNG terminal which Shannon LNG admitted would be an establishment to which SEVESO regulations would apply⁸⁸ in May 2006 – a date at least six months prior to the screening report being undertaken in November 2006.

KRA RESPONSE End

3. The Council's comments on Mr. McElligott's claim that the developments proposed for this site, a weather station and petroleum storage installation will have a significant effect on the environment. He states that 10 hectares of the development proposed for the estuary itself is partially in a SAC area.

The comments of Mr. McElligott, that the proposed development of this site will have significant effect on the environment, is a matter to be considered in the context of any planning application. In this regard there is an application for consent currently before An Bord Pleanála under the Planning & Development (Strategic Infrastructure) Act, 2006 which has been the subject of an eight day oral hearing which commenced on 21 January 2008 and concluded on 30 January, 2008. This application was accompanied by an Environmental Impact Statement (EIS) which has assessed the environmental effects of the proposed development. In addition no portion of the application proposed is located within an area designated as a Special Area of Conservation (SAC). Neither was any land located in the SAC zoned industrial by the variation (No. 7).

KRA RESPONSE Start

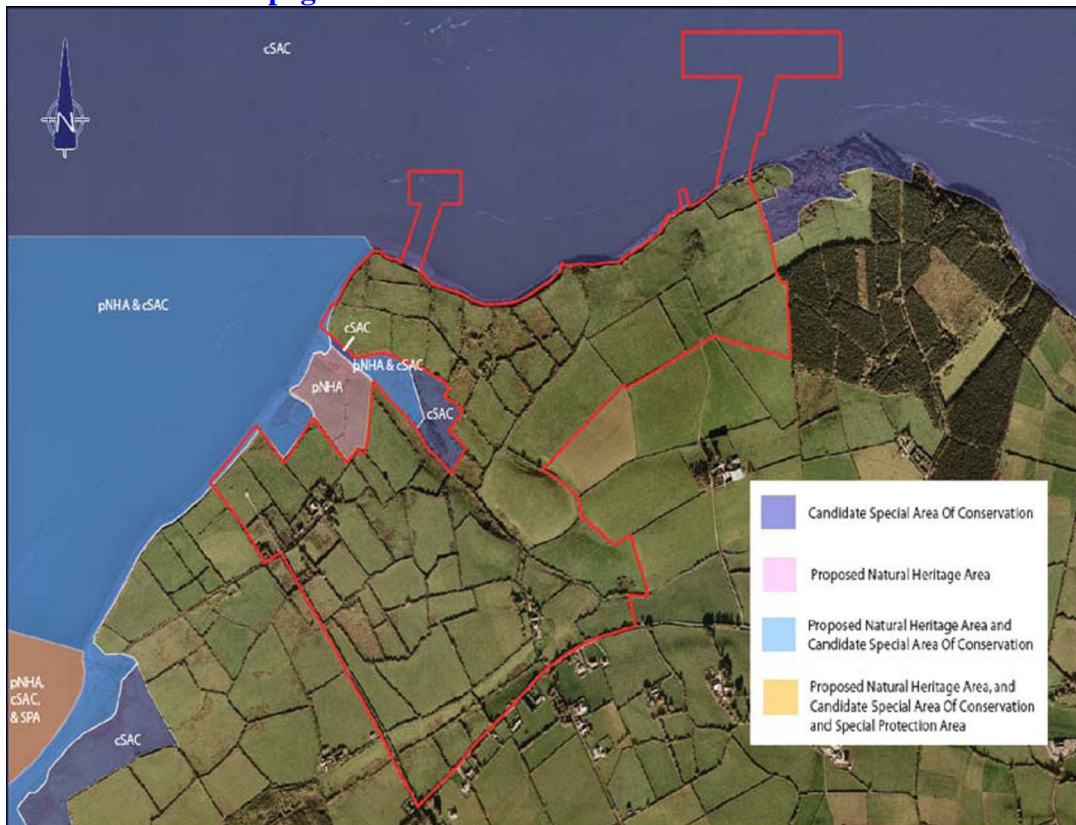
An EIS is not an SEA. An SEA is obliged to be undertaken by the council when a variation to the development plan is likely to have an effect on the environment. An SEA is required for a variation to the development plan under Statutory Instrument No

⁸⁸ Shannon LNG booklet May 2006 page 7 submitted to the Ombudsman's Office on November 19th 2007 c.f. <http://www.shannonlngplanning.ie/files/Newsletters/Issue1.pdf>

436 of 2004 Article 7 section 13K and article 12 schedule 2A of the same Statutory Instrument⁸⁹ where there will be a significant effect on the environment.

The EIS was carried out by the applicant but should not be considered as a replacement for an SEA.

10 hectares of the proposed LNG development are for building 2 jetties and completing dredging works and ALL of these 10 hectares are on SAC waters. In addition the site surrounds and is surrounded by SAC, NHA and SPA land and water subject to Irish and European Environmental protection legislation. This is seen clearly on the map of the Environmental Designated Areas in the Shannon LNG EIS volume 1 page 2.⁹⁰



KRA RESPONSE End

4. The Council's comments on Mr. McElligott's complaint that the Council failed to take account of the developments proposed for this site when carrying out the SEA screening process.

The Planning Authority does not accept that the Council failed to take into account the development proposed for the site in carrying out the SEA

⁸⁹ C.f. <http://www.irishstatutebook.ie/2004/en/si/0436.html#article12> Planning and Development (Strategic Environmental Assessment) Regulations 2004

⁹⁰ Shannon LNG Terminal EIS volume 1 page 2 submitted to the Ombudsman's Office on November 19th 2007 c.f.

http://www.shannonlngplanning.ie/files/EIS/ShannonLNG_Terminal_EIS_Vol_1_of_4_Issue1.pdf

screening process. As indicated earlier these lands were always intended for industrial development.

KRA RESPONSE Start

The proposed LNG terminal was not even mentioned in the Screening Report as a development likely to happen, even though it was in the public domain for 6 months and the lands had been purchased by Shannon LNG subject to planning permission for an LNG terminal. A Seveso site is by its very definition a

dangerous site subject to the Seveso Directive. This was deliberately omitted because it would have required an SEA to be undertaken.

The lands were not zoned industrial at the time of the variation in March 2007 – rather they were zoned ‘Rural General’ and ‘Secondary Special Amenity’⁹¹
KRA RESPONSE End

5. The Council's comments on Mr. McElligott's claim that the SEA was required in this case because the waters of the lower Shannon are in a candidate SAC, and protected under the EU Habitats Directive.

Following the preparation of the screening report it was forwarded to the Department of the Environment Heritage and Local Government, the Department of Communication, Marine and Natural Resources and the Environmental Protection Agency for their observation. The observations received were further considered by our consultants. Following their further consideration the Planning Authority determined that a Strategic Environmental Assessment was not necessary for the proposed variation.

KRA RESPONSE Start

No copies of these replies have been submitted to the Ombudsman's Office. The EPA⁹² and Clare County Council⁹³ could not confirm receipt of the SEA screening Report.

KRA RESPONSE End

Furthermore in this regard the Planning Authority was satisfied that any significant environmental issue arising from any development on the lands would be resolved through Environmental Impact Assessment Legislation as an EIS would be required for any project or development which exceeds the specified threshold under Part 10 of the Planning and Development Act 2000, and Schedule 5 Part 2.12 of the Planning & Development Regulations 2001.

KRA RESPONSE Start

Again, a future possible EIS does not negate the need for an SEA as they are 2 different processes with different rationale.

KRA RESPONSE End

Accordingly the Planning Authority decided to proceed with the proposed Variation.

⁹¹ Kerry County Manager's Report on Variation no. 7 to the Kerry County Development 2003-2009 of March 8th 2007 Page 1, submitted to the Ombudsman's Office on November 19th 2007

⁹² Email communication with Kerry County Council submitted to the Ombudsman's Office on November 19th 2007 as attachment 8

⁹³ Email confirmation by John Bradley of Clare County Council forwarded to the Ombudsman's office on November 21st 2007

6. The Council's comments on Mr. McElligott's complaint that the screening report did not take into account the concerns raised by Clare

County Council about the impact that the construction of a deep water harbour would have on both the visual and the ecological amenities of the area and potentially on the Lower Shannon Estuarine Environment.

The concerns of Clare County Council were raised in the context of the proposed variation to the County Development Plan and not the Screening Report which was completed prior to the publication to the variation as required by legislation.

KRA RESPONSE Start

Again, Clare County Council⁹⁴ could not confirm receipt of the SEA screening Report and the concerns raised by Clare County Council in its objection to the variation⁹⁵ highlighted the fact that the variation would have serious impacts on another council area when it stated:

“the proposed rezoning is likely to have a significant impact on the future development of the region, and will have a direct impact on the planned objectives for the Mid West Regional guidelines for the Shannon Estuary and in particular the Planning, Economic and Service Infrastructural development objectives for zone 5 of the plan. Any industrial development including the construction of a deepwater harbour will have a major impact on both the visual and ecological amenities of the area, and potentially on the Lower Shannon Estuarine Environment, including the foreshore of County Clare. Clare County Council would like an appraisal of any SEA investigation which may have been undertaken in respect of the proposed variation”.

KRA RESPONSE End

7. Mr. McElligott maintains that the ecological sensitivity of this area was recognised in the Kerry County Development Plan by declaring Ballylongford Bay and Tarbert Bay areas of ecological importance but that this was not taken into account in the screening process and I would appreciate your comments on this matter.

All matters, including the ecological sensitivity of the area were taken into account.

KRA RESPONSE Start

As the area was already recognised in the County Development Plan as being ecologically sensitive then an SEA had automatically to be undertaken⁹⁶

KRA RESPONSE End

8. Mr. McElligott also maintains that the Department of the Environment and Local Government guidelines in relation to SEA screening have not been adhered to as the site in question is a Seveso 2 site surrounded by SAC and

⁹⁴ Email confirmation by John Bradley of Clare County Council forwarded to the Ombudsman's office on November 21st 2007

⁹⁵ Kerry County Manager's Report on Variation no. 7 to the Kerry County Development 2003-2009 of March 8th 2007 Page 1. submitted to the Ombudsman's Office on November 19th 2007

⁹⁶ <http://www.irishstatutebook.ie/2004/en/si/0436.html#article12> Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I No 436 of 2004)

NHA areas and I would be obliged for your comments in relation to this matter.

The Planning Authority is satisfied that the Department of the Environment

and Local Government Guidelines in relation to SEA screening was fully complied with. The Seveso 2 regulations refer to development taking place and not to the lands. As no application was lodged at the time of the variation the question of a Seveso 2 site did not arise (see response to 1 above).

KRA RESPONSE Start

The criteria for determining whether a variation to a development plan requires an SEA is clearly defined in Schedule 2A of the Planning and Development (Strategic Environmental Assessment) Regulations 2004⁹⁷. Seveso sites by their definition are dangerous and subject to the SEVESO Major Accidents Directive and as such fall under Schedule 2A (2) (the risks to human health or the environment (e.g. due to accidents). The full Schedule 2A reads as follows and underlines how an LNG terminal will have a significant effect on the environment and therefore require an SEA:

“SCHEDULE 2A

Criteria for determining whether a plan is likely to have significant effects on the environment

Articles 13A, 13K and 14A

1. The characteristics of the plan having regard, in particular, to:

- the degree to which the plan sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,**
- the degree to which the plan influences other plans, including those in a hierarchy,**
- the relevance of the plan for the integration of environmental considerations in particular with a view to promoting sustainable development,**
- environmental problems relevant to the plan,**
- the relevance of the plan for the implementation of European Union legislation on the environment (e.g. plans linked to waste-management or water protection).**

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to:

⁹⁷ C.f. <http://www.irishstatutebook.ie/2004/en/si/0436.html#article12> Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I No 436 of 2004)

- the probability, duration, frequency and reversibility of the effects,
- the cumulative nature of the effects,
- the transboundary nature of the effects,
- the risks to human health or the environment (e.g. due to accidents),
- the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected).
- the value and vulnerability of the area likely to be affected due to:
 - (a) special natural characteristics or cultural heritage,
 - (b) exceeded environmental quality standards or limit values,
 - (c) intensive land-use,
- the effects on areas or landscapes which have a recognised national, European Union or international protection status.

KRA RESPONSE End

9. Mr. McElligott has queried if the consultants employed by the Council to carry out the screening report were fully appraised of Shannon LNG's proposals for the site. I would be obliged for your comments on this matter.

The consultants employed by the Council to carry out the screening report were aware that the proposed variation was to provide for industrial development on these lands in the context of the Kerry County Development Plan and the fact that the lands in question have been identified for major marine based industrial development for almost 50 years. Kerry County Council is unaware as to whether or not the consultants were aware of the LNG proposal as it was in the public arena at that time.

KRA RESPONSE Start

The Ombudsman's Office has the power to inquire directly of the Consultants if they were aware of the proposed LNG terminal. A "deepwater port facility" is not a Seveso II top tier development and therefore would have different impacts on the environment. The land was being rezoned specifically for the LNG plant - land required by the LNG terminal on which an option to purchase subject to planning permission existed.

KRA RESPONSE End

10. Detail the reasons why the Council employed the services of a consultant to carry out the SEA screening process in such a case.

The Council employed the services of consultants to carry out the SEA screening process as it did not have the necessary resources available at that time to carry out the work.

KRA RESPONSE Start

It would be helpful if the Ombudsman requested all internal emails and memos from the council on this matter and all external communications with the consultants to determine the criteria and issues discussed to avoid an SEA being undertaken.

KRA RESPONSE End

11. Confirm that a copy of the SEA Screening Report was sent to all relevant environmental authorities which it consulted.

The Council confirms that a copy of the SEA screening report was sent to all relevant Environmental Authorities.

KRA RESPONSE Start

Again, no copies of these communications with all the relevant environmental authorities have been submitted to the Ombudsman's Office and the Ombudsman's office has the power to request this information.

The EPA⁹⁸ and Clare County Council⁹⁹ could not confirm receipt of the SEA screening Report.

KRA RESPONSE End

12. The Council's comments on Mr. McElligott's complaint in respect of the information which was requested concerning the Council's visit to the LNG terminal in Boston.

The information sought by Mr. McElligott in relation to the Council visit to an LNG terminal in Boston is the subject of an Freedom of Information (FOI) request at present and is being dealt with.

KRA RESPONSE Start

Again, no copies of these communications with all the relevant environmental authorities have been submitted to the Ombudsman's Office and the Ombudsman's office has the power to request this information.

The cost of the trip amounted to 5,786.00 Euros (4160.00 Euros for flights and 1,626 Euros for accommodation).

⁹⁸ Email communication with Kerry County Council submitted to the Ombudsman's Office on November 19th 2007 as attachment 8

⁹⁹ Email confirmation by John Bradley of Clare County Council forwarded to the Ombudsman's office on November 21st 2007

They went on Tuesday the 19th June 2007 and 3 of them returned on 23rd of June and the last one on 24th June. They also claimed 3,092.05 Euros in expenses. 8,878.05 was the total cost of the trip. This proves that the LNG terminal development was being taken seriously by the council and that all rezoning was retrospective to accommodate the planning application by Shannon LNG.
KRA RESPONSE End

13. Other information which may assist the Ombudsman in the examination of this complaint.

The Planning Authority would like to draw the Ombudsman's attention to the provisions of Section 50 of the Planning & Development Act 2000, as amended, which provides that "any decision made or other Act done" by, inter alia, a Planning Authority in the performance of a function under the 2000 Act, may only be challenged by application for leave to apply for judicial review within an eight week period of the decision or act.

Consequently, as the decision of Kerry County Council to adopt Variation No. 7 to the Development Plan was a decision made or act done in performance of a function under Section 13 of the 2000 Act, it could only have been challenged within an eight week period commencing on the day of adoption of the Variation No. 7, in March, 2007. As no such challenge was instituted within that period, it is submitted that Variation No. 7 is a valid variation to the Kerry County Development Plan.

KRA RESPONSE Start

The Ballylongford Screening report¹⁰⁰ makes no mention of Shannon LNG having an option to purchase land on the site subject to planning permission for an LNG terminal, even though this was known since at least May 2006 and that this was already discussed in the Kerry County Council meeting of 19 June 2006¹⁰¹ as follows:

"20. Establishment of a committee to deal with infrastructural development and Planning issues relating to the Ballylongford Land Bank Pursuant to notice duly given Cllr. J. Brassil proposed:-

"In light of the major announcement made by Minister Micheal Martin regarding the development of the Shannon Development owned Ballylongford land bank that Kerry County Council put a team of people together to specifically deal with the infrastructure development and planning issues that will be associated with this project."

Mr. C. O'Sullivan, SEO Corporate Services read the following report:-

The Ministers announcement in relation to the proposals for Ballylongford is to be welcomed. Preplanning discussion with Shannon LNG will shortly commence. The necessary planning and infrastructure teams will be put in place as discussions develop more fully the particular project proposal and the needs of the Ballylongford Land Bank

¹⁰⁰ Strategic Environmental Assessment Screening Report – Kerry County Council Development Plan 2003-2009 Proposed Variation – November 2006 submitted to the Ombudsman's office on November 19th 2007.

¹⁰¹ Minutes of June 19th 2006 Meeting of Kerry County Council -
<http://www.kerrycoco.ie/minutedocs/Item%202b%20Ordinary%20Minutes%20June%202006.pdf>

generally. Project progress will be overseen by Sub Committee of Senior Management Team. The situation will be kept under review as the project progresses.

Cllr. J. Brassil welcomed the report and said that this has the potential to be a huge project for North Kerry and he called on the Executive to give it every support.

Cllr. L. Purtill welcomed the recent announcement for the development of part of Ballylongford Land Bank and supported **Cllr. Brassil's** motion.“

Conclusion

We are not asking here if we can challenge the variation to the county development plan. We are complaining that the correct procedures were not

followed in that no SEA was undertaken as was required pursuant to Article 13k Planning And Development (Strategic Environmental Assessment) Regulations 2004.

We cannot challenge a valid variation but our assertion is that the variation was not valid in the first place due to a serious and deliberate breach of procedure at Kerry County Council to its benefit and to the detriment of the whole of North Kerry.

We politely request that the Ombudsman's Office determines the complete truth behind this variation and rezoning and suggest that it uses its full powers of investigation and seizure if it serious doubts remain.

KRA RESPONSE End

As mentioned in our telephone conversation it may be some time before I have an opportunity to consider, in detail, the material that you have submitted in relation to the complaint. My preliminary assessment of the complaint would however be that the Council has acted in accordance with the statutory requirements and that the project will be subject to consideration at An Bord Pleanála. This Office's role, as mentioned is confined to examining the administrative actions of the bodies concerned. In this context, while you are very welcome to comment on the details of the Council's reply the final decision in relation to this project will, as I realise you are aware, be taken in another forum.

Yours sincerely

David Ryan
Investigator

Our Reference : L18/07/2518
3 April 2008

Mr John McElligott
Kilcolgan Residents Association
Island View
5 Convent Street
Listowel
Co Kerry

Dear Mr. McElligott

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1. The Background to this case:

The lands in question are located between Tarbert and Ballylongford in North Kerry. The site is bordered to the North by the Shannon Estuary and to the South by the coast road connecting Tarbert to Ballylongford. The area is rural in nature and the site is currently in pasture with some wet lands adjacent to the Shannon Estuary. The lands and adjacent lands have been owned for a number of years by Shannon Development/IDA. There is a considerable landbank to the East owned previously by Aran Energy on which planning permission was granted over 20 years ago for an oil refinery tank farm and marine terminal. The lands have long been identified as a strategic location for large scale industrial type development which would take advantage of the deep water available and the sheltered nature of the Estuary. The Kerry County Development Plans 1989 and 1996 identified the site and adjacent lands for industrial use. The current Kerry County Development Plan 2003-2009, which was adopted in November 2003, includes an objective EC02-6 to "identify lands in key strategic locations that are particularly suitable for development that may be required by specific sectors. Land in such locations will form part of a strategic reserve that

will be protected from inappropriate development that would prejudice its long term development for these uses".

In early 2006, Kerry County Council received preliminary enquiries from Shannon LNG regarding the possibility of locating a Liquefied Natural Gas (LNG) import terminal and re-gasification plant on part of these lands. Formal pre-planning discussions commenced in June, 2006 and continued until the enactment of the Planning and Development (Strategic Infrastructure) Act 2006 when it became apparent that this application would probably come within the remit of that Act. The variation of the County Development Plan must be considered in this context. However, at the time of the variation no application for such a development had been lodged. In proposing the variation Kerry County Council had to be cognisant of the possibility that the project might not proceed to application stage and the proposed variation for industrial zoning could not therefore be assessed on a project specific basis.

2. The Council's comments on Mr. McElligott's claim that the screening process was inadequate as it did not refer to the option of Shannon LNG to purchase the site subject to planning permission.

The Council is satisfied that the screening process undertaken accords in full with the criteria set out in Schedule 2(a) of the Planning & Development (Strategic Environmental Assessment) Regulations (S.I. No. 436 of 2004). This scoping exercise was carried out by independent consultants RPS Planning and Environmental Ltd. on behalf of the Council. The Screening Report concluded that "the policy and objectives contained within the Kerry County Development Plan 2003-2009 will ensure the appropriate assessment of any proposed developments on the lands so as to prevent any adverse effect. The nature of the proposed variation is considered to be relatively minor. Therefore, it does not appear that there is a need for a Strategic Environmental Assessment (SEA) in this instance as the proposed variation is unlikely to result in development which would have significant effect on the environment".

This assessment must be viewed in the context of the lands already being identified in the County Development Plan 2003-2009 for major industrial development.

3. The Council's comments on Mr. McElligott's claim that the developments proposed for this site, a weather station and petroleum storage installation will have a significant effect on the environment. He states that 10 hectares of the development proposed for the estuary itself is partially in a SAC area.

The comments of Mr. McElligott, that the proposed development of this site will have significant effect on the environment, is a matter to be considered in the context of any planning application. In this regard there is an application for consent currently before An Bord Pleanála under the Planning & Development (Strategic Infrastructure) Act, 2006 which has

been the subject of an eight day oral hearing which commenced on 21 January 2008 and concluded on 30 January, 2008. This application was accompanied by an Environmental Impact Statement (EIS) which has assessed the environmental effects of the proposed development. In addition no portion of the application proposed is located within an area designated as a Special Area of Conservation (SAC). Neither was any land located in the SAC zoned industrial by the variation (No. 7).

4. The Council's comments on Mr. McElligott's complaint that the Council failed to take account of the developments proposed for this site when carrying out the SEA screening process.

The Planning Authority does not accept that the Council failed to take into account the development proposed for the site in carrying out the SEA screening process. As indicated earlier these lands were always intended for industrial development.

5. The Council's comments on Mr. McElligott's claim that the SEA was required in this case because the waters of the lower Shannon are in a candidate SAC, and protected under the EU Habitats Directive.

Following the preparation of the screening report it was forwarded to the Department of the Environment Heritage and Local Government, the Department of Communication, Marine and Natural Resources and the Environmental Protection Agency for their observation. The observations received were further considered by our consultants. Following their further consideration the Planning Authority determined that a Strategic Environmental Assessment was not necessary for the proposed variation.

Furthermore in this regard the Planning Authority was satisfied that any significant environmental issue arising from any development on the lands would be resolved through Environmental Impact Assessment Legislation as an EIS would be required for any project or development which exceeds the specified threshold under Part 10 of the Planning and Development Act 2000, and Schedule 5 Part 2.12 of the Planning & Development Regulations 2001.

Accordingly the Planning Authority decided to proceed with the proposed Variation.

6. The Council's comments on Mr. McElligott's complaint that the screening report did not take into account the concerns raised by Clare County Council about the impact that the construction of a deep water harbour would have on both the visual and the ecological amenities of the area and potentially on the Lower Shannon Estuarine Environment.

The concerns of Clare County Council were raised in the context of the proposed variation to the County Development Plan and not the Screening

Report which was completed prior to the publication to the variation as required by legislation.

7. Mr. McElligott maintains that the ecological sensitivity of this area was recognised in the Kerry County Development Plan by declaring Ballylongford Bay and Tarbert Bay areas of ecological importance but that this was not taken into account in the screening process and I would appreciate your comments on this matter.

All matters, including the ecological sensitivity of the area were taken into account.

8. Mr. McElligott also maintains that the Department of the Environment and Local Government guidelines in relation to SEA screening have not been adhered to as the site in question is a Seveso 2 site surrounded by SAC and NHA areas and I would be obliged for your comments in relation to this matter.

The Planning Authority is satisfied that the Department of the Environment and Local Government Guidelines in relation to SEA screening was fully complied with. The Seveso 2 regulations refer to development taking place and not to the lands. As no application was lodged at the time of the variation the question of a Seveso 2 site did not arise (see response to 1 above).

9. Mr. McElligott has queried if the consultants employed by the Council to carry out the screening report were fully appraised of Shannon LNG's proposals for the site. I would be obliged for your comments on this matter.

The consultants employed by the Council to carry out the screening report were aware that the proposed variation was to provide for industrial development on these lands in the context of the Kerry County Development Plan and the fact that the lands in question have been identified for major marine based industrial development for almost 50 years. Kerry County Council is unaware as to whether or not the consultants were aware of the LNG proposal as it was in the public arena at that time.

10. Detail the reasons why the Council employed the services of a consultant to carry out the SEA screening process in such a case.

The Council employed the services of consultants to carry out the SEA screening process as it did not have the necessary resources available at that time to carry out the work.

11. Confirm that a copy of the SEA Screening Report was sent to all relevant environmental authorities which it consulted.

The Council confirms that a copy of the SEA screening report was sent to all relevant Environmental Authorities.

12. The Council's comments on Mr. McElligott's complaint in respect of the information which was requested concerning the Council's visit to the LNG terminal in Boston.

The information sought by Mr. McElligott in relation to the Council visit to an LNG terminal in Boston is the subject of an Freedom of Information (FOI) request at present and is being dealt with.

13. Other information which may assist the Ombudsman in the examination of this complaint.

The Planning Authority would like to draw the Ombudsman's attention to the provisions of Section 50 of the Planning & Development Act 2000, as amended, which provides that "any decision made or other Act done" by, inter alia, a Planning Authority in the performance of a function under the 2000 Act, may only be challenged by application for leave to apply for judicial review within an eight week period of the decision or act.

Consequently, as the decision of Kerry County Council to adopt Variation No. 7 to the Development Plan was a decision made or act done in performance of a function under Section 13 of the 2000 Act, it could only have been challenged within an eight week period commencing on the day of adoption of the Variation No. 7, in March, 2007. As no such challenge was instituted within that period, it is submitted that Variation No. 7 is a valid variation to the Kerry County Development Plan.

As mentioned in our telephone conversation it may be some time before I have an opportunity to consider, in detail, the material that you have submitted in relation to the complaint. My preliminary assessment of the complaint would however be that the Council has acted in accordance with the statutory requirements and that the project will be subject to consideration at An Bord Pleanála. This Office's role, as mentioned is confined to examining the administrative actions of the bodies concerned. In this context, while you are very welcome to comment on the details of the Council's reply the final decision in relation to this project will, as I realise you are aware, be taken in another forum.

Yours sincerely

David Ryan
Investigator

From: McElligott, John
Sent: 14 December 2007 15:50
To: 'aimee_tallon@ombudsman.gov.ie'
Subject: Complaint concerning refusal to carry out an SEA on variation No 7 of 2007:

Kilcolgan Residents Association
c/o Johnny McElligott
Island View,
5 Convent Street,
Listowel,
County Kerry
safetybeforelng@hotmail.com
Tel: (087) 2804474

13th December 2007

Aimee Tallon,
The Office of the Ombudsman,
18 Lr. Leeson Street, Dublin 2
Sent via email only to:
aimee_tallon@ombudsman.gov.ie

Dear Ms. Tallon,

I understand from my conversation with you during the week that you are the person from the Ombudsman's Office dealing with our complaint of a breach of procedure by Kerry County Council in its refusal to carry out an SEA on variation No. 7 of 2007.

We are of the opinion, as already stated, that this refusal was motivated by the aim of allowing Shannon LNG proceed with the new fast-track planning application now before An Bord Pleanala, to the detriment of the environment and safety of nearby residents.

Shannon LNG had talks with the council before the SEA screening report was undertaken by "outside consultants".

Further new information has come to light which we believe relevant to this complaint.

4 Council employees went on a trip to Boston to visit an LNG there (the Everett LNG terminal we believe).

The LNG trip to Boston was paid for by the council (see mails below confirming this from Kerry County Council) but no formal report was written up.

We find it amazing that there is such a lack of accountability from Kerry County Council on a trip that has such huge implications for the residents adjacent to the landbank.

We are seriously concerned that no report was done on the Boston trip, considering it concerns the construction of a top-tier Seveso 2 hazardous chemicals installation on the landbank in Tarbert.

We feel that the answers to the questions we asked were highly flippant as they did not deal with the fact that planning permission in Boston was more lax 40 years ago. Neither did the account from the trip cover significant areas such as the environmental impacts, the safety issues and the high cost of security force surveillance of each LNG tanker delivery into this LNG terminal at Everett. LNG tankers have to go past downtown Boston to reach the terminal, making it one of the most dangerous LNG terminals on the planet due to the consequences of a major accident there. A quick google search on the internet of the Everett terminal reveals many of these issues in a couple of minutes of basic research so these issues should have been raised on any fact-finding mission to Boston if the trip was to have any credibility.

As the trip of the 4 officials was paid for by the council (and therefore by the tax payers) this raises serious questions of accountability. Their findings were used as the basis of their informed opinion on the proposed LNG terminal proposed in Tarbert and we question their motivation in not even writing up a report on it. When did they go on the trip? How long did they stay there? Who organized the trip to the lng terminal? Did they go on other official council business to Boston? Is it normal for 4 Council members to go on official council trips to Boston and not even write a report? What was their brief before going on the trip? Who else went with them? We need to know if Shannon LNG had any input into this trip and the visit to the Everett LNG terminal. Council employees must act in a transparent manner at all times and must not be compromised in any way in planning applications and we require urgent answers to our request for more detailed information on this "trip to Boston".

These questions are very serious as the council is already the subject of an official complaint to the Ombudsman's Office over its refusal to undertake a Strategic Environmental Assessment when the land was being rezoned from Rural General to Industrial in March of this year. The Kilcolgan Residents Association feels that shortcuts were taken to speed up the planning application for a dangerous LNG terminal, putting their lives and environment in danger in the interests of fast-track planning. We also believe that the groundwork for refusing to undertake an SEA was laid in this trip to Boston and therefore we need full disclosure of all the facts surrounding this visit.

Yours sincerely,
Johnny McElligott

Johnny McElligott

Kilcolgan Residents Association

<http://www.safetybeforelng.com>

e-mail: John.McElligott@cw.com

Tel.: +353-87-2804474

Address: Island View, Convent Street, Listowel, County Kerry, Ireland.

Kind Regards,
Johnny

From: Lorainne Sheehan [mailto:lsheehan@kerrycoco.ie]
Sent: 11 December 2007 12:44
To: catrionagriffin068@eircom.net
Subject: RE: Shannon LNG - File

Catriona, I can confirm that all expenses for the Council Staff were paid for by Kerry County Council.

Regards
Lorraine Sheehan
Planning Policy

-----Original Message-----
From: catrionagriffin068@eircom.net
[mailto:catrionagriffin068@eircom.net]
Sent: 07 December 2007 11:35
To: Lorainne Sheehan
Subject: RE: Shannon LNG - File

Hi Lorraine,

I have been trying to ring you this morning but i was told that you were out of the office.I emailed you on Wednesday asking about who funded the trip to Boston.Would you let me know as soon as possible,please.

Thanks
Catriona Griffin

From: Lorainne Sheehan [mailto:lsheehan@kerrycoco.ie]
Sent: 05 December 2007 10:26
To: catrionagriffin068@eircom.net
Subject: RE: Shannon LNG - File

Hi Catriona

There is no formal report in relation to this trip. The staff from Kerry County Council, visited the site, inspected the layout of the development and discussed the operation of the facility in detail with the plant operator.

Regards
Lorraine

-----Original Message-----
From: catrionagriffin068@eircom.net
[mailto:catrionagriffin068@eircom.net]
Sent: 04 December 2007 15:33
To: Lorainne Sheehan
Subject: Re: Shannon LNG - File

Hi Lorraine,

I emailed you last week about a report done by Kerry County Council on a trip to Boston to view an LNG terminal. You sent me the attached reply. I emailed you a second time as I said that I wanted to see the ACTUAL report as I am faced with having an LNG terminal 800 meters from my house. I look forward to hearing from you.

Catriona Griffin

From: Lorainne Sheehan [mailto:lsheehan@kerrycoco.ie]
Sent: 30 November 2007 15:40
To: catrionagriffin068@eircom.net
Subject: Re: Shannon LNG - File
Importance: High

A Chara

I refer to your recent e-mail to the Planning Department on the 28th November 2007. I note that you already have the Manager's Report in relation to the Shannon LNG Project with An Bord Pleanála.

In relation to a verbal report which Cllr. Kiely made to the Council in connection with the Corporate Policy Group Meeting held on the 20th November 2007, he stated that the County Manager had informed the meeting that he had visited a similar development in Boston and that there were other industrial developments up to the boundary of the site. The Plant in Boston is in operation for over 40 years. In relation to your query, I wish to confirm that the following Council Staff accompanied the County Manager on that site visit:-

Mr. Michael McMahon	Director of Planning & Sustainable Development
Mr. Tom Sheehy	Snr. Engineer – Planning Policy
Mr. Declan O'Malley	S.E.P. Planning Management (North Kerry)

Regards

Lorraine Sheehan
Forward Planning
Planning Dept
Kerry County Council

066-7161801
Ext 3373

A brief google search of Everett LNG terminal raises the serious issues surrounding this terminal as follows:

http://www.boston.com/news/local/massachusetts/articles/2006/08/29/drill_will_be_gauge_of_terror_readiness/

http://www.boston.com/news/local/massachusetts/articles/2007/10/25/coast_guard_blocks_fall_river_lng_terminal?mode=PF

Coast Guard blocks Fall River LNG terminal

Span was factor in ruling; developer plans an appeal

By Stephanie Ebbert, Globe Staff | October 25, 2007

A proposed liquefied natural gas terminal that had incited public fears about an explosive accident or terrorist attack on Fall River's waterfront was blocked yesterday by the US Coast Guard, which ruled that the Taunton River is unsafe for frequent trips by LNG tankers.

Barring a successful appeal by Weaver's Cove Energy, the decision appeared to bring to a close a tumultuous chapter in Fall River, whose residents and political leaders had waged an aggressive campaign against a project they regarded as a dangerous intruder on their shores. The city's two congressmen aided the cause by getting federal legislation passed that prevented the long-planned demolition of the structurally deficient, 101-year-old Brightman Street drawbridge, which is not large enough for the large ships to pass through.

"That bridge may be responsible for saving the city of Fall River from this horrible fate of having an LNG facility planted right in the middle of it," said US Representative James P. McGovern. "That bridge deserves a lot of credit."

After the congressional vote, Weaver's Cove Energy proposed circumventing the bridge problem by using smaller vessels, roughly 750 feet long and 85 feet wide, to make deliveries twice as often, up to three times a week. But the drawbridge is only 98 feet wide.

In a 37-page report, the Coast Guard pointed out that the old bridge and a new span, currently under construction, are just 1,100 feet apart and that the ship passages are not aligned. The new bridge was originally designed to replace the drawbridge, but mariners will have to navigate both. To get through safely, a ship would need to slow to nearly a halt and either be towed or move laterally 100 feet. While other commercial ships now make the trip, the vessels that Weaver's Cove proposed were bigger and would make more frequent trips. In addition, the coal ships currently traveling up the river require no security zone, as LNG tankers do, the report states.

"Certainly there are competent mariners out there who can make this go right 10 times, 100 times," Lieutenant Commander Benjamin Benson of the Coast Guard said in an interview. "But it needs to go right every time."

The narrow confines of the river also would prevent tankers from turning around in the event of an accident, the Coast Guard ruled. "In short, once a northbound LNG tanker enters the federal channel in this segment, they are committed to completing the entire transit - there is no feasible alternative," US Coast Guard Captain Roy A. Nash wrote in his report deeming the river unsuitable for an LNG terminal.

While Weaver's Cove has assured that the terminal would not pose a danger, the fear of the unknown post-Sept. 11, 2001, has led many to consider whether LNG tankers so close to shore could pose an attractive target for a terrorist attack. The governor's office said yesterday that the tankers would have traveled near a densely populated urban area and within 33 yards of two heavily traveled bridges and the Battleship Cove floating naval museum.

In recent years, Mayor Thomas M. Menino of Boston has railed against the dangers at a similar LNG terminal in Everett, where nearly weekly deliveries through Boston Harbor draw a thick security contingent of helicopters, the Coast Guard, and State Police. Everett is one of four LNG terminals along the East Coast. Two additional facilities are being built offshore north of Boston.

Yesterday's ruling represented the Coast Guard's final word on the project, though Weaver's Cove can appeal to the Coast Guard for reconsideration, an action the developer immediately vowed to take, saying that the recommendation "lacks the necessary factual support."

"The decision disregards critical facts in the record and introduces both new data and new concerns on which Weaver's Cove Energy was not provided an opportunity to comment," said a statement by the company, a subsidiary of Hess LNG.

The project has been opposed by many local residents, politicians, and officials, who feared that frequent LNG deliveries along the densely populated waterfront would be a burden on emergency management and public safety agencies. Governor Deval Patrick praised the Coast Guard's decision.

"We are grateful for the Coast Guard's independent and objective assessment of the security and safety risks involved with the Weaver's Cove LNG project," Patrick said in a written statement. "I am pleased that the Coast Guard's concerns, like ours, were about site suitability and security."

In 2003, Weaver's Cove Energy proposed to build an LNG storage tank, a new pier, processing equipment, and several support buildings at a former Shell Oil terminal in Fall River. The proposed terminal would unload LNG from tankers from overseas and include a new pipeline to ship gas to an interstate system.

Two years later, the project easily won approval from the Federal Energy Regulatory Commission, which declined to reconsider its decision even after Congress preserved the Brightman Street Bridge, complicating the anticipated route for the LNG tankers. The

attorneys general of Massachusetts and Rhode Island joined Fall River in challenging the commission's decision in a case that is still pending before the First Circuit Court. That case argues that the commission should have reopened the proceedings after the bridge was preserved and that it improperly rejected alternative sites, among other issues.

The commission's approval was contingent upon the sign-off by of the Coast Guard.

The news that the Coast Guard had rejected the project seemed like a parting gift to Mayor Edward M. Lambert Jr., who is leaving the Fall River post this week for a job at the University of Massachusetts at Dartmouth and who made the LNG battle a cornerstone of his last years in office.

"It's very nice; I don't think they planned it that way," Lambert said jokingly of the Coast Guard's timing. "I think the whole community here is in a celebratory mood, although we recognize it's not over till it's over."

Stephanie Ebbert can be reached at ebbert@globe.com. ■

From: McElligott, John

Sent: 23 November 2007 16:59

To: 'ombudsman@ombudsman.gov.ie'

Subject: Re Complaint concerning refusal to carry out an SEA on variation No 7 of 2007 and unethical motivation of councillors in voting for rezoning which paved the way for a fast track Submission to An Bord Pleanála by Shannon LNG regarding the Proposed Liquefi

Kilcolgan Residents Association
c/o Johnny McElligott
Island View,
5 Convent Street,
Listowel,
County Kerry
safetybeforelng@hotmail.com
Tel: (087) 2804474

23rd November 2007

The Office of the Ombudsman,
18 Lr. Leeson Street, Dublin 2

By Email only to ombudsman@ombudsman.gov.ie

Re Complaint concerning refusal to carry out an SEA on variation No 7 of 2007 and unethical motivation of councillors in voting for rezoning which paved the way for a fast track Submission to An Bord Pleanála by Shannon LNG regarding the Proposed Liquefied Natural Gas (LNG) regasification terminal located on the Southern shore of the Shannon Estuary in the townlands of Ralappane and Kilcolgan Lower, County Kerry (reference PL08 .PA0002 and PC 08.PC0002).

Dear Sir/Madam,

We have 4 new issues to support or complaint.

1. As you can see in attachment 11 (Pre-planning Consultations) which is also on the Shannon LNG website (<http://www.shannonlngplanning.ie>), there have been 2 pre-planning consultations between Shannon LNG and Kerry County Council before the SEA screening report was compiled in November 2006 viz. 23rd June 2006 and 20 October 2006.
2. With 10 hectares of development planned for the actual estuary itself the development is partially in a SAC area it is evident that this would have had an effect on the environment before the screening report was undertaken (see attachment 12- Shannon LNG EIS Non Technical Summary volume 1 or <http://www.shannonlngplanning.ie>)
3. On September 18, 2006 Shannon LNG made an application for a weather station at the site (reference 06/4328) so Kerry County Council knew beyond any reasonable doubt what was intended for the site (see attachments 13 and 14 or http://www.kerrycoco.ie/ePlan/InternetEnquiry/rpt_ViewApplicDetails.asp?validFileNum=1&app_num_file=063428) and it is inconceivable that they should claim this would not have an effect on the environment and therefore had no need for an SEA.

4. We have uncovered (see attachment 15) another fast-track planning application for “**a petroleum storage installation** and related marine facilities at Ballylongford” currently before An Bord Pleanála at the pre-planning stage with a decision due on November 29th 2007 on whether or not it qualifies for fast-track planning. The company is **SemEuro?** We contacted John Spencer, the managing director of SemEuro in Geneva on Wednesday November 21st 2007 and he referred us to Kieran Parker of the SemEuro Group in the UK. Kieran Parker just confirmed on November 22nd ago by phone that we should contact Shannon LNG if we have any questions and that he could not comment any further.

So SemEuro and Shannon LNG are linked.

This now therefore means that this planning process is diving quickly into farcical proportions as the local authority of Kerry County Council have not disclosed any information about SemEuro and therefore Shannon LNG's true intentions. People have been misleadingly lead to believe locally that SemEuro is intending to build on the Ballylongford to Asdee side of Ballylongford Bay. However, Darren Coombes of An Bord Pleanála confirmed to us also on November 22nd that SemEuro are actually applying **for planning adjacent to the Shannon LNG site on the landbank**. What does this say for top-tier Seveso 2 sites' exclusion zones on the SAC area of the Lower Shannon and the Ballylongford and Tarbert Bay areas defined as of significant ecological importance in the Kerry County Development Plan 2003-2009 ? **He also confirmed that SemEuro had consultations with Kerry County Council.**

Can one still say that LNG and petroleum storage will not have an effect on the environment? This further proves the lies that were when it is evident that a development of this size would have an effect on the environment.

Why has the information on SemEuro not been in the public domain as it has a huge bearing on the real intentions of Shannon LNG and has deprived the general public timely access to information on intentions and possible alternative uses of the site to participate fully in the planning process

5. Through the media, not to us the people who lodged the complaint, the Council has replied that the **Consultants** that did the SEA screening report reported that no SEA was necessary. Of course (as can be seen from the Shannon LNG booklet published in May 2006 page 7) it was already known that Seveso regulations would apply. The county manager can therefore say that he acted in good faith in accepting the consultants report. The Consultants hired out can say they acted in good faith because no mention was made of Shannon LNG nor of the SemEuro petroleum storage so these hazardous chemicals sites did not even get mentioned in the screening report; the Councillors can say that they acted in good faith in accepting the report of the County Manager at face value. So everyone has an opt-out plausibly-deniable answer for any disaster down the line and we all go around in circles patting each other on the backs saying what a great legacy we have left the county. It's an environmental and safety disaster of a legacy we are leaving those that come after us, more like and we will be disdained for it.

Kerry County Council refused to undertake an **SEA, which would have represented the only independent assessment of the development of the landbank and Lower Shannon Estuary**. All we finally received to our comprehensive complaint to the council was a one-line statement on November 22nd 2007 from Anne O'Sullivan (see attachment 16) on November 22nd 2007 stating

“ In relation to the question of a Strategic Environmental Assessment this is not mandatory in this case and Kerry County Council following a screening process decided that such Strategic Environmental Assessment was not necessary.”

We are now, convinced more than ever that a **serous breach of procedure has** taken place and have supplied you with all the remaining evidence necessary to back this up.

We await your reply and actions.

Yours faithfully,

Johnny McElligott

Attachments:

11. Pre-planning Consultations by Shannon LNG
12. Shannon LNG Terminal EIS Vol 1 of 4 issue 1.
13. Application for Weather Station on a 10M. High mast with Security fencing by Shannon LNG at the site of the proposed LNG terminal in Kilcolgan
14. Full application for weather station 063428
15. SemEuro Planning for Petroleum Storage facilities
16. Final Reply from Kerry County Council on Complaint from Kilcolgan Residents Association on breach of procedure

From: McElligott, John
Sent: 21 November 2007 10:50
To: 'ombudsman@ombudsman.gov.ie'
Cc: 'jbradley@CLARECOCO.IE'; 'Adam Kearney Associates'
Subject: FAO Local Authority Section: Complaint concerning refusal to carry out an SEA on variation No 7 of 2007: further information

Kilcolgan Residents Association
c/o Johnny McElligott
Island View,
5 Convent Street,
Listowel,
County Kerry
safetybeforelmg@hotmail.com
Tel: (087) 2804474

21st November 2007

Local Authority Section,
The Office of the Ombudsman,
18 Lr. Leeson Street, Dublin 2
ombudsman@ombudsman.gov.ie

Dear Sir/Madam,

We have received a clarification from John Bradley from Clare County Council as follows in the email below which he wants brought to your attention. Could you please add this to the file we submitted you on November 19th 2007 please.

Yours faithfully,

Johnny McElligott
Tel: 087-2804474

From: John Bradley [mailto:jbradley@CLARECOCO.IE]
Sent: 20 November 2007 17:22
To: 'Adam Kearney Associates'
Subject: RE: Local Group Website

Hi Adam I want to clear up a point that I picked up in your letter to the Ombudsman. I stated that I could not **remember** receiving any SEA report from the Kerry County Council, in regard to this matter not that I had not received a SEA report. Please correct any misunderstanding in this regard. I understand that a SEA screening report was prepared but have no record of it in my files. Regards John Bradley

Kind Regards,
Johnny McElligott

Kilcolgan Residents Association
c/o Johnny McElligott
Island View,
5 Convent Street,
Listowel,
County Kerry
safetybeforelng@hotmail.com
Tel: (087) 2804474

19th November 2007

The Office of the Ombudsman,
18 Lr. Leeson Street, Dublin 2
ombudsman@ombudsman.gov.ie

Complaint concerning refusal to carry out an SEA on variation No 7 of 2007 and unethical motivation of councillors in voting for rezoning which paved the way for a fast track Submission to An Bord Pleanála by Shannon LNG regarding the Proposed Liquefied Natural Gas (LNG) regasification terminal located on the Southern shore of the Shannon Estuary in the townlands of Ralappane and Kilcolgan Lower, County Kerry (reference PL08 .PA0002 and PC 08.PC0002).

Dear Sir/Madam,

From as early as May 2006, it was clear from booklets distributed by Shannon LNG (see attachment 1) that Shannon LNG was planning an LNG terminal on the site at Kilcolgan – the first of its kind in the country and one which would see 4.4 million gallons of water pumped from the Shannon Estuary every hour. The most serious environmental concern has always been that pumping over 108 million gallons of chlorinated and cooled water into the estuary daily will cause serious environmental damage to the eco-system of this SAC area. The withdrawal and discharge of huge volumes of seawater will affect marine life by killing ichthyoplankton and other micro-organisms forming the base of the marine food chain unable to escape from the intake area. Furthermore, the discharge of cooled and chemically-treated seawater will also affect marine life and water quality.

However, the site was still zoned Rural General and Secondary Special Amenity at the time.

To rezone the land to Industrial, a variation had to take place to the Kerry County Development Plan 2003-2009.

In March 2007, the site at Tarbert was therefore rezoned from “Rural General” to Industrial through variation No. 7 of the County Development Plan.

The stated purpose of the variation was as follows:

“The purpose of the variation is to facilitate consideration of suitable development of these lands in accordance with the provisions of section 5.2.9 of the Kerry County Development Plan 2003-2009 which states: ‘lands have been identified at Ballylongford/Tarbert as suitable for development as a premier deep-water port and for major industrial development and employment creation’. The adoption of this variation gives effect to objective ECO 5-5 of the Kerry County Development Plan 2003-2009 which states: ‘It is an objective of Kerry County Council to identify lands in key strategic locations that are particularly suitable for development that may be required by specific

sectors. Land in such locations will form part of a strategic reserve that will be protected from inappropriate development that would prejudice its long-term development for these uses.”

However, extremely serious issues surrounding the rezoning of the landbank at Kilcolgan to Industrial from rural general in March of this year have now been uncovered and we are hereby lodging a formal complaint on this matter to the Ombudsman’s Office as the questions we raise bring in to serious disrepute the whole planning process in Kerry and are furthermore putting the lives of the people of Kilcolgan in danger through the attempts to fast track a Seveso 2 site without following all planning procedures correctly. As we raised these issues with Kerry County Council last week we feel that their answers are inadequate, hence our complaint to you.

Clare County Council objected to the rezoning (see attachment 2) on the grounds that:

“the proposed rezoning is likely to have a significant impact on the future development of the region, and will have a direct impact on the planned objectives for the Mid West Regional guidelines for the Shannon Estuary and in particular the Planning, Economic and Service Infrastructural development objectives for zone 5 of the plan. Any industrial development including the construction of a deepwater harbour will have a major impact on both the visual and ecological amenities of the area, and potentially on the Lower Shannon Estuarine Environment, including the foreshore of County Clare. Clare County Council would like an appraisal of any SEA investigation which may have been undertaken in respect of the proposed variation”. The Kerry County Manager replied: “Any future application of these lands will be subject to an Environmental Impact Assessment. This process will ensure that any proposals will take into account impacts on the visual and ecological amenities of the area. A copy of the SEA screening report for the proposed variation will be forwarded to Clare County Council.”

No SEA has been undertaken as required for a variation to the development plan under Statutory Instrument No 436 of 2004 Article 7 section 13K and article 12 schedule 2A of the same Statutory Instrument (<http://www.irishstatutebook.ie/2004/en/si/0436.html#article12>) where there will be a significant effect on the environment.

The County Manager Report’s conclusions on March 8th 2007 (see attachment 2) that *“it does not appear that there is a need for a SEA in this instance as the proposed variation is unlikely to result in development which would have significant effects on the environment”* are extremely questionable for the following reasons:

- i. it was known at the time of the report that Shannon LNG had an option to buy the lands subject to planning permission for the LNG terminal with the serious consequential effects on the environment as detailed above. Indeed, An Bord Pleanála wrote to the County Manager on February 7th, 2007 notifying them of Shannon LNG’s request for pre-application consultations under the planning and Development (Strategic Infrastructure) Act 2006 for an LNG terminal on the said site.
- ii. The waters of the Lower Shannon are in a candidate Special Area of Conservation (SAC) and therefore protected under the EU Habitats directive.
- iii. Clare County Council raised serious concerns that the construction of a deepwater harbour would have a major impact on both the visual and ecological amenities of the area and potentially on the Lower Shannon Estuarine Environment, including the

foreshore of County Clare, and requested an appraisal of any SEA investigation as detailed above.

- iv. The Senior Executive Planner of Clare County Council, John Bradley, who made the submission on behalf of Clare County Council, has confirmed that no such screen report was ever received by Clare County Council
- v. The EPA could not confirm receipt of the SEA screening report, even though Tom Sheehy of Kerry County Council maintains it was sent in December 5th 2006 (see attachment 8).
- vi. The ecological sensitivity of the area has been recognised in the Kerry County Development Plan (see attachment 4) in declaring both Ballylongford Bay and Tarbert Bay as areas of Ecological Importance but this fact was completely ignored in the report.
- vii. The Department of the Environments Guidelines for Local Authorities on implementation the SEA directive are clearly not adhered to as the site is a Seveso 2 site surrounded by SAC and NHA areas as per sections 3.5 and 3.10 (2) (see attachment 5)

“3.5 The key to deciding if SEA will apply will be *whether the plan would be likely to have significant effects on the environment*. The decision should not be determined by the size of an area alone. It will also be influenced by nature and extent of the development likely to be proposed in the plan and its location (e.g. close to or within an SAC, SPA or NHA), and its broad environmental effects”

“Criteria for Determining the Likely Significance of Environmental Effects

3.10 Schedule 2A to the Planning and Development Regulations 2001 sets out two main types of criteria for determining whether a plan would be likely to have significant environmental effects:

(1) Characteristics of the Plan: for example, the scale of development likely to take place over the life of the plan, or the degree to which it promotes sustainable development. Does the plan set out environmentally-friendly objectives? What environmental problems are of particular relevance to the plan?

(2) Characteristics of the effects and of the Area likely to be affected: for example, the magnitude, cumulative nature and reversibility of the effects, or the value and vulnerability of the area likely to be affected by implementation of the plan. How many people are likely to be affected by the plan? Are there areas of conservation sensitivity (such as natural habitats) within or adjacent to the area covered by the plan? Much of the advice contained in the Department's Guidance (*August 2003*) on EIA sub-threshold Development (www.environ.ie) regarding areas of conservation sensitivity is also of relevance for SEA. How intensive is the nature of the proposed landuse? Is there a risk of accidents, *e.g. involving Seveso landuses?*”

- viii. The Ballylongford Screening report (see attachment 7) makes no mention of Shannon LNG having an option to purchase land on the site subject to planning permission for an LNG terminal, even though this was known since at least May 2006 and that this was already discussed in the Kerry County Council meeting of 20 June 2006 (see attachment 9) as follows:

“20. Establishment of a committee to deal with infrastructural development and Planning issues relating to the Ballylongford Land Bank Pursuant to notice duly given Cllr. J. Brassil proposed:-

“In light of the major announcement made by Minister Micheal Martin regarding the development of the Shannon Development owned Ballylongford land bank that Kerry County Council put a team of people together to specifically deal with the infrastructure development and planning issues that will be associated with this project.”

Mr. C. O’Sullivan, SEO Corporate Services read the following report:-

The Ministers announcement in relation to the proposals for Ballylongford is to be welcomed. Preplanning discussion with Shannon LNG will shortly commence. The necessary planning and infrastructure teams will be put in place as discussions develop more fully the particular project proposal and the needs of the Ballylongford Land Bank generally. Project progress will be overseen by Sub Committee of Senior Management Team. The situation will be kept under review as the project progresses.

Cllr. J. Brassil welcomed the report and said that this has the potential to be a huge project for North Kerry and he called on the Executive to give it every support.

Cllr. L. Purtill welcomed the recent announcement for the development of part of Ballylongford Land Bank and supported Cllr. Brassil’s motion.“

Without any information in the public domain regarding the scoping or the actual execution of an SEA (see attachment 6), this rezoning is fundamentally unsound and invalid.

On March 12th 2007, from the minutes of the Kerry County Meeting (see attachment 3) it can be confirmed that Mr. McMahon, director of planning, circulated his SEA screening report (see attachment 2) to the councillors and briefed them on it.

Councillor O'Sullivan proposed acceptance of the variation having considered the County Manager's Report and this was seconded by councillor Beasley.

All the councillors present voted for the motion (Beasley, Brassil, Buckley, Cronin, Ferris, S.Fitzgerald, Foley, Gleeson, M.Healy-Rae, Leahy, McCarthy, McEllistrim, Miller, O'Sullivan, Purtill, T. Fitzgerald).

The following councillors were absent: Cahill, Connor-Scarteen, Fleming, D. Healy-Rae, MacGearailt, O'Brien, O'Connell, O'Connor, O'Donoghue, O'Shea and Sheahan.

Our complaint is that an SEA should have been undertaken by the statutory body (Kerry County Council) as requested by Clare County Council who quite rightly pointed out that the rezoning would have a direct impact on the environment and the planned objectives for the Mid West Regional guidelines for the Shannon Estuary. We believe that this was not undertaken because pressure to fast-track the rezoning for the Shannon LNG company took precedence over following the correct procedures to the detriment of the Shannon Estuary, its environment and environs and to the people living and owning property adjacent to the land bank. In our opinion both the County Manager and the elected representatives were collectively responsible for this deliberate effort to push through the development at all costs.

On November 26th 2007, Kerry County Council is due to have its next meeting where its position on the submission to An Bord Pleanala concerning the Shannon LNG planning application will be decided. For this reason, we request you deal with this serious complaint with the greatest urgency. Furthermore, we bring to your attention that Councillor John Brassil is Chairman of Shannon Development and request that he and other councillors with links to Shannon Development and the developer on the site declare their interests and absent themselves from the Council Meeting while this issue is being discussed on ethics grounds.

Our submission to An Bord Pleanala is attached giving a clear explanation of the serious concerns we have about the proposed development (see attachment 10).

Our complaint is very serious, because if the planning authorities will not follow their own rules then why bother having a planning process?

Yours faithfully,

Johnny McElligott

Attachments:

1. Shannon LNG Booklet May 2006
2. Kerry County Manager's report on variation No 7 to Kerry County Development Plan
3. Minutes of March 12th Meeting of Kerry County Council
4. Kerry County Development Plan – Appendix 1G
5. SEA Guidelines
6. Notice of proposed variation to Kerry County Development Plan
7. Ballylongford Screening Report
8. Email Communication with Kerry County Council

9. Minutes of June 20th 2006 Meeting of Kerry County Council
10. LNG Planning Submission by Kilcolgan Residents Association

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10. LNG Planning Submission by Kilcolgan Residents Association
11. Pre-planning Consultations by Shannon LNG
12. Shannon LNG Terminal EIS Vol 1 of 4 issue 1.
http://www.shannonlngplanning.ie/files/EIS/ShannonLNG_Terminal_EIS_Vol_1_of_4_Issue1.pdf
13. Application for Weather Station on a 10M. High mast with Security fencing by Shannon LNG at the site of the proposed LNG terminal in Kilcolgan
14. Full application for weather station 063428
15. SemEuro Planning for Petroleum Storage facilities
16. Final Reply from Kerry County Council on Complaint from Kilcolgan Residents Association on breach of procedure