



***Safety before LNG &
Kilcolgan Residents Association***

Protecting the Shannon Estuary and its people

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1 December 2008

KILCOLGAN RESIDENTS ASSOCIATION & SAFETY BEFORE LNG

Oral Hearing Submission

on proposed Shannon LNG Natural Gas Pipeline and proposed compulsory acquisition of lands thereon from Kilcolgan, County Kerry to Foynes, County Limerick



Listowel Arms Hotel
December 1st 2008

1 December 2008

Opening Submission to An Bord Pleanála Oral hearing into proposed Shannon LNG pipeline.

Mr Inspector, ladies and gentlemen,

My name is Johnny McElligott and I am speaking on behalf of myself, the 'Kilcolgan Residents Association' (KRA) and the 'Safety Before LNG' group (SBLNG).

After the previous An Bord Pleanála oral hearing into the LNG terminal (reference PA0002) and prior to the High Court challenge to that decision by KRA member Raymond O'Mahony and 'Friends of the Irish Environment' (FIE), I was elected PRO of the Kilcolgan Residents Association at the most recent meeting of the Association in October 2008. A vote of confidence in our strategy of complete opposition to this LNG project in its entirety was carried at this meeting with only one vote opposing this strategy. I therefore have a mandate to speak for the KRA.

The 'Kilcolgan Residents Association' represents nearby residents of the proposed LNG regasification terminal and people with close family and economic ties to the area.

The 'Safety Before LNG' group represents people from both Kilcolgan and the wider community and is advocating responsible strategic siting of LNG terminals in areas which do not put people's health and safety in danger. Ms. Kathy Sinnott M.E.P and Mr. Tony Lowes for "Friends of the Irish Environment" have already signed our written submissions on the pipeline and all submissions by 'Safety Before LNG' therefore represents their views too and are to be construed as such in any legal proceedings that may ensue following these proceedings.

SBLNG and the KRA are hereby once more formally objecting to the proposed Shannon LNG Natural Gas pipeline and compulsory acquisition order, referenced GA0003 and DA0003, in their entirety, on health, safety, environmental and strategic planning grounds.

We submitted a detailed written opposition to this current application and I do not propose to read that submission out in its entirety as it is already part of the officially submitted documentation.

There are five main problems with this planning application which can no longer be ignored by An Bord Pleanála if it is to comply with its statutory duties in assessing this planning application and which we are now claiming is illegal for them not to do so:

1. There has still been no LNG Marine Risk Assessment because the HSA's remit stops at the water's edge;
2. No strategic environmental assessment (SEA) has been undertaken;
3. No consideration has been given to the consequences of an LNG accident or the consideration of an emergency plan;

4. 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*"¹, representing an official government policy document has been ignored by An Bord Pleanála in addressing the question of alternatives sites; and
5. It is our contention that the interactions between the decision-making bodies (such as An Bord Pleanála, the EPA, the CER and the HSA) are illegally totally inadequate and currently almost non-existent, cannot be assessed and that the procedural requirements of the EIA Directive are not being respected. This is compounded by the level of project-splitting of this development.

An Bord Pleanála still managed to make a decision on the LNG terminal without any of these main issues being considered. We therefore object that An Bord Pleanála is cutting corners in this planning application because it based its decision on the limited remit of the HSA that does not consider all risks of the LNG project such as an LNG spill on water beyond the shoreline, nor deliberate damage being caused such as from a terrorist action. In our opinion, An Bord Pleanála is motivated primarily by its objective of giving a speedy planning decision under the new powers it obtained under the fast-track planning process of the Strategic Infrastructure Act 2006. We believe that for An Bord Pleanála to ignore these main issues in its decision-making process and to make such decisions without independent relevant expert advice is cavalier, negligent, inadequate, inappropriate, illegal and criminal.

The largest LNG tankers in the world will be coming to store LNG in the most sizeable hazard in Ireland in the world's largest LNG storage tanks. This is effectively a third-world project in a first-world country.

New Issues now being raised by the KRA and SBLNG since its written submission on the pipeline:

1. We have no legal support as we cannot afford it. We requested legal aid from An Bord Pleanála for this oral hearing on November 18th 2008 but this was refused by the Board on November 20th. We therefore now expect An Bord Pleanála to ensure that our legal interests are represented to the maximum as we are already taking part in this process at a disadvantage and therefore under protest in this regard.
2. We have engaged the services of Dr. Peter North to examine the technical and safety issues surrounding this application and he will speak separately on his findings. We expect that An Bord Pleanála will cover his costs as his intervention is of great importance in understanding the technical and safety issues at stake.
3. On November 19th 2007, a formal complaint was lodged with the Office of the Ombudsman concerning the refusal of Kerry County Council to carry out a Strategic Environmental Assessment 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

¹ <http://www.dcmnr.gov.ie/NR/rdonlyres/8AD0EDDB-3237-4157-B230-2D467A3C1F9C/0/4DCENRGasStorageExecutiveSummary.pdf>

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). **A decision is still awaited on this complaint** . We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.

4. On January 6th 2008 the Kilcolgan Residents Association exercised its right of petition to the European Parliament under Articles 21 and 194 of the EC Treaty and under Article 44 of the Charter of Fundamental Rights of the European Union. It is petitioning for condemnation of breaches of EU Directives by An Bord Pleanála and the Irish “Planning and Development (Strategic Infrastructure) Act 2006” in the planning application for the first proposed LNG re-gasification terminal in Ireland and a top-tier Seveso II development. It is also 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. **A result is still awaited on this petition**. We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.
5. On January 23rd 2008 the KRA highlighted 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 stated on record at the An Bord Pleanála oral hearing in Tralee in January 2008²:

“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.”

We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the issues of the consequences of an LNG accident before making any decision.

6. In April 2008, 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* –

² <http://www.safetybeforelng.com/docs/DAY%203%20012308%20TRALEE%20LNG.PDF> page 49

November 2007”³ jointly commissioned by the Department of Communications, Energy and Natural Resources and the Department of Enterprise, Trade and Investment, Northern Ireland, which was published in November 2007 was finally only released in Executive Summary format to the general public. This was AFTER planning permission was given for the LNG terminal and this delay was, we believe, also politically motivated because the report contained valuable information on high potential alternative storage sites and strategies which could be ignored in the planning decision but which could not be reasonably ignored in any Strategic Environmental Assessment.

7. On September 20th 2008, ‘Radio Kerry’ quoted the Minister for the Environment, Dr. John Gormley T.D, as stating that the best route for the pipeline has already been chosen as follows:⁴

“Best route chosen for Shannon LNG says Minister

The Environment Minister is confident that planning authorities have chosen the best route for the Shannon LNG gas pipeline. John Gormley was speaking on the final day of the Green Party think-in in Tralee. In July, plans for the 26 kilometre pipeline on the Tarbert Ballylongford land bank passed the first pre-application stage. The facility will bring 50 jobs to the area. During an oral hearing on the pipeline in January the company said the biggest obstacle to the 500 million euro facility was public concerns over safety. But Minister Gormley says the route has been carefully planned.”

On September 22nd 2008 the Kilcolgan Residents Association wrote to the Minister to ask him if there is any point in the Kilcolgan Residents Association lodging a submission on the pipeline if, as he has been quoted as stating by Radio Kerry, “the route has been carefully planned” and “the planning authorities have chosen the best route for the Shannon LNG gas pipeline”? **A reply to this question is still awaited.** We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.

8. On September 30th 2008 a formal complaint was lodged with the Standards in Public Office Commission (SIPO) on a possible breach of ethics and conflict of interest by two Kerry County Councillors – that they both effectively prejudiced a Strategic Environmental Assessment Screening Report on the proposed Shannon LNG terminal. **A decision is still awaited on this complaint.** We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.
9. On October 8th, 2008: Doctor Mary Kelly, director of the Environmental Protection Agency (EPA), speaking at the launch of the agency’s fourth report – “2008 Ireland’s Environment” - in Dublin, on October 8th, 2008, stated:

³ <http://www.dcmnr.gov.ie/NR/rdonlyres/8AD0EDDB-3237-4157-B230-2D467A3C1F9C/0/4DCENRGasStorageExecutiveSummary.pdf>

⁴ <http://www.radiokerry.ie/news/search.php> - Rado Kerry News September 20th 2008

*“In addition, Strategic Environmental Assessments (SEAs) would have to be imposed on all major projects, while the State must comply with EU environmental legislation”.*⁵

On October 28th 2008, the Kilcolgan Residents Association wrote to Dr. Kelly asking her if, following her statement to the media on October 8th, the EPA will be requiring that an SEA first be undertaken for this major project, which, in our opinion, is now clearly part of a larger strategy of the development of an oil and gas storage hub on the southern shores of the Shannon Estuary.

A reply is still awaited from the Director of the EPA. We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.

10. On October 15th, 2008 the Kilcolgan Resident Association’s lodged a complaint to the Office of the Director of Corporate Enforcement on a possible failure by the Auditor of Shannon LNG’s accounts to comply with statutory obligations⁶. The auditor did not sign or date the accounts and our complaint is that, in our opinion, the accounts of Shannon LNG Limited do not give a true and fair view of the state of affairs of the company. **A decision on this complaint is still awaited.** We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.

11. On October 17th 2008 the Kilcolgan Residents Association and the ‘Safety Before LNG’ group lodged a detailed submission against the application by Shannon LNG for consent from the Commission for Energy Regulation (CER) to construct a natural gas pipeline under Section 39A of the Gas Act, 1976, as amended, from Kilcolgan, County Kerry to Foynes, County Limerick⁷. **A decision is still awaited on this application by the CER.** We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.

12. On November 2nd 2008, at the Green Party Convention held in Clonmel, County Tipperary, Mr John Gormley T.D. Minister for the Environment, Heritage and Local Government, informs Thomas O’Donovan of the Green Party in North Kerry, that the Shannon LNG project would require a Strategic Environmental Assessment. On November 12th 2008, Safety Before LNG writes to the Minister and asking him if he can confirm if this is the case. The letter included the following statement:

“Could you please confirm that it is indeed your position that an SEA is required of the energy development projects on the Shannon Estuary? We note that one Green Party principle is that it is “against pollution of air, sea and land” and that planning, environment and education were the three core principles of the Green Party’s programme for government. We now believe

⁵ See “Irish Times” Thursday October 9, 2008 page 7

⁶ See ‘Pipeline Oral Hearing – Appendix 1’ Submission to CER on Shannon LNG pipeline

⁷ See ‘Pipeline Oral Hearing – Appendix 1’ Submission to CER on Shannon LNG pipeline

that the impact of the proposed LNG terminal, pipeline, SemEuro oil storage facility adjacent to the LNG terminal at Tarbert and another huge oil storage facility in Foynes supplying 15% of the country's oil leading to 610 extra oil and LNG tanker movements per year in these 2 areas alone warrant an SEA at the very least. This is such a serious issue going to the core of what the Green Party stands for (and is highly respected for) that you, as a Green Party Minister for the Environment, should be able to take a principled stand on it as the consequences of inaction are irreversible. We respectfully beg of you to address this issue as soon as possible."

We still await a reply to this request from the Minister. We now state that we are of the opinion that An Bord Pleanála is legally obliged to await the outcome of this issue before making any decision.

13. On October 2008, Finance minister Brian Lenihan announced details of a tax incentive to promote the relocation of Seveso-listed industrial facilities which hinder the residential and commercial regeneration of Cork docklands.⁸ Goulding Fertilizers has an exclusion zone of 400 meters in a radius surrounding the plant there. Why therefore can it be argued that the establishment of a Seveso II LNG site will encourage development when this is the opposite in Cork Docklands.
14. Rallappane House is only 300 metres from the Above-ground installation on the site. This proximity has not been considered in any risk contours as defined by the HSA. All the risk contours in the original planning application emanate from the LNG storage tanks.
15. An infringement notice has been issued by the EU Commission against Ireland for the lack of interaction between the EPA and An Bord Pleanála. . There is no integrated assessment of this project in our opinion. Our contention is that the **interactions between the decision-making bodies is totally inadequate and currently almost non-existent and cannot be assessed and that the procedural requirements of the EIA Directive are not being respected.** This is now the subject of a separate section 5 referral to Kerry County Council⁹ which we also request the Bord now takes into consideration.
16. Following the recent hijacking of oil tankers by pirates off the coast of Somalia, there has been no assessment of the risk of hijacking of an LNG tanker – as this has now moved into the realm of credible risk. This must now be assessed.
17. The need for an SEA is now more obvious than ever before given the following new information;

⁸ Sunday Business Post, October 19th 2008 - <http://archives.tcm.ie/businesspost/2008/10/19/story36870.asp>

⁹ See 'Pipeline Oral Hearing – Appendix 2' Section 5 referral to Kerry County Council.

- a. Kerry Deputy Jimmy Deenihan T.D, in the ‘Kerryman’ newspaper on November 19th 2008, has called for the establishment of an Energy Park status for the landbank¹⁰ as follows:
- ‘North Kerry TD, Jimmy Deenihan also welcomed the news calling for Shannon Development and the IDA to establish ‘energy park’ status for the landbank. “Synergy between the ESB and the LNG development should lead to an emphasis now on the landbank tapping into the vast opportunities that are being presented by green energy at present”’*
- b. The Department of Agriculture has confirmed that Shannon Development has made enquiries about a tree-felling licence in order to destroy the 200 acres of trees on the landbank. The previous oral hearing heard how residents could hide behind trees if there was an accident, so the removal of these trees must now be assessed for their impact on the current project
- c. ESB employee John Fox announced in the ‘Kerryman’ newspaper on November 19th 2008 that Endessa plans to build a separate gas-powered power station adjacent to the current power station – not a replacement as follows:
- “The Spanish company’s undertaking to build a gas-fired power plant alongside the existing plant within the next four years could mean even more jobs.”*
- This will still be 2 miles from the proposed pipeline route
- d. The SemEuro proposal for a Whiddy Island-like oil tank farm adjacent to the LNG site is still active
- e. A large oil storage facility catering for up to 15% of the country’s oil is being built in Foynes and the impact and risks of this, and corresponding tanker movements, was not assessed in the planning application for the terminal
- f. In issue 5 of the November 2008 newsletter, Shannon LNG announced that a new company has been formed for the proposed Gas-powered power station that it plans to build on the landbank on the LNG site. This has not been considered in this application.
- g. The high-powered electricity cables from the LNG plant and power station to Tarbert and their effect on the residents of the area and future development possibilities has not yet been assessed.
18. The latest studies by Carnegie Mellon University researchers show that imported LNG could have 35% higher life cycle greenhouse gas emissions than coal used in advanced carbon capture storage (CCS) power plants.¹¹ However, this will only be assessed by the EPA which will be too late for the consent process of An Bord Pleanála.
19. We have also questioned the solvency of Shannon LNG in our submission to the Commission for Energy Regulation (CER)¹². The CER does not plan to have an oral hearing in this matter. We still do not know how much the site is costing the

¹⁰ ‘Kerryman’ Newspaper, November 19th 2008 – ‘Green Light for Endessa move on ESB plants’ <http://www.kerryman.ie/news/green-light-for-endessa-move-on-esb-plants-1545486.html> and see ‘Pipeline Oral Hearing Appendix 3 - Green Light for Endessa move on ESB plants’

¹¹ <http://www.sciencedaily.com/releases/2007/08/070822132122.htm>

¹² See ‘Pipeline Oral Hearing – Appendix 1’ Submission to CER on Shannon LNG pipeline

developer and if they have the money to pay for it given the current world financial situation. This information has now therefore to be made available and we now formally request that An Bord Pleanála oblige the developer and CER to respond to these issues at this oral hearing.

20. No account has been taken of how and if an emergency plan can be implemented for the given site and project. Would it not be very stupid and illegal to allow a terminal to be built to find out then that an adequate emergency plan could not be implemented as required per the Seveso II directive?
21. The Tarbert Chamber of Commerce that supported the original planning application for the LNG terminal now no longer exists.
22. We object to the selective application by An Bord Pleanála of the EU Habitats Directive. Dredging for mussel seeds in Castlemaine Harbour was forbidden earlier this year due to the designated status of the area, putting the livelihoods of 70 families in Cromane alone at risk. How could this LNG project not be affected by the Habitats Directive given that it is on a much greater scale than mussel seed dredging?

Finally, it has to be noted that MEP Ms. Kathy Sinnott is the only public representative to have publically defended the people of North Kerry from the threats faced by this LNG project. She is the only local politician to have respected and fought for our constitutional rights.

The Irish Constitution – Bunreacht na hEireann – states in Article 40 (1) that “All citizens shall, as human persons, be held equal before the law”. It states in Article 40 (3)(1) that “The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen”. And in Article 40(3)(2) it states that “The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.”

We expect that An Bord Pleanála and the HSA, as an organ of the state should uphold these aforementioned constitutional rights. Residents of a sparsely-populated area must be afforded the same degree of protection from danger as residents of a more densely populated area, such as Dublin would be as obliged by Article 40(1).

Thank you.

Pipeline Oral Hearing Appendix 1: Submission to CER on Shannon LNG pipeline



Kilcolgan Residents Association
Safety before LNG

Protecting the Shannon Estuary and its people

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17 October 2008

KILCOLGAN RESIDENTS ASSOCIATION

&

SAFETY BEFORE LNG

Submission on application by Shannon LNG for consent from the Commission for Energy Regulation to construct a natural gas pipeline under Section 39A of the Gas Act, 1976, as amended, from Kilcolgan, County Kerry to Foynes, County Limerick

17 October 2008

The Commission for Energy Regulation
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24.

By Email only to: info@cer.ie

Re: Application by Shannon LNG for consent to construct a pipeline under Section 39A of the Gas Act, 1976, as amended.

Dear Sir / Madam,

The Kicolgan Residents Association represents nearby residents of the proposed LNG regasification terminal and people with close family and economic ties to the area.

The 'Safety Before LNG' group represents people from both Kilcolgan and the wider community and is advocating responsible strategic siting of LNG terminals in areas which do not put people's health and safety in danger.

We are hereby formally objecting to any consent being given by the CER to Shannon LNG to construct a pipeline under Section 39A of the Gas Act, 1976, as amended, in its entirety, on health, safety, environmental and strategic planning grounds. We believe that the statutory bodies have dealt illegally and inadequately with the issues we have raised to date and believe that it would also, therefore, be inappropriate and illegal for the CER to accord any permits until our issues have been dealt with in an acceptable and adequate manner.

Please consider the following issues we are now raising:

1. Please consider all the issues we raised in our submission to An Bord Pleanála on October 7th 2008¹³ against the Shannon LNG pipeline.
2. Doctor Mary Kelly, director of the Environmental Protection Agency, speaking at the launch of the agency's fourth report – "2008 Ireland's Environment" - in Dublin, on October 8th, 2008, stated

"In addition, Strategic Environmental Assessments (SEAs) would have to be imposed on all major projects, while the State must comply with EU environmental legislation".¹⁴

We are now requesting that an SEA be therefore completed before any consents are even considered by the CER.

¹³ See CER Appendix 1: KRA and Safety Before LNG submission to An Bord Pleanála on Shannon LNG pipeline and compulsory acquisition order reference GA0003 and DA0003 – October 7th 2008

¹⁴ See "Irish Times" Thursday October 9, 2008 page 7

3. Please consider the KRA submission on the Draft Heads of Petroleum Exploration and Extraction (safety) Bill, 2007¹⁵.
4. Please consider the Kilcolgan Resident Association’s complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations.¹⁶ In summary, our complaint is that, in our opinion, the accounts of Shannon LNG Limited do not give a true and fair view of the state of affairs of the company.
5. We believe that the statutory criteria for the determination of consents under Section 39A of the Gas Act 1976, as amended¹⁷ are not complied with:
 - a. Section 2(a) states:

“if it grants the consent, no activity carried out under it will adversely affect the safety and security of the natural gas systems”.

The developer is a foreign operator owned by a company registered in the Cayman Islands. We are of the opinion that the CER should impose a “use it or lose it” condition on any consent given. Furthermore, as highlighted by us in the case of “O’Mahony v. An Bord Pleanála and Ors 2008/598 JR”¹⁸ and “Friends of the Irish Environment Limited v. An Bord Pleanála and Ors 2008/597 JR”, the Health and Safety Authority have not dealt with all the safety aspects of this project and no one statutory body has given an overall safety view of this project e.g. no Marine Risk Assessment of an LNG spill on water was completed before the HSA gave its advice to An Bord Pleanála that it did not advise against the project. In addition, no independent safety assessment has been carried out on the proposed pipeline. We believe that failure by the CER to address these concerns would amount to an illegal and inadequate consent being given by the CER.

- b. Section 2(b) states:

“the applicant will comply with any code of operations in so far as it is applicable to the applicant and, at the relevant times, will have the capability of doing so”

In our opinion, the developer does not seem willing to comply with all current codes of operations as can be seen in its submission to the CER Consultation on “A Natural

¹⁵ See CER Appendix 2: KRA submission on the Draft Heads of Petroleum Exploration and Extraction (Safety) Bill, 2007 – April 28th, 2008

¹⁶ See CER Appendix 3: Kilcolgan Resident Association’s complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations

¹⁷ See STATUTORY INSTRUMENT No. 264 of 2002 “**REGULATIONS Entitled** Gas (Interim)(Regulation) Act 2002 (Criteria for Determination of Consents) Regulations 2002”

¹⁸ <http://highcourtsearch.courts.ie/hcslive/cslogin>

Gas Safety Regulatory Framework for Ireland – Proposed Vision” (Framework) on September 13, 2007.¹⁹

c. Section 2(c) states:

“the applicant has complied with the requirements of section 40A (as amended by section 12(1)(c) of the Gas (Interim)(Regulation) Act 2001) of the Gas Act 1976 in relation to the proposed construction of the pipeline to which the application relates”

We disagree strongly that this section is complied with. Article 40 (1)(c) states:

“An environmental impact statement shall contain the information for the time being specified under Article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989, or under any provision amending or replacing the said Article 25”.

Article 25 states:

“An environmental impact statement for the purposes of these Regulations or of any enactment as amended or adapted by these Regulations shall contain the information specified in paragraph 2 of the Second Schedule and may also contain the information specified in paragraph 3 of that Schedule.”

The second schedule states:

“INFORMATION TO BE CONTAINED IN AN ENVIRONMENTAL IMPACT STATEMENT

- 1. An environmental impact statement shall contain the information specified in paragraph 2 (referred to in this Schedule as "the specified information").*
- 2. The specified information is—*
 - a. a description of the development proposed, comprising information about the site and the design and size or scale of the development;*
 - b. the data necessary to identify and assess the main effects which that development is likely to have on the environment;*
 - c. a description of the likely significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on—*
 - human beings;*
 - flora;*
 - fauna;*
 - soil;*
 - water;*
 - air;*
 - climate;*

¹⁹ See CER Appendix 4 – Shannon LNG submission on “A Natural Gas Safety Regulatory Framework for Ireland – Proposed Vision” – September 13, 2007

- the landscape;*
 - the inter-action between any of the foregoing;*
 - material assets;*
 - the cultural heritage;*
 - d. *where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and*
 - e. *a summary in non-technical language of the information specified above.*
3. *An environmental impact statement may include, by way of explanation or amplification of any specified information, further information on any of the following matters—*
- a. *the physical characteristics of the proposed development, and the land-use requirements during the construction and operational phases;*
 - b. *the main characteristics of the production processes proposed, including the nature and quantity of the materials to be used;*
 - c. *the estimated type and quantity of expected residues and emissions (including pollutants of surface water and groundwater, air, soil and substrata, noise, vibration, light, heat and radiation) resulting from the proposed development when in operation;*
 - d. *(in outline) the main alternatives (if any) studied by the applicant, appellant or authority and an indication of the main reasons for choosing the development proposed, taking into account the environmental effects;*
 - e. *the likely significant direct and indirect effects on the environment of the development proposed which may result from—*
 - i. *the use of natural resources;*
 - ii. *the emission of pollutants, the creation of nuisances, and the elimination of waste;*
 - f. *the forecasting methods used to assess any effects on the environment about which information is given under subparagraph (e); and*
 - g. *any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any specified information.*
- In paragraph (e), "effects" includes secondary, cumulative, short, medium and long term, permanent, temporary, positive and negative effects."*

Second Schedule 2(d) is not complied with because the EIS did not consider any Marine QRA taking into account the risks and consequences of an LNG spill on water. The EIS of the pipeline cannot be considered in isolation from that of the LNG terminal. The HSA is not giving any technical advice to An Bord Pleanála on the part of the pipeline within the Seveso II establishment because it considers that it has already done this for the EIS of the LNG terminal. However, at that stage the pipeline route was not known. We also believe that it is illegal for the CER to accord consent

while no Strategic Environmental Assessment has been undertaken of the entire project as this is obliged by Second Schedule 2(b) and 2(c). A project-specific EIS cannot address the issues which are obliged of 2(b) and 2(c), which an SEA can.

d. Section 2(d) states:

“the pipeline to which the application relates will be constructed and commissioned within a period which the Commission shall specify in relation to the application”

The Pipeline, in our opinion, represents project splitting and an attempt to obtain implicit retention for planning permissions already obtained by the developer. Following the recent European Court of Justice ruling on July 3rd, 2008 in case C-215/06 (Commission of the European Communities v Ireland)²⁰, we believe that a refusal by the CER to address the questions raised by this ECJ ruling would amount to an illegal and inadequate consent process by it.

e. Section 2(e) states:

“the pipeline to which the application relates will be capable of interoperating in a secure, safe and efficient manner with the natural gas system”

We are concerned about the different origins of the LNG that will enter the system and question if the varying composition of the LNG will have a safety impact. Also, as outlined in point (a) above, no single statutory body has given an overall view of the safety aspect of this project and no independent safety assessment has been carried out on the proposed pipeline.

f. Section 2(f) states:

“the applicant is a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates and to comply with the consent, if granted”

We have submitted a complaint to the Office of the Director of Corporate Enforcement outlining our fears that the accounts of Shannon LNG Limited do not give a true and fair view of the state of affairs of the company²¹ which could mean that the applicant may not have the financial capacity required of it by this section 2(f)

²⁰See [http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$dorequire=alldocs&numaff=C-215/06&datefs=&datefe=&nomusuel=&domaine=&m](http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher$dorequire=alldocs&numaff=C-215/06&datefs=&datefe=&nomusuel=&domaine=&m) and See CER Appendix 1: KRA and Safety Before LNG submission to An Bord Pleanála on Shannon LNG pipeline and compulsory acquisition order reference GA0003 and DA0003 – October 7th 2008

²¹ See CER Appendix 3: Kilcolgan Resident Association’s complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations

g. Section 2(g) states:

“the applicant will be capable of paying any levy charged by the Commission”

We have submitted a complaint to the Office of the Director of Corporate Enforcement outlining our fears that the accounts of Shannon LNG Limited do not give a true and fair view of the state of affairs of the company²² which could mean that the applicant may not have the financial capacity required of it by this section 2(g).

6. According to media reports, an internal CER memo has stated that gas prices will soar by about 15% if Corrib and Shannon LNG start production. The Sunday Independent reported it as follows on August 24th, 2008²³:

That's gas -- bills up 15% after Corrib field opens

Less fuel imported but higher costs mean prices will soar again

By MAEVE SHEEHAN

Sunday August 24 2008

ONCE gas production comes on stream from the Corrib Gas fields off Belmullet, Co Mayo, next year the price of gas to Irish users is set to shoot up by 15 per cent.

Consumers are already facing a 20 per cent increase in gas bills from September.

However, an internal memo from the energy regulator warns that the price will soar even higher once production starts at the Corrib gas fields next winter.

The memo attributes the rising cost of gas to the declining use of two inter-connectors linking the UK's gas supplies with Ireland.

At the moment, Ireland gets 90 per cent of its gas from the UK. Once production starts at Corrib and a second producer, Shannon LNG, starts distributing gas from 2012, less gas will be imported.

The inter-connectors, which must meet fixed costs, will consequently become more expensive.

The energy regulator is currently considering whether the consumer should shoulder the burden of that extra cost -- which is estimated to represent a 15 per cent rise in the price of gas.

Consumers currently foot the bill for the inter-connectors, with the price built into the twice-monthly gas bills. Bord Gais invested in two inter-connectors in Scotland to import gas from the UK when Irish gas supplies started running out. The company passed the cost on to its customers.

A memo, circulated in July, sets out several options under consideration.

²² See CER Appendix 3: Kilcolgan Resident Association's complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations

²³ See Sunday Independent August 24th 2008 c.f. <http://www.independent.ie/national-news/thats-gas--bills-up-15-after-corrib-field-opens-1462172.html>

The first is a "do nothing" scenario, in which the price of gas would increase dramatically and consumers would shoulder the increased gas prices. A second option is for the Government to cover the additional cost to Bord Gais, thereby protecting the consumer from an immediate price rise.

Analysis and comment PAGES 20, 21, 23

A third is to allow the gas suppliers to share the extra cost between them. Gas suppliers are likely to resist this option, however.

Ireland is anxious to decrease dependence on UK gas supplies by generating its own supply. That means encouraging production in the Irish market. Charging gas suppliers for the cost of the inter-connector could be seen as a deterrent.

The supply of indigenous gas is unlikely to mean cheaper prices for consumers. Shell and Statoil are scheduled to begin producing gas from the Corrib field off the west coast in 2009. Shannon LNG is due to come on stream in 2012. That company will ship liquefied gas to Ireland and restore to its gaseous state for distribution on the Irish network.

According to the memo, Corrib and Shannon will not provide enough gas to supply the Irish market so gas will still be imported from the UK and priced at world market levels. The indigenous gas producers are likely to set their prices at those market level, even though their costs may be lower.

Simon Coveney, the Fine Gael spokesman on energy, said the regulator's job is ultimately to protect the consumer and businesses by ensuring that gas is provided as cheaply as possible.

"The onus is on the regulator to ensure there is a pricing structure in place so that Ireland's consumers benefit from Ireland producing it's own gas and not having the extra costs associated with importing gas," he said.

"What is required is a new formula for regulating gas prices in Ireland that can differentiate between imported gas and gas produced off the coast of Ireland."

We await your feedback.

Yours faithfully,

Johnny McElligott
PRO Kilcolgan Residents Association.

CER APPENDIX 1:

KRA and Safety Before LNG submission to An Bord Pleanála on Shannon LNG pipeline and compulsory acquisition order reference GA0003 and DA0003 – October 7th 2008

Attached in a separate file.

CER APPENDIX 2:

KRA submission on the Draft Heads of Petroleum Exploration and Extraction (Safety) Bill, 2007 – April 28th, 2008

Attached in a separate file.

CER APPENDIX 3:

KRA Complaint to the Office of the Director of Corporate Enforcement on possible failure by the Auditor to comply with statutory obligations.



Kilcolgan Residents Association
Safety before LNG

Protecting the Shannon Estuary and its people

Kilcolgan Residents Association Telephone: +353-87-2804474
c/o Island View Email: safetybeforelng@hotmail.com
Convent Street Web: www.safetybeforelng.com
Listowel
County Kerry

15 October 2008

Office of the Director of Corporate Enforcement,
16 Parnell Square,
Dublin 1.
By Email only to: info@odce.ie

Re: Complaint on possible failure by Auditor to comply with statutory obligations.

Dear Sir /Madam

We are hereby formally complaining about the auditing of the accounts of Shannon LNG Limited, submitted to the Companies Registration Office on October 6th 2008 for year ended 31 December 2007.

The auditors are Ernst and Young, Chartered Accountants, Barrington House, Barrington Street, Limerick.

We ask you to examine the following points:

1. The Director's Report is signed by directors Patrick Power and Gordon Shearer, but it is not dated. The approval date of the financial statements in point 15 is not entered either. These accounts cannot therefore be reviewed properly as there is information material to the understanding of the accounts omitted.
2. The Auditor's Report is neither signed nor dated. These accounts cannot therefore be reviewed properly.

3. The accounts state in the notes²⁴ that the continuation as a going concern is dependent on, among other factors, obtaining funding from Hess LNG. However, no mention has been made of any foreign currency exposure and the fact that the value of the same loan agreement is 10 million Euros for year ended 31 December 2006, whereas it is 30 million Euros the following year. This is a material loan in the context of the accounts. Is this the same loan agreement?
4. No mention has been made anywhere in the accounts of the actual cost of the land that will accrue if the option to purchase is actually exercised. Our view is that these 281 acres are worth between 100,000 to 300,000 Euros an acre because it is now zoned Industrial – giving the site a value, in our opinion of between 28.1 million and 84.3 million Euros. This would mean that the 30 million Euros of a loan would not even cover the purchase price of the land and this information is material to the accounts but has not been mentioned anywhere. This is material to the understanding of the accounts.
5. Note 1 (c) states that the project site is in “Shannon” but our understanding is that it is in Tarbert, County Kerry. Is this a mistake?
6. The fact that Shannon LNG Limited became a single-member company on June 24, 2008, the owner being HESS LNG LIMITED, a company registered in the Cayman Islands is not mentioned in the accounts.
7. The standard note for contingencies reads the same for year ended 31 December 2007 as it did for the previous year ended 31 December 2006. However,
 - a. No reference is made to the rights and responsibilities attaching to the option agreement of April 19th, 2006 (to purchase 281 acres of land at Kilcolgan, Tarbert, County Kerry for the purpose of attempting to build an LNG terminal) of which the auditors at the time of preparing their report must have been aware; 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.”*²⁵ This four-year option and requirement to obtain planning within 2 years are material facts never mentioned in the accounts.
 - b. The accounts do not give a true and fair view of the contingencies that the company has and therefore of the state of the company’s affairs. The accounts do not state if there are any further payments payable under the option agreement. Up to 31 December 2006, the company had paid

²⁴ Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 9

²⁵ http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf Section 3.1 page 22

493,000 euros under the term of the option agreement²⁶. Up to 31 December 2007, the company had paid 1,233,000 euros under the term of the same option agreement²⁷. No mention was made of this 740,000 euros creditor in the accounts of year ended 31 December 2006, even though they were a definitely-known creditor at that time.

- c. The accounts mention that on 28 March, 2008 An Bord Pleanála granted the company planning permission to construct an LNG terminal in County Kerry²⁸. However, they do not mention the equally important fact that less than 8 weeks later, this decision was being challenged in a highly-publicised judicial review to the High Court. This challenge will subject the company to not insignificant legal costs which have not been mentioned in the accounts either and which will have a definite material effect on whether the company will ever operate in the foreseeable future. We ask if the fact that the accounts are not dated is an attempt to hide information.
- d. The planning permission has also been referred to the petitions committee of the European parliament and this fact has also not been mentioned in the accounts.

The Irish Times noted the following on June 17th 2008:²⁹

“Tarbert challenge moves step closer

APPLICATIONS BY an environmental group and a local man for permission to bring proceedings challenging the proposed development of a €500 million gas terminal near Tarbert in Co Kerry will be heard at the Commercial Court later this year.

The proceedings were admitted to the Commercial Court list yesterday by Mr Justice Peter Kelly who directed that the applications for leave will be heard on October 14th. He said if leave was granted, the full trial of the actions would proceed immediately afterwards.

Proceedings have been brought by Friends of the Irish Environment Ltd (FIE) and by Raymond O'Mahony, a welder and member of the Kilcolgan Residents Association of Kilcolgan, Tarbert. Both are objecting to the proposed €500 million development by Shannon LNG Ltd of a liquid natural gas terminal at Kilcolgan, Tarbert.

²⁶ Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2006 submitted to the CRO on 28 September 2007 page 3

²⁷ Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 3

²⁸ Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 3

²⁹ <http://www.ireland.com/newspaper/ireland/2008/0617/1213646602803.html>

Mr O'Mahony says he is extremely concerned about the safety of himself and his family and at how the Health and Safety Authority (HSA) has dealt with issues concerning the proposed terminal.

Both sets of proceedings were initiated in the High Court earlier this year and were admitted to the Commercial Court list, which fast-tracks commercial disputes, on the application of Shannon LNG.

Permission for the development was granted by An Bord Pleanála on March 31st.

Shannon LNG claims it had spent €15 million related to the proposed development by last April and that any delay in moving forward with the development will have significant commercial consequences. It is aiming to have the facility operational by 2012 or 2013.

In its judicial review application, FIE claims the HSA failed to give proper technical advice on the control of major accident hazards relating to the proposed development as required by domestic and European law. It also claims the State failed to properly transpose four relevant EU directives. It claims the HSA decided that major accident regulations applied to the proposed development but that the HSA's consequent technical advice on the development was inadequate, amounting only to "a simple statement" that the HSE did not advise against the proposed development.

FIE also claims there is no national land use policy governing the proposed development and that the Tarbert site is on a special area of conservation, beside a proposed national heritage area and special protection area and close to areas frequented by the public.

Mr O'Mahony is seeking declarations that the HSA failed to give proper technical advice concerning the proposed development and failed to transpose properly a number of relevant EU directives.

MARY CAROLAN

© Irish Times 17.06.08

The question we ask now is: did Ernst and Young audit these accounts at all as this information was in the public media and they must have been aware of it?

Our fear is that the submission of these accounts was impacted by the deadline for public submissions on the planning application for a 26 kilometre pipeline from the proposed LNG terminal of October 7th, 2008, the date of the commencement of the high court challenge of October 14th 2008 and the deadline for a submission to the Commission for Energy Regulation for consent to construct a pipeline of October 17th 2008.

Our fear is also that the aim in these accounts has been to hide the purchase price of the site from public scrutiny.

If these accounts are relied upon by third parties it is clear that the omission of material information could present a view that may not be a true and fair view of the company's affairs.

In summary, our complaint is that the accounts do not give a true and fair view of the state of affairs of the company. Our complaint, if accepted as valid, conflicts entirely with the auditor's report which states:

"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".³⁰

We await your feedback.

Yours sincerely,

Johnny McElligott.
P.R.O. Kilcolgan Residents Association.

³⁰ Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 5

CER APPENDIX 4:

Shannon LNG submission on “A Natural Gas Safety Regulatory Framework for Ireland – Proposed Vision” – September 13, 2007
Attached in a separate file.

Pipeline Oral Hearing Appendix 2: Section 5 Submission to Kerry County Council



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County Kerry

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

Safety before LNG

Protecting the Shannon Estuary and its people

28 November 2008

Planning Department
Kerry County Council
Council Buildings
Rathass
Tralee
Co. Kerry
By email to: kcc@kerrycoco.ie and plan@kerrycoco.ie

RE: Section 5 declaration on whether changes to the Shannon LNG project at Kilcolgan, Tarbert, County Kerry granted permission under PA0002 constitute work on the original project which is or is not development and is or is not exempted development.

Dear Sir/Madam,

This is an application to Kerry County Council seeking a declaration under Section 5 (1) of the Planning and Development Act 2000 on whether changes to the Shannon LNG project constitute work on the original project which is or is not development and is or is not exempted development.

The 'Safety Before LNG' group represents people from both Kilcolgan and the wider community and is advocating responsible strategic siting of LNG terminals in areas which do not put people's health and safety in danger. See attached signed submissions by Ms. Kathy Sinnott M.E.P.³¹ and Mr. Tony Lowes for "Friends of the Irish Environment"³² on whose behalf this submission is also, therefore, being made.

Shannon LNG was granted planning permission for an LNG terminal at Tarbert on March 2008 directly through the fast-track planning procedure of the Strategic Infrastructure Act 2006 by An Bord Pleanála. Shannon LNG has now applied for a 26-kilometre gas pipeline from the proposed

³¹ See 'Section 5 Appendix 1' – Signed submission by Ms. Kathy Sinnott M.E.P.

³² See 'Section 5 Appendix 2' – Signed submission by "Friends of the Irish Environment".

LNG terminal under planning reference GA0003. Please consider the following issues in making your decision:

1. We are of the opinion that the result of the European Court of Justice ruling of July 3rd 2008 regarding the inadequate Environmental Impact Assessment (EIA) at Derrybrien³³ is that any new information on a project that has an EIA would **require a new EIA on the entire project** to assess their environmental effects as obliged by the EIA Directive .
The court ruled as follows :

“ that, by failing to adopt all measures necessary to ensure that:

- *projects which are within the scope of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment either before or after amendment by Council Directive 97/11/EC of 3 March 1997 are, before they are executed in whole or in part, first, considered with regard to the need for an environmental impact assessment and, secondly, where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337, and...*

Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of that directive;”

An extensive programme of pre-development archaeological testing has already taken place on the site which included building a road through the site. This was detailed in Chapter 14.6 of Volume 2 of the EIS submitted by Shannon LNG to An Bord Pleanála for planning application PA0002. Indeed, chapter 7.2 of the same volume describes the archaeological investigation itself as the first of six broad areas of construction activity on the site. This therefore means that this project is development that has already begun and any modifications to this project therefore constitute a project to which the ECJ ruling of July 3rd 2008 applies because **this project has been “executed in part”**.

A modification to the Shannon LNG project was officially made by application GA0003 to construct a 26-kilometer pipeline from the proposed LNG terminal to the national gas grid at Foynes in County Limerick. We question that the environmental report accompanying this application was inadequate as per the ECJ ruling of July 3rd 2008. We are now requesting a declaration from Kerry County Council on whether or not this modification is or is not exempted development.

³³ European Court of Justice ruling C-215/06: [http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$docrequire=alldocs&numaff=C-215/06&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100](http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-215/06&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100)

2. An official application for a 26-kilometre pipeline is a material change to the permitted LNG terminal as it is an integral part of the project. This is a perfect example of project-splitting which is contrary to the EU EIA Directive. The original planning permission was for a terminal only; the new application is for a pipeline to this LNG terminal. Our contention is that the **project is to be therefore considered as a new one - a pipeline AND an LNG terminal**, compared to the information available during the first assessment. We are now requesting a declaration from Kerry County Council on whether or not this modification to the original project is or is not exempted development. In response to a question³⁴ raised by Member of the European Parliament (M.E.P.) Ms. Kathy Sinnott, the EU Commission responded on this issue as follows on November 7th, 2008:

“When referring to the addition of information requiring a new Environmental Impact Assessments (EIA), the Directive does not provide for a deadline to re-conduct an assessment on the basis of supplementary information. This process depends on the importance of the new elements brought forward and it is for the Member States to appreciate if a new EIA is needed. This could be the case if the project is to be considered as a new one, compared to the information available during the first assessment.”

In addition, the following works have not yet even been considered for this project:

- a. The developer has only made vague references to its plans for the rest of its site on the land bank. They suggest maybe a gas-fired power station which would, they say, “be the subject of a separate planning application and EIS” (EIS volume 1 page5). On November 2008, Shannon LNG announced in its information booklet, issue 5 that:

*“Shannon LNG has registered an electricity generation company with the Companies Registration Office. Ballylongford Electricity Company Ltd. has been registered in order to provide a vehicle, should it be required, to manage the operation of a separate electricity generation business associated with the proposed LNG Terminal.”*³⁵

- b. Shannon LNG also states (EIS volume 1 page5) that electricity to be supplied via 110kv lines from the ESB network at Tarbert will also “be the subject of a separate planning application”. On November 2008, Shannon LNG announced in its information booklet, issue 5 that
- “Shannon LNG has accepted an offer from Eirgrid for a power supply to the site. The supply will be from Tarbert”.*³⁶
- c. Shannon LNG goes on to state (EIS volume 1 page5) that Kerry County Council will upgrade the coast road from Tarbert which “will also be the subject of a separate planning application”.

3. Planning permission was given for the LNG terminal without any conditions attached on the obligation to first obtain all other environmental permits e.g. an Integrated Pollution

³⁴ Question to the EU Commission raised by MEP Ms. Kathy Sinnott: reference E-4740/08EN <http://www.europarl.europa.eu/sides/getDoc.do?jsessionid=ADB262D6911C8729563B6D432D65463B.no de1?type=WQ&language=BG&reference=E-2008-4740&secondRef=0>

³⁵ See ‘Section 5 Appendix 3’ below: Shannon LNG Information Booklet, Issue 5, November 2008

³⁶ See ‘Section 5 Appendix 3’ below: Shannon LNG Information Booklet, Issue 5, November 2008

Prevention and Control (IPPC) licence from the Environmental Protection Agency (EPA). No EPA licence has yet been obtained. It is our contention that applying for a pipeline for a project that has not yet obtained an EPA licence is a modification to the original permission that constitutes development which is not exempted development and we are now asking Kerry County Council to rule on this question. There is no integrated assessment of this project in our opinion. Our contention is that the **interactions between the decision-making bodies is totally inadequate and currently almost non-existent and cannot be assessed and that the procedural requirements of the EIA Directive are not being respected.** In response to a question (reference E-4740/08EN) raised by Member of the European Parliament (M.E.P.) Ms. Kathy Sinnott³⁷, the EU Commission responded on this issue as follows on November 7th, 2008:

“Directive 85/337/EEC³⁸ does not exclude the possibility that more than one authority may make a decision in respect of a proposed project. However, it must be ensured that the procedural requirements of the Directive are respected. It should be noted that the Directive makes provision for assessing the interactions between different factors. If different factors are the subject of decisions by different decision-making bodies, arrangements must be adequate to ensure that these interactions are assessed.

The Commission is aware that, in Ireland, approval of certain kinds of projects requires both a planning consent and separate pollution-control consent. It has some concerns that the current Irish legislation does not fully ensure the assessment of interactions (Infringement procedure 1997/4703).”

In response to a question (reference E-4066/08EN) raised by Member of the European Parliament (M.E.P.) Mr. Proinsias De Rossa³⁹, the EU Commission responded on September 2nd 2008:

“Infringement 1997/4703 is now chiefly about the conformity of Irish legislation used to implement Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment⁽¹⁾. The directive lays down a set of requirements to be met by national authorities when submitting, or determining whether to submit, certain projects to environmental impact assessment. As of 31 July 2008, the status of the procedure was that the Commission had decided to refer Ireland to the European Court of Justice but had not yet executed this decision.”

³⁷ Question to the EU Commission raised by MEP Ms. Kathy Sinnott on 8 September 2008: reference E-4740/08EN

<http://www.europarl.europa.eu/sides/getDoc.do?jsessionid=ADB262D6911C8729563B6D432D65463B.no&type=WQ&language=BG&reference=E-2008-4740&secondRef=0>

³⁸ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

³⁹ Question to the EU Commission raised by MEP Proinsias De Rossa on 18 July 2008 reference E 4066/08 EN <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2008-4066+0+DOC+XML+V0//EN>

4. The extension of the LNG project represents a broadening of the public affected by this project and therefore renders, among others, conditions 37 and 38 of the original planning permission unenforceable because the local communities between Kilcolgan and Foynes have been disenfranchised and excluded from any benefits or protections.
5. The original planning application permission PA0002 references condition 45 in condition 40 but only 40 conditions are listed. Conditions 41 to 45 are therefore missing and this planning permission is therefore invalid as unenforceable.
6. The original planning application was for an LNG terminal. The Irish Health and Safety Authority (HSA) advice to An Bord Pleanála on that project only covered the risks on the land. The HSA remit for this application stopped at the water's edge. An Bord Pleanála made its planning decision without obtaining any HSA expertise on any risk assessment of an LNG spill on water from LNG tankers travelling in the estuary. Our understanding is that the EPA did not attend the original oral hearing into the LNG terminal. Since a planning application has now been submitted for a pipeline, gas will be able to leave the site so the transport of LNG to the site on the estuary will now be able to realistically take place. This represents a material change to the original project and an assessment of the risks and consequences of an LNG spill on water from a moving vessel on the estuary needs to be analysed. This means that this is not a separate project but a whole new project that is work that constitutes development which is not exempted development. We now request that Kerry County Council rules on this assertion.

In conclusion, we want a determination on whether planning permission for part of a dangerous LNG project split into its constituent parts, each of which is an integral part of the one project, is invalidated and therefore represents development which is not exempt when permission for the next constituent part (in this case the LNG pipeline) is applied for. We are therefore requesting a declaration on whether or not "project splitting" is development which is not exempt.

We have forwarded you the required fee of 80 Euro and await your feedback.

Yours faithfully,
Johnny McElligott

Section 5 Appendix 1. Signed Submission by MEP Ms. Kathy Sinnott.

Attached in a separate file

Section 5 Appendix 2. Signed Submission by 'Friends of the Irish Environment'.

From: admin@friendsoftheirishenvironment.net
To: safetybeforelng@hotmail.com
Subject: RE: Section 5 referral on Shanonn LNG project
Date: Wed, 26 Nov 2008 15:03:28 +0000

Hi Johnny –

This is good and we'd be delighted to sign!

Tony

From: Safety Before LNG [mailto:safetybeforelng@hotmail.com]
Sent: 26 November 2008 11:52
To: Tony Lowes Friends of the Irish Environment
Subject: Section 5 referral on Shanonn LNG project

Hi Tony,

Could you please confirm by email that would like the 'Friends of the Irish Environment' to be added to the attached section 5 referral to Kerry County Council on the Shannon LNG project.?

Kind Regards,

Johnny McElligott

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

Section 5 Appendix 3. Shannon LNG Information booklet, Issue 5 November 2008.

Shannon Pipeline Application.

An Bord Pleanála has announced that it will conduct an Oral Hearing on the Shannon Pipeline Application in the Listowel Arms Hotel, commencing Monday, 1st December 2008.

The proposed Shannon Pipeline will connect the national gas grid near Foynes to the LNG Terminal, thereby extending the gas grid to Kerry for the first time.

The Shannon Pipeline planning application was submitted to An Bord Pleanála on the 14th August 2008. The proposed pipeline comes within the Strategic Infrastructure provisions of the Planning and Development Act.

On the 5th September 2008, an application under the Gas Acts was made to the Commission for Energy Regulation for Consent to construct the Pipeline.

Over a year prior to lodging the Planning Application, Shannon LNG met with the Farming Organisations to agree Wayleave Arrangements for Landowners along the pipeline route.

Subsequently, Shannon LNG met with individual Landowners to discuss the proposed Pipeline route.

Shannon LNG also entered into consultation with interested parties and in May 2008 held information evenings for the wider community in Foynes and Tarbert.

Terminal Planning Permission secured

In January of this year, An Bord Pleanála conducted an eight day Oral Hearing in Tralee on the planning application for the LNG Terminal. The Board subsequently granted permission for the Terminal on 28th March 2008.

In June 2008, two High Court applications were made to have An Bord Pleanála's decision judicially reviewed. The case involved An Bord Pleanála, the Health & Safety Authority and the Attorney General with Shannon LNG as a Notice Party.

The case commenced in the Commercial High Court on 14th October 2008 and was later withdrawn by the parties who had sought the judicial review.

Thus Shannon LNG has secured full planning permission for the Terminal.

WORK ONGOING

Initial Archeological Work

Archaeological test trenching was undertaken on the site in recent months. The work also included a wade and metal detection survey in the stream running through the site. The work was

undertaken in accordance with the terms of the Terminal planning permission and under licence from the Department of the Environment, Heritage and Local Government.

The work was in preparation for the detailed archaeological work, which will entail excavation and recording of the identified areas, and will be carried out a later date.

Power Supply to Site

Shannon LNG has accepted an offer from Eirgrid for a power supply to the site. The supply will be from Tarbert.

Electricity Generation

Shannon LNG has registered an electricity generation company with the Companies Registration Office. Ballylongford Electricity Company Ltd. has been registered in order to provide a vehicle, should it be required, to manage the operation of a separate electricity generation business associated with the proposed LNG Terminal.

New Appointment

Shannon LNG is pleased to announce the appointment of Martin Regan as Commercial Manager. Martin has 15 years experience in the gas & electricity sectors. Previously Martin operated a consultancy practice specialising in gas and electricity regulation, capacity planning and economic analysis. Prior to that Martin worked for BG Group plc in Ireland, UK and Asia in engineering and commercial roles in the gas and electricity sectors.

Contact Details

Shannon LNG Limited,
Clieveragh Business Park,
Listowel, County Kerry
Tel: 068 53 310

Pipeline Oral Hearing Appendix 3: Green Light for Endesa move on ESB plants' (Kerryman – Wednesday November 19th 2008) <http://www.kerryman.ie/news/green-light-for-endesa-move-on-esb-plants-1545486.html>

Green light for Endesa move on ESB plants

By DÓNAL NOLAN

Wednesday November 19 2008

TARBERT Island's transition to new Spanish owners Endesa will begin next month following the support of its workforce who voted in favour of the sale on Friday.

The deal - which was also supported by workers at the Great Island plant in Wexford by a ballot on Friday - sees the Spanish company paying €450 million for both plants. Following the deal it is expected that up to 100 of the existing 130 workers in Tarbert Island will remain in the Kerry plant for the foreseeable future, with the remainder transferring to other ESB sites in the region.

Sixty-six Tarbert Island workers voted in favour of the sale with 59 voting against. In contrast the sale was carried in Great Island by a majority of 55 for and eight against - it is understood that concerns were sharper in Tarbert given the age profile of the workforce. With many young employees in Tarbert Island, workers feared the transition deal - where the ESB undertook to make no compulsory redundancies - might have proved unworkable. Three options were given the staff following the announcement of the sale in August - take early retirement, retire from the ESB to a new position with Endesa or transfer to another ESB site.

Those who choose to take jobs with the Spanish operator are to receive a payment of €5,000 each, with a further payment of €12,000 next year - all part of the ESB's incentive package of €2.8 million for agreeing to transfer to the new owner. Workers in Tarbert have until Thursday to decide which of the three options to take, but it is thought at this stage between 90 and 100 workers might opt to remain on site.

The sale of both plants came about under a deal between the ESB and the Commission for Energy Regulation to reduce the State-owned company's share of the power-generation market to 40 per cent - in a bid to increase competition.

Meanwhile, the agreement has been greeted with relief by the community who feared the plant was going to close for good until details of the new ownership began to emerge earlier this year. Tarbert Development Association's John Fox said it would lead to the retention of invaluable jobs in the area. ["The Spanish company's undertaking to build a gas-fired power plant alongside the existing plant within the next four years could mean even more jobs."](#)

"With the proposed LNG plant nearby supplying gas it could guarantee economic success for north Kerry and west Limerick in a time of recession. We need to get it all moving now," he said.

North Kerry TD, Jimmy Deenihan also welcomed the news calling for Shannon Development and the IDA to establish 'energy park' status for the landbank. "Synergy between the ESB and the LNG development should lead to an emphasis now on the landbank tapping into the vast opportunities that are being presented by green energy at present."