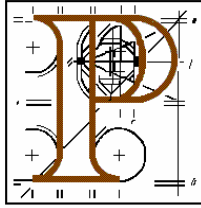

An Bord Pleanála



Ref.: **PL03.237141**

Development: **Floating pontoon, mooring anchors, access gangway, reinforced concrete slipway and inspection hardstanding, workstore, parking, associated infrastructure for berthing and inspection of sea plane at Mountshannon / Dooros, Co. Clare.**

Planning Application

Planning Authority: Clare County Council
Planning Authority Ref.: 09/1166
Applicant: Harbour Air Ireland Ltd.
Type of Application: Permission
Planning Authority Decision: Grant permission (9 no. conditions)

Planning Appeal

Type of Appeal: Third party (4 no.)
Appellants: Sandycove Residents Association
Inland Fisheries Ireland
An Taisce
Mountshannon Angling Club
Observers: Patrick and Antoinette Reynolds
Inspector: Conor McGrath
Date of Site Inspection: 09/09/2010

1.0 INTRODUCTION

This report relates to a number of third party appeals against the decision of the planning authority to grant permission for the proposed development. There is one observation on the appeal. The Board is advised of a concurrent appeal in relation to development of a similar nature in Galway docks, under ref. PL61.237271.

2.0 SITE LOCATION AND DESCRIPTION

The appeal site is located on the eastern edge of the settlement of Mountshannon, Co. Clare, on the shores of Lough Derg. The site comprises a stated area of 0.3571ha, located to the southeast of an existing marina / harbour, associated with the adjoining Mountshannon Holiday Village. The site is accessed from the R352 via the internal road network of that development. An unsurfaced roadway extends along the eastern side of the adjoining marina to an existing wooden jetty on the lake shore. The shoreline to the east of this jetty is initially sandy, giving way to trees and vegetation. There are a number of trees behind the sandy shoreline, giving way to disturbed ground. To the west of the jetty is the entrance to the marina.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development comprises the provision of;

- A floating concrete pontoon (20m x 2.5m) extending into the lake, to be accessed from the existing wooden jetty over a 1.5m wide gangway. The pontoon will be moored to the lake-bed with two, 3-tonne, anchor blocks.
- A new concrete slipway on the lakeshore (30m x 9m) will provide access to an inspection hardstanding area (22.1m x 17.5m).
- A new access road to the jetty and the inspection area, with one minibus and four car parking spaces. A 20 ft container / workstore is to be sited adjoining the car parking spaces, adjacent to an existing covered mooring area.

The development is to serve a proposed, scheduled and charter, sea-plane service, which is to operate across the country. It is stated that the operations office and passenger check-in / waiting area will be accommodated within the existing Mountshannon Holiday Village office building to the northwest.

An indicative landing area on the lake is identified on the plans, however, the application notes that the landing area will not require any infrastructure, such as buoys or lighting. While the site is to serve as the inspection base for Harbour Air sea-planes, maintenance work will be undertaken in Scotland. Occasional refuelling will take place on this site, with an oil delivery truck attending the site as necessary. No passenger parking is proposed and passengers will be transferred to and from the site by minibus.

The planning application and appeal relates to the physical infrastructure to facilitate the berthing and inspection of a seaplane and does not relate to the operation or licensing of the aircraft.

4.0 RELEVANT PLANNING HISTORY

PA ref. 03/977: Permission granted to Willowfleet Limited to construct 18 no. holiday cottages, control / office building, service road and entrance on lands to the northwest of the appeal site.

PA ref. 03/2353: Permission granted to Willowfleet Limited to redevelop an existing jetty facility, comprising 16 no. mooring bays, boathouse, service road and associated works, to be used in conjunction with the holiday cottage development (P03/977), and a private jetty facility to include 3 mooring bays together with lean-to roofed structure and store room. Conditions included:

2. No development shall take place on site until such time as an encroachment licence is obtained from Waterways Ireland. A copy of same or, where it is found that such a licence is not necessary, a letter from Waterways Ireland to this effect, shall be submitted for the written agreement of this Planning Authority prior to the commencement of any on-site development works.

PA ref. 04/2289: Permission granted to Willowfleet Limited for change of design of holiday cottage on site no. 18 of the development approved under ref. P03-977.

PA ref. 04/2290: Permission granted to Willowfleet Limited for a revision to the control office approved under P03-977, providing for a retail and craft sales area, 2 holiday dwellings and associated works, including relocation of the site entrance.

PA ref. 04/2749: Permission granted to Willowfleet Limited for an extension to the jetty development approved under ref. 03-2353, to comprise 32 no. additional mooring bays, relocation of the boathouse and construction of 11 no. holiday cottages, control office/storage building, roads, entrance and site services.

PA ref. 08/1325: Permission granted to Willowfleet Limited for retention and completion of coffee shop, shop and apartment as constructed at the site entrance, and retention of boathouse with apartment over, adjacent to the marina.

5.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

5.1 Decision

In considering the application, the planning authority sought the following further information:

- An Appropriate Assessment of the development under Article 6(3), to include an appropriate assessment of likely impacts on, or disturbance of, protected bird species.
- An ecological assessment of impacts on fish species.

The planning authority subsequently decided to grant permission for the proposed development, subject to 9 no. conditions, including the following:

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- 2 (a) All mitigation measures outlined in the Natura Impact Statement and Fisheries Statement asreceived on 24/05/10, shall be adhered to in full during the construction and operation of the proposed development.
 - (b) A suitably qualified ecologist shall be appointed to oversee the site set-up and construction of the proposed development, and to ensure correct compliance with all prescribed mitigation measures. The ecologist shall be present on site during construction of the concrete slipway.
 - (c) The areas of shoreline outside of, but adjacent to, the site area shall be fenced off during construction to protect unnecessary damage to habitats outside of the construction footprint.
 - (d) The planning department shall be given four weeks notice in writing as to the proposed date of commencement of construction on the site.
 - (e) Upon completion of works, the appointed ecologist shall prepare an audit report of the works as carried out and submit a copy of this to the planning authority.
3. The proposed development shall only operate between the hours of 8.30am (winter months) or 6.45am (summer months) to 4.15pm (winter months) or 8.30pm (summer months).
 4. An oil spill kit shall be kept at the site at all times during construction and operation of the proposed development.
 5. Existing trees and hedgerows shall be retained and maintained unless their removal is necessitated as a condition of this permission.
 8. Provision of ring buoys on the site.
 9. Development contribution of €9,883.63, in accordance with the development contribution scheme.

5.2 Internal Reports

Planning: Having regard to the location of the site directly adjacent to the settlement of Mountshannon, at an existing private harbour, and to the nature and form of the development and the requirement to be located on the shoreline, the development is acceptable in principle. The development does not require an EIS under Schedule 5 nor is a EIS required for this sub-threshold development.

The closest houses to the development are not in permanent occupation. Given the location adjacent to an existing commercial marina, negative impacts on the amenities and privacy of residents are not expected. Maximum noise levels will be experienced during take-off, approx. 500m to the south of the site. Noise emissions will not have excessive impacts on amenities. Use of the existing access to the R352 will not impact on road safety and the parking proposals are acceptable. IAA will regulate the operation of the sea plane to ensure that it does not present a danger. An Air Operating Certificate will be required. The details submitted in response to the FI request are sufficient to

address the concerns regarding ecological impacts. All mitigation measures to be implemented in full.

Area Engineer, Roads: The development serving the proposal is not taken in charge. No major impacts on roads.

5.3 Prescribed Bodies

Department of the Environment, Heritage and Local Government:

Initial departmental reports noted that the overall project was considered to have potential significant effects on protected species and habitats. An appropriate assessment was requested and EIS screening was advised. In response to the further information submission, the dept. recommended that all mitigation measures identified in the environmental report be adhered to, as well as monitoring of site works by an ecologist, fencing off of the adjoining shoreline, contact with NPWS prior to construction commencing and preparation of an audit report on completion.

Waterways Ireland: No representation to make.

Irish Aviation Authority: No observations on the proposals.

An Taisce: The development requires an EIS due to the presence of adjoining designated sites. The development will block part of the busy entrance to Mountshannon harbour, which is undesirable for local businesses and access. Impacts on boating, fishing and wildlife will be far reaching due its commercial nature with scheduled flights.

Shannon Regional Fisheries Board: Seriously concerned regarding impacts on fishery and angling in the lake. Excessive wave action will reduce the availability and diversity of insect species, which is an important component of the fishery. The lake is important for many fish species of angling potential and species of high conservation status, including sea lamprey. An assessment of the area for pollan spawning is required. The lake is an SPA and species requiring protection include the hen harrier.

The development will affect fishery rights, which are property rights vested in the lake. There is a risk to the safety of people using the lake, while the presence of birds for which the site is designated, would create an air accident risk. The high speed of the aircraft and the distances required to taxi are not comparable with jet skies, whose impacts are proven. An EIS is a minimum requirement for this development. There is a risk of pollution from refuelling activities. It is not clear if dredging will be required at the site. No measures are identified to address the spread of invasive species. Noise disruption is not appropriate. The designated landing zone is not appropriate.

5.4 Third party submissions:

Issues raised in submissions on the application included the following:

- Environmental impacts on this designated site and the requirement for an EIS.
- Safety concerns due the levels of boating and other water based activities in this area.
- Noise and disturbance.
- The omission of flight operation aspects of the development from the application.

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- Deficient vehicular access.
 - Flooding issues.
 - Potential pollution impacts.
 - Loss of a beach area.
 - Previous dumping of dredged materials on this site.

6.0 THIRD PARTY GROUNDS OF APPEAL

Four third party appeals have been received from the following parties:

- Sandycove Residents Association
- Inland Fisheries Ireland
- An Taisce
- Mountshannon Angling Club

6.1 Sandycove Residents Association

- The proposed access road is not adequate to serve the development. It is already overused, serving 61 dwellings, shop, service vehicles and mooring berths.
- There are safety concern arising from fuel storage and refuelling activities in a residential area.
- The safe use of an adjoining beach area will be compromised by aircraft movements.
- There will be nuisance from noise emissions, particularly early in the morning.
- The development will give rise to loss of / disturbance to habitats in this SPA and disturbance to birds, particularly wintering species.
- There is a risk to water quality from construction and refuelling activities.
- Aircraft movement create the potential for the transfer of invasive species.

6.2 Inland Fisheries Ireland

- The concerns identified in SRFB submission to the planning authority were not adequately addressed.
- The lake is an important and valuable amenity due to the variety of fish available.
- Disturbance arising from aircraft movements will infringe fishing rights vested in the lake, which are property rights to be protected.
- There is a risk to staff and other boat users on the lake from high speed plane movements, which has not been assessed.
- There is no protocol required / proposed to address potential invasive species being transported by aircraft.
- Use of the lake surface should be subject to appropriate consents from statutory agencies and stakeholders, including NPWS, Waterways Ireland and anglers.
- If permission is granted it should be for a limited time to allow an appropriate review to take place.

6.3 An Taisce

- The applicants have not demonstrated legal title to lodge the application for development affecting the shoreline and on the surface of Lough Derg, which is a state lake. No encroachment licence has been obtained from Waterways Ireland.

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- The application is inextricably linked to the creation of a sea plane landing and take-off area on the lake and lakeshore.
 - The rights of existing boat users on the lake have not been addressed or resolved.
 - The site has not been properly screened for EIA, in view of the adjoining SPA and cumulative, including transboundary, impacts arising.
 - This issue was raised in DOEHLG submissions to the planning authority.
 - The European Court of Justice has previously found against Ireland, regarding its failure to adequately screen sub-threshold developments.
 - The development is part of a larger transboundary plan / project for a network of seaplane landing infrastructure in the county, with cumulative impacts requiring EIA.
 - The project is incompatible with national objectives to improve energy efficiency and sustainability in transport and tourism developments.
 - There is inadequate detail and assessment of the health and safety implications of sea plane operations on the lake. The development may lead to the cordoning-off of an area of the lake for landing / take off.
 - The Natura Impact Statement was deficient as no information on plane movements and their impacts, was provided to the consultants. No comparison with boat movements was made.
 - The applicants have missed the principle impact, which is one of disturbance of habitats, particularly from wake generated by plane movements.
 - No details in this regard have been provided and no assessment of the site specific concerns arising in Lough Derg has been undertaken.
 - The planning authority did not carry out a proper AA of the development, as required.
 - Impacts on fishing in lake has not been adequately addressed.
 - The assessment of noise impacts is inadequate.
 - It is likely that further sea planes would be required if passenger numbers increased.
 - Security measures, including fencing and lighting have not been identified.
 - Impacts arising from refuelling, servicing and maintenance on the site has not been adequately considered.

6.4 Mountshannon Angling Club

- There is a high level of local opposition to the proposal
- 13 of the 55 no. houses in the adjoining holiday home development, Sandycove, are permanently occupied.
- The site is not zoned and is outside the settlement boundary, in an area designated as a vulnerable landscape.
- Planning authority and DOEHLG reports do not agree on its location vis the boundaries of designated sites.
- The site is subject to development plan policies CDP46 and CDP52.
- The planning authority had inadequate regard to the habitats arising on the site. Existing habitats and trees will be lost due to the lack of conservation measures.
- No need for the proposed development has been established, as would be required in the case of a rural house. There is a local airport at Cloudrinagh, some miles away.
- Where a site hosts a priority natural habitat or species, only considerations relating to health, public safety, beneficial consequences of primary importance for the environment or other imperative reasons of overriding public interest, may be raised.

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- The assessment undertaken is more sympathetic to the proposed commercial development than to conservation of the Natura 2000 site.
 - While the site does not currently support annex listed habitats or species, it is located in a pNHA /SPA and may again support fish species and habitats for wildfowl.
 - The assessment does not consider disturbance arising from aircraft movements.
 - Dangerous wind conditions and plane movements may create a danger to others.
 - Proposed mitigation measures include signage advising of the need to avoid disturbance of habitats, introduction of invasive species etc. Experience on the lake indicates such signage to be ineffective.
 - The encroachment of the landing zone onto an area of commons / public water should not be condoned by the Board.
 - The fisheries assessment does not adequately deal with angling tourism or property rights vested in the lakes.
 - The proposed mitigation measures are not acceptable for the lake, which hosts rare fish and Annex II listed species.
 - Third party concerns, particularly regarding safety, were not taken into consideration by the planning authority. No mitigation measures in this regard were identified.
 - No public consultation was undertaken.
 - Impacts on holiday homes were dismissed inappropriately.
 - There will be impacts on the flight path of the hen harrier.

7.0 OBSERVERS

7.1 Patrick and Antoinette Reynolds

The observers make the following observations on the appeal:

- Proximity to adjoining residential properties is unacceptable.
- Noise and light pollution, particularly in the early morning, has not been addressed.
- There is potential for oil spillage and pollution of the lake.
- Such industrial development would detract from the visual amenities of the area.
- The access road is not of adequate standard to serve the proposed development.
- Safety concerns arise as the landing / take off area is subject to high levels of boating activity, while the harbour area is also used for swimming.
- Landing and take-off activities, and the base structures, would impact on the SPA.
- The site is located on a flood plain, which flooded last winter.
- Disturbance arising would have a negative impact on visitor numbers.
- The planning authority have ignored health and safety concerns. Issues regarding the supervision of the landing / take-off area have not been addressed.
- Submissions from IAA and Waterways Ireland would have been expected.

8.0 FIRST PARTY RESPONSE TO GROUNDS OF APPEAL

The first party make the following points in response to the third party appeals:

- The IAA and Waterways Ireland are responsible for the licensing / permitting of seaplane operations.

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- All navigation operations on the lake fall under the jurisdiction of Waterways Ireland.
 - Applications for an operating licence from Waterways Ireland and an Air Operators Certificate from IAA are being prepared. Preliminary consultations in this regard have been positive.
 - The planning application relates to necessary berthing and inspection infrastructure, rather than the operation or licensing of the aircraft.
 - These small aircraft, carrying 3-19 passengers are in operation on similar waters around the world, with negligible impacts.
 - There has been historic commercial, and current private, use of the lake by sea planes.
 - Waterways Ireland have granted one seaplane operating licence on Lough Erne and are considering another on Lough Ree.
 - Leisure and commercial cruise operations, and angling boats, have a greater impacts on the lake than sea planes.
 - Vehicular traffic volumes will be low and passengers will be transferred to and from the site by minibus.
 - Refuelling operations will be carried out in accordance with the operating procedures specified in the Air Operators Certificate, to be issued by IAA.
 - Aviation fuel is treated to prevent explosion and there is no risk to resident's safety.
 - The site / shoreline is private and is not open to the public. There will be no impact on the beach to the west of the marina entrance.
 - The Natura Impact Assessment and Fisheries Assessment address all environmental issues associated with the proposed development.
 - DOEHLG were satisfied with the assessments and did not appeal the decision. IROPI only applies where an impact has been determined, which does not arise in this case.
 - The development is substantially sub-threshold.
 - The nearest houses are 70m from the hardstanding and engines will be started only 1/2 minutes before departure.
 - Trees to be removed from the site are not mature trees.
 - The lake is in state ownership and there is a common law right to navigate any part thereof. Planning permission is not required for aircraft landing, take-off or, taxiing.
 - The comments of Inland Fisheries Ireland regarding impacts on fish species are unsubstantiated. Meetings were held in August 2010 with this body.
 - There will be no restrictions on angling activity on the lake.
 - Safety issues will be dealt with by IAA and Waterways Ireland and pilots will be appropriately trained.
 - Issues of invasive species are addressed in the Natura Impact Assessment.
 - There is no need for an encroachment licence. All structures are within private lands.
 - Carbon emissions per passenger mile would be less than those of transport by road.
 - Due to the shallow depth and design of sea plane floats, the wash generated by sea planes is minimal.
 - This tourism development will be beneficial to the area.

Appendices include letters in support of the development from current and previous operators of seaplanes on the lake.

9.0 PLANNING AUTHORITY RESPONSE TO GROUNDS OF APPEAL

No response to the third party appeal has been received from the planning authority.

10.0 THIRD PARTY COMMENTS ON APPEALS

10.1 An Taisce:

An Taisce make the following comments on the other third party appeals:

- Concur with the submission of Inland Fisheries Ireland, particularly regarding impacts on fishing rights and safety of boat users, and with concerns regarding the legal status of use of the lake in the manner proposed.
- The application is contrary to the established tranquil, lakeshore character of the area, as outlined by Sandycove Management Company.
- The concerns of Mountshannon Angling Club regarding health and safety, and the environmental impacts are noted. An Taisce concur with these concerns.
- The other third party appeals complement the appeal by An Taisce.

11.0 THIRD PARTY COMMENTS ON FIRST PARTY RESPONSE TO APPEALS

11.1 An Taisce:

- The response does not address the concerns raised, particularly regarding health and safety, environmental issues, fisheries impacts and residential amenities.
- An operating licence from Waterways Ireland does not establish title.
- The response fails to address issues of project splitting or EIS / SEA for the overall national sea plane network.
- No information on emission tonnage is provided.
- No new information is provided regarding potential bird disturbance.
- No additional noise data is provided.
- No additional information on shoreline based impact is provided.

11.2 Sandycove Management Company

- Health and safety concerns and impacts on daily lives are not addressed.
- The majority of houses in Sandycove are occupied on a full time basis. No houses are rented as holiday homes.
- This residential area is not suitable for the proposed development.

11.3 Mountshannon Angling Club

- IAA cannot issue a licence until Waterways Ireland, the landowner, have granted necessary licences.
- No licence applications have yet been made to IAA or to Waterways Ireland
- While the development relates to land based infrastructure, the impacts of seaplane operations are unacceptable to the third parties. There is no right to appeal the decisions of IAA or Waterways Ireland in this regard, however.

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- Total impacts on the area and its population have not been assessed.
 - The AA does not assess the impacts of aircraft landing and take-off on the lake.
 - The development of this site, outside the settlement boundary, will negatively impact on the landscape.
 - There has not been regular seaplane activity on the lake in the last ten years.
 - The environmental impacts will outweigh potential, unknown, benefits arising from increased tourism.
 - IFI have identified the importance of this area for fish species.
 - Seaplane activity will have significant disturbance impacts on fishing activity.
 - Pollan is an important and unique species in the lake, which is the subject of a biodiversity action plan.
 - There is potential for the transport of invasive species to the lake.
 - The proposed landing and take-off area is subject to considerable boating traffic.
 - Tourism in this area is dependent on maintaining the natural environment.

12.0 PRESCRIBED BODIES

The following submissions were received in response to a S.131 notice from the Board:

12.1 IAA:

- No observations on the proposed development.

12.2 Failte Ireland

- Lough Derg is an important tourist destination and Mountshannon is one of the most important nodes on the lake.
- The proposed infrastructure is welcome and will improve the tourist amenity value of the area through the creation of direct linkages with other destinations.
- The proposal should ensure that navigation channels are not interfered with and risk to boat users should be minimised.
- The needs of angling tourists should be considered. Any necessary safety arrangements, including markers on the lake, should be put in place.
- The time limitations placed on the operation of the flights to and from this destination should satisfactorily deal with any negative impact on tourist residential amenity value of the area.

12.3 Waterways Ireland

- The proposed development will not cause significant abstraction or addition of water either to or from the lake.
- The development is in keeping and comparable to existing infrastructural developments on the lake catering for other water based activities.
- Waterways Ireland have no evidence that the development will give rise to significant discharges of polluting matters or other materials or be likely to cause water pollution or the danger of such pollution.

13.0 PLANNING CONTEXT

13.1 Clare County Development Plan 2005

The lakeshore area is identified as a vulnerable landscape.

CDP 46: In areas identified as being vulnerable landscapes the Planning Authority will only normally permit proposals for development of the highest quality in terms of siting and design and where the development will not adversely impact upon to a significant extent upon the character, integrity or uniformity of the landscape.

CDP 52: The Planning Authority will normally only permit development where it can be clearly demonstrated that :

- i) There is no direct or indirect adverse affect on areas designated as sites or candidate or potential sites of national, European or international importance for wildlife; &
- ii) There will be no direct or indirect impact upon protected species and their habitats; &
- iii) There will be no adverse impact upon features of major importance to wild flora and fauna; &
- iv) There are no adverse impact upon features of geological or geomorphological importance recognised by the Geological Survey of Ireland; &
- v) There are no significant adverse effects on local habitats or species.

13.2 East Clare LAP 2005

The site is located outside the settlement boundary of Mountshannon in an area identified as a Vulnerable Lakeshore. Lands to the west and northwest, are zoned Other Settlement Land.

Policy E11: Extending the tourism base

The council will continue to work with others to promote and support the integration, extension and diversification of the range of tourism facilities and attractions throughout the area in so far as they do not conflict with the aims of other policies in the plan.

Proposals for development that will not unacceptably prejudice the growth of tourism in East Clare will not normally be permitted.

The council will seek to promote the strategic links with Shannon airport and the major tourism and visitor attractions within the county and region as a whole in order to support the local tourist economy.

Policy E12: Special interest, lakeside and activity based tourism

The council will support special interest water and activity related tourism development along the Lough Derg shoreline and will presume in favour of applications for activities and infrastructure supporting shore based activities, such as bird watching, walking , cycling and angling, and water based activities such as sailing.

Policy E13: Tourism Related Development.

Proposals for new or extended tourism related development will be permitted where it can be clearly demonstrated that there will be:

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- Integration with existing holiday / tourism facilities where feasible;
 - Adequate access serving the development with no associated adverse transport effects;
 - Car parking proposed in accordance with plan standards;
 - No adverse impact to any conservation interest, heritage interest or residential amenity;
 - Appropriate design that takes into account size, scale and materials of existing facilities;
 - Visitor management schemes.

Policy ENV 2: Protection of Vulnerable Landscapes

Proposals for development within the areas designated as vulnerable landscapes will normally be permitted only where it can be clearly demonstrated that the development will not impinge in a significant way upon the character integrity or uniformity of the landscape.

Policy ENV3 Protecting Areas of Nature Conservation

Proposals for development will only be considered where it can be clearly demonstrated that:

- a) There is no direct or indirect adverse impacts on areas designed as sites, or candidate or potential sites, of national or international importance for wildlife;
- b) There will be no direct or indirect impact upon protected species and/or their habitats;
- c) There will be no adverse impact upon features of major importance to flora and fauna;
- d) There will be no unacceptable effects to features of geological or geomorphological importance;
- e) There will be no unacceptable effects on local biodiversity or wildlife corridors; and

Policy T9: Marinas and Jetties

Proposals for the development of marina and jetty facilities will normally be permitted where it can be clearly demonstrated that :

- a) Constraints resulting from the designation of lake and lakeside areas as special areas of conservation, natural heritage areas and special protection areas have been taken into account.
- b) There are no adverse environmental, residential or transport impacts.

Objectives identified in the Mountshannon Settlement Plan include **Objective 3**, to allow for tourism growth in Mountshannon and the wider area. There are also specific objectives identified for the development of water-based commercial activities and for tourism and leisure uses in the harbour area, as identified on the attached plan extracts.

14.0 ASSESSMENT

It is proposed to consider the appeal under the following broad headings:

- Land use and development principle.
- Environmental impacts.
- Interaction with other lake users.
- Noise.
- Landscape and visual impacts.
- Roads and traffic.
- Other matters arising.

14.1 Land use and development principle.

The appeal site is located on the lakeshore, immediately adjacent to an existing marina and holiday home development, but just outside the settlement boundary of Mountshannon. The planning application relates to the development of a base for a sea plane operation, comprising a floating pontoon, concrete slipway, hardstanding area, and associated works. It is indicated that the associated seaplane service will not require any infrastructure such as buoys or lighting on the lake surface. I note the presence of existing harbour / marina facilities in Mountshannon generally and adjoining the appeal site, and the relatively high levels of water based activity which occur in this area. The development of marine / lake infrastructure, with a limited development footprint in this location would not be out of character with the surrounding pattern of development and would generally be in accordance with the policies and objectives of the development plan for the area. The proposed development is considered to be acceptable in principle.

Many of the issues raised in the third party submissions relate to the associated aircraft movements. The first party argue that aircraft movements, including landing, take-off and taxiing, are under the jurisdiction of the Irish Aviation Authority and Waterways Ireland. I note that these bodies have not raised objections to the proposed development. While the application relates to the provision of base facilities only, I do not consider that the impacts arising from the movement of aircraft to or from the facility can be excluded from consideration in the appeal.

14.2 Environmental impacts.

The adjoining lakeshore comprises the boundary of the Lough Derg pNHA, while the boundaries of the Lough Derg (Shannon) SPA appear to lie slightly further out from the edge of the lake. Lough-Derg North-East Shore SAC relates to the shore on the opposite side of the lake. The relevant site synopsis are appended herewith. It is necessary to consider the impacts of the proposed development on these designated nature conservation sites.

14.2.1 Appropriate Assessment

The development is not directly connected to, or necessary for, the management of the SPA. The project will potentially have significant effects on the SPA in view of its

conservation objectives. A Statement for Appropriate Assessment was submitted by the first party in response to the further information request.

Stage 1 of the statement, *Screening*, identifies the following potential impacts

- Direct and indirect loss of habitats: There will be minor loss of habitat within SPA and pNAH. The affected area does not support Annex listed species or species constituting a qualifying interest of the sites. It does not support spawning ground or nursery grounds for fish species or a feeding habitat for waterfowl.
- Disturbance to habitats: Disturbance will be restricted to the area of development works. Operational elements, involving use of the lake for aircraft landing and take-off, will not result in disturbance to habitats. The risk of transfer of invasive species is low due to nature and design of vessel floats and to the nature of operations.
- Disturbance to birds: There is potential for disturbance to wintering birds during construction and operation. Previous surveys did not indicate species of conservation value breeding on, or in the vicinity of, the site.

Potential impacts arise during take-off and landing activities. Noise disturbance will be similar, to or lower than, a speedboat, but will be temporary and localised. Aircraft movements will take place on open water, away from the shallow lake fringes, in areas where bird densities will not be high. There will be no disturbance to wintering or breeding wildfowl as a result of disturbance or noise.

- Disturbance to fish and aquatic organisms: Conditions at the site are not suited to spawning, nursery or regular holding habitat for identified annex listed, and nationally rare, fish species. It is a suitable nursery for ubiquitous species such as eel and stickleback. While the habitat is locally important for fish species, there are extensive similar, or better quality habitats in the area. Fisheries habitat will not be impacted on in the landing take-off area, due to the shallow draft of sea plane floats, the lack of in-water propeller and the lack of exhaust discharge to water. No impacts on fish species are anticipated.
- Disturbance to mammals: While otter activity is likely, no significant additional disturbance will result. The suitability of the habitat to support bats will not be affected and no potential roost sites will be lost.
- Water Quality: There is a risk to water quality without appropriate mitigation. Construction mitigation is required to prevent pollution during construction of the slipway. The coarse nature of sediment will mitigate silt run-off. Refuelling will be carried out in accordance with strict operating procedures. Maintenance will be carried out off-site and inspections will utilise spill kits where necessary. Petrol interceptors will be provided to car park drainage. No impacts are anticipated subject to mitigation.
- Hydrological Changes: There will be no changes to the hydrological regime or to settlement patterns in the vicinity. Wake from aircraft will not likely exceed 75mm in height and not increase wave action significantly. No impacts on hydrology are anticipated.

As potential impacts are anticipated a Stage 2: Natura Impact Assessment, was undertaken, which included consideration of aircraft movements associated with the proposed development.

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- Potential impacts: No impacts are anticipated on the utilisation of the lake by wintering or breeding birds, or on any of the other habitats or species present in the SPA arising from disturbance or habitat loss. Potential impacts may arise from pollution during construction or operation and there will be some loss of habitat, due to incursion into the SPA / pNHA.
 - In-combination effects: No currently proposed projects were identified which could result in in-combination impacts. No negative effects on the qualifying interests or integrity of the SPA are anticipated.
 - Impact mitigation: The site location avoids known feeding or roosting sites for wintering birds for which the lake is designated. Take-off and landing will occur in an area which does not support large concentrations of wintering or breeding waterfowl. The affected habitat does not conform to an annex listed habitat or support any of the qualifying interests of the SPA. Specific construction and operational mitigation measures are identified.
 - Conclusion: Habitat loss will not impact on the qualifying interests or on the integrity of the SPA or pNHA. Construction and operation will not result in disturbance of wintering or breeding birds and there are no regularly occurring Annex 1 listed birds within the vicinity of the site that will be threatened by the development. Operations do not pose a risk of transfer of invasive species. There will be no negative impacts on annex listed species. Water quality impacts will be adequately mitigated.

The application was also accompanied by a Fisheries Assessment, which notes that:

- The bay is of limited value for angling although some fishing does occur.
- Conditions in the vicinity of the site are unsuitable as spawning ground or nursery grounds for fish species of interest. Eels are likely to be present in this area.
- Fisheries habitat will not be impacted on in any way by landing and take-off activities. The loss of sandy substrate for slipway construction will not constitute a significant impact. The risk of transfer of invasive species is low.
- Mitigation will be required to address construction and operational impacts on water quality.

These assessments were circulated to the DoEHLG (NPWS) for comment. In response the Department raised no objection to the development and recommended conditions to attach to any decision to grant permission.

AA Conclusion Statement

- The proposed development comprises the provision of a floating concrete pontoon (20m x 2.5m), moored to the lake bed with two 3-tonne anchor blocks, and a new concrete slipway across the lakeshore (30m x 9m) will provide access to an inspection / hardstanding area (22.1m x 17.5m). The development will also provide a new access road to the jetty and inspection area, with four car, and one minibus, parking spaces. A 20 ft container / workstore is to be sited adjoining the car parking spaces. The proposed development is required to serve a proposed scheduled and charter sea-plane service. The associated landing area will not require any infrastructure, such as

buoys or lighting. Occasional refuelling will take place, with an oil delivery truck attending the site as necessary.

- Relevant Natura 2000 sites include Lough Derg (Shannon) SPA and Lough Derg North-East Shore cSAC, located on the opposite shores of the lake. The site synopsis for these sites are appended herewith and the submitted Statement for AA identifies these sites and describes the receiving environment.
- Potential adverse impacts arising from the development comprise disturbance and pollution from construction and operations. These potential impacts are identified in the Statement for AA under the following headings:
 - Direct and indirect loss of habitats.
 - Disturbance to habitats.
 - Invasive species.
 - Disturbance to birds.
 - Disturbance to fish and aquatic organisms.
 - Disturbance to mammals.
 - Water Quality.
 - Hydrological Changes.

The assessment identifies potential risks to water quality in the absence of appropriate mitigation measures.

- The development avoids known feeding and roosting sites for wintering or breeding wildfowl for which the site has been designated. The landing and take-off area does not support large concentrations of wintering or breeding wildfowl.
- Specific mitigation measures include those to be implemented during the construction phase. Operational impacts are identified which include those relating to refuelling operations, which operations are subject to the procedures specified in the Air Operators Certificate. Other measures can be appropriately conditioned and I note the requirement for monitoring of works by an ecologist and preparation of a mitigation audit report on completion of works.

Having regard to the foregoing and the identified mitigation measures, I do not consider that the proposed development would give rise to residual adverse impacts.

With regard to the consent processes to be undertaken by IAA and Waterways Ireland, I note that the *Guidelines for Planning Authorities on Appropriate Assessment of Plans and Projects in Ireland*, indicate that appropriate assessment is not restricted to the planning process, but applies to every decision relating to plans and projects. Where projects require more than one authorisation, each consent authority must treat each separate application as a project.

14.2.2 Requirement for an EIS.

The proposed development is not of a type or does not exceed the thresholds, identified in Parts 1 and Part 2, of the fifth Schedule of the reg.'s, giving rise to the requirement for a

mandatory EIS. Having regard to the location of the site relative to adjoining designated sites, and in accordance with Article 103(2), however, it is necessary to determine whether the development would be likely to have significant effects on the environment. Regard is had to the criteria set out in Schedule 7 in this regard.

At further information stage, a Natura Impact Assessment was submitted to the planning which identified and assessed the potential impacts of the development. This assessment was circulated to DoEHLG, who raised no objection to the proposed development subject to specified conditions.

Having regard to the nature and scale of development proposed, the conclusions of the AA and the criteria set out in Schedule 7, I do not consider that the proposed development is likely to have significant effects on the environment. I conclude, therefore, that an EIS is not required in this instance.

14.3 Interaction with other lake users

Mountshannon is an important base for water based activities and tourism, which activities include cruising, sailing and angling. The proposed structures and base facility are not likely to directly impact on existing users of the lake. The associated aircraft movements, facilitated by these works, do have the potential to interact with other users, however. An indicative landing area is identified in the application, however, it is acknowledged that this may change due to issues including weather conditions. Landing and take-off manoeuvres require approx. 200m and 350m of water respectively. Aircraft will then taxi for approx. 800m to the base site. The speed of seaplanes while taxiing is low. Wash generated by landing, take-off and taxiing movements is not large and would not appear to present any greater risk than other boating activities on the lake.

The application relates to the physical infrastructure to facilitate the berthing and inspection of a seaplane. Aircraft operations will require the consent, and be subject to the regulations and bye-laws, of the IAA and Waterways Ireland. I note that Waterways Ireland have the power to impose speed restrictions for craft (including sea planes) using the navigation. This includes a prohibition on navigating a craft at such speed as to create a wash, which would cause nuisance or injury to persons, craft, property, any part of the navigation or to the natural environment. Waterways Ireland also have the power to restrict or prohibit the operation of specified types of craft in the interests of safety and to prevent nuisance or injury. I conclude therefore that any safety issues arising in this regard would be governed by these bodies and would lie outside the remit of this report.

14.4 Noise.

I note the concerns raised regarding noise disturbance of other lake users. Similarly, concerns are raised regarding impacts on adjoining dwellings, particularly having regard to the scheduled early morning flights. I note that the closest dwellings will be approx. 70m from the base station / floating pontoon. The principle source of noise from aircraft movements will arise during take-off, which emission would be comparable with a motorboat but would be temporary / short-term in nature. The indicative take-off and

landing zone is identified approx. 800m from the appeal site. Landing and, in particular, taxiing movements would generate similar noise emissions.

Having regard to the extent of powered craft activity in the area and the intermittent and short-term nature of the proposed activity, I do not consider that there would be significant adverse impacts arising from the noise emissions on other lake users.

Having regard to the separation between the indicative landing / take off area and the adjoining dwellings, and the temporary nature of the impact, I do not consider that the impacts arising would be significant. I would not consider it unreasonable, however, to impose noise emission limit values on activities at the base facility and for aircraft movements to and from the facility, measured at the nearest dwelling. Conditions imposing ELV's on take-off movements are considered to be inappropriate, however.

Having regard to the nature of the development, it would be reasonable to consider granting a temporary permission for the use of the proposed facility by sea planes, in order to allow for a review of such operations and their impacts. Where, on expiration of such initial temporary permission, permission for the continued use of the facility was refused, the facility could be used for the berthing of boats or other craft.

14.5 Landscape and visual impacts.

The site adjoins an existing marina and residential development. The lands have been previously disturbed and the development will not result in the loss of habitats of identified value or interest. The extent of development proposed in this case is limited and would not be out of character with adjoining development to the west. While the development will extend marina / harbour related development along the lakeshore, it will not contribute significantly to the expansion of the settlement. Views to the site from the surrounding lakeshore are restricted. The principle views to the site are from the lake itself. Having regard to the surrounding pattern of development, I do not consider that the proposed development would have significant negative impacts on the landscape character or visual amenities of the area.

14.6 Roads and traffic.

The proposed development is provided with 4 no. parking spaces for staff use and one mini-bus parking space. Passenger numbers are not likely to be high given the capacity of the aircraft and it is indicated that most passengers will arrive from Dublin and will not generate a parking requirement. Passengers are to be transferred to and from the facility by minibus. Any increase in parking demand arising from an increased frequency of service from the site, or from passengers commencing journeys from Mountshannon, could be subject to review on expiration of any temporary permission granted.

The site is accessed through the adjoining holiday village development. These internal roads are laid out in an informal manner, with on-street parking, and are generally not of a high capacity. The proposed development will generate relatively low traffic volumes, however, and in this regard I do not consider that the development will give rise to the creation of a traffic hazard. The junction of the internal access road with the R352 also serves the adjoining Sandycove residential development. This entrance is provided with

adequate sightlines and I considered that it can satisfactorily accommodate the increase in vehicle movements which would be likely to arise.

14.7 Other matters arising:

14.7.1 Land ownership: Waterways Ireland bye-laws state that construction of a jetty, harbour or any other works in the navigation requires prior written permission of Waterways Ireland. It is therefore considered appropriate that any decision to grant permission in this case should be subject to the requirement to obtain such consent prior to the commencement of development.

Third parties have also raised the issue of consent to land aircraft on the lake. The relevant body in this regard is Waterways Ireland. I note that Waterways Ireland has not objected to the development or otherwise raised any issues in relation thereto. I consider the provisions of S.34(13) to be relevant in this regard.

14.7.2 Project Splitting: The issue of project splitting is raised in the context of other applications for seaplane bases around the country. Project splitting is the practice of splitting projects into sub-projects so that each of these falls below screening thresholds or criteria. The proposed development comprises works to establish a base for the berthing and inspection of sea planes. Having regard to the nature of development for which permission is sought, the geographical spread and differences in the environment in which the identified developments would be sited, it is considered that the subject application / appeal can be assessed as a stand-alone project, and that the issue of project splitting does not arise in this case. I would make a similar response to the concerns raised regarding transboundary impacts.

14.7.3 Sustainability and Climate Change: Appeal submissions raise the need to decarbonise transport and tourism development in the country. It is argued that the development of a network of fossil fuel based transport infrastructure is untenable. I note the points raised and the response of the first party thereto. The Board is not responsible for the licensing or regulation of the chartered sea plane service, which responsibility is vested in other bodies. I do not consider that the issues raised would warrant a decision to refuse permission for the development as proposed.

14.7.4 Flooding: I note third party references to the flooding of the appeal site. No details in this regard are provided, however, it may be assumed that the site could be defined as being located within Flood Zone A, as defined in the “Planning System and Flood Risk Management, Guidelines for Planning Authorities”. The proposed development would, however, comprise a Water Compatible Development, which may be considered appropriate for this zone. I therefore raise no objection in principle to the development in this regard.

15.0 RECOMMENDATION

Having regard to the foregoing, I recommend that the decision of the planning authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

Reasons and Considerations:

Having regard the nature and extent of development proposed, the location of the site adjacent to the settlement of Mountshannon and the pattern of development in the surrounding area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not give rise to the creation of a traffic hazard, would not be prejudicial to public health and would be in accordance with the proper planning and sustainable development of the area.

Conditions:

1. PARTIC

The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted the 24th day of May 2009, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

In default of agreement, the matters in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

- 2.** Use of the proposed development for the berthing and inspection of sea planes shall cease on the expiration of a period of five years from the commencement of construction on the site, unless a subsequent grant of planning permission for the continued use of the facility has been obtained. The floating concrete pontoon shall be removed from the site within 6 months of cessation of this use. The continued use of the slipway for boating activities shall otherwise, be permitted.

Reason: To enable the effects of the use on the amenities of the area to be reviewed having regard to the conditions then pertaining.

- 3.** (a) All mitigation measures outlined in the Natura Impact Statement and Fisheries Statement submitted to the planning authority on 24/05/10, shall be

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- adhered to in full during the construction and operation of the proposed development.
- (b) A suitably qualified ecologist shall be appointed by the developer to oversee the site set-up and construction of the proposed development and to ensure correct compliance with all prescribed mitigation measures. The ecologist shall be present on site during construction of the concrete slipway.
 - (c) All areas of shoreline outside of the site area shall be fenced off during construction, in order to prevent unnecessary damage to habitats outside of the construction footprint.
 - (d) No servicing or maintenance of aircraft shall be undertaken on the site.
 - (e) An oil spill kit shall be kept at the site at all times during the construction and operation of the proposed development.
 - (f) The planning department shall be given four weeks notice in writing as to the proposed date of commencement of construction on the site.
 - (g) Upon completion of construction works, an audit report of the site works and the mitigation measures undertaken shall be prepared by the appointed ecologist and submitted to the planning authority. Details of the timing and content of such report shall be agreed in writing with the planning authority prior to the commencement of development on the site.

Reason: In the interest of nature conservation and to prevent adverse impacts on Lough Derg pNHA and the Lough Derg (Shannon) SPA.

4. Urban Waterdrain

~~Water supply and~~ Drainage arrangements, including the ~~{attenuation and}~~ disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. LAN 2

The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) A plan to scale of not less than [1:500] showing –
 - (i) Existing trees, ~~hedgerows~~ ~~[shrubs]~~ ~~[rock outcroppings]~~ ~~[stone walls]~~, specifying which are proposed for retention as features of the site landscaping
 - (ii) The measures to be put in place for the protection of these ~~trees landscape features~~ during the construction period.
 - (iii) The species, variety, number, size and locations of all proposed trees and shrubs, which shall comprise ~~predominantly~~ native species.
 - (iv) Details of screen planting ~~[which shall not include *cupressocyparis x leylandii*]~~

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- (v) ~~Details of roadside/street planting [which shall not include *prunus* species]~~
 - (vi) Hard landscaping works, specifying surfacing materials ~~furniture [play equipment]~~ and finished levels.
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- (c) A timescale for implementation ~~including details of phasing~~ **Trees to be removed on site shall be felled in late summer or autumn.**

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.

6. The written permission of Waterways Ireland to the provision of the proposed floating pontoon shall be obtained and evidence of same shall be submitted to the planning authority prior to the commencement of development on the site.

Reason: In the interests of public safety and to protect the amenities of Lough Derg.

7. CONSTIMING

Construction works shall only take place between the months of August and April.

Reason: To prevent disturbance to nesting birds species scheduled under the Wildlife Act and the EU Habitats Directive and in the interest of nature conservation.

8. No external lighting or floodlighting, shall be provided on the site to serve the proposed development, save with a prior grant of planning permission in this regard.

Reason: To protect the ecological and landscape qualities of the area.

9. NOISE A

- (a) During the operational phase of the proposed development, **noise levels arising from activities on the site and from the movement of aircraft between the site and landing / take-off areas**, as measured at the nearest dwelling shall not exceed:-
- (i) An L_{AeqT} value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. The T value shall be one hour.
 - (ii) An L_{AeqT} value of 45 dB(A) at any other time. The T value shall be 15 minutes. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 “Assessment of Noise with respect of Community Response” as amended by ISO Recommendations R 1996 1, 2 or 3 “Description and Measurement of Environmental Noise” as applicable.

Reason: To protect the residential amenities of property in the vicinity of the site.

- 10.** All service cables associated with the proposed development shall be located underground.

Reason: In the interests of visual and residential amenity

- 11.** Prior to the commencement of development, details regarding the provision of life saving / ring buoy equipment to be provided on the site shall be submitted to and agreed in writing with the planning authority.

Reason: In the interests of public safety.

12. S.48 UNSPECIFIED

The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Conor McGrath
Inspectorate