



An  
Bord  
Pleanála

**Board Direction**  
**BD-002015-18**  
**ABP-301561-18**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 18/12/2018.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

### **Reasons and Considerations**

In coming to its decision, the Board had regard to the following:

(a) EU legislation including in particular:

- The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment,
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC, as amended by 2009/147/EC (The Birds Directive), which set out the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union,

(b) National legislation including in particular:

- Section 37A of the Planning and Development Act 2000, as amended, which sets out the provisions in relation to strategic infrastructure development,

(c) National policy including in particular:

- the National Planning Framework published in February 2018,
  - the National Ports Policy 2013 published in March 2013,
- (d) Regional policy including in particular:
- the Mid-West Regional Planning Guidelines 2010 – 2022,
- (e) Local planning policy including in particular:
- the Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020,
  - the provisions of the Limerick County Development Plan 2018 – 2024,

and also having regard to the following matters:

- the nature, scale and design of the proposed development, as set out in the planning application, and the pattern of development in the vicinity,
- other relevant guidance documents,
- the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites,
- the documentation and submissions of the developer, including the EIAR and associated documentation submitted with the planning application, and the range of mitigation and monitoring measures proposed,
- the Appropriate Assessment Screening Report and the Natura Impact Statement submitted as a Habitats Directive Assessment with the planning application,
- the submissions and observations, including the developer's response to submissions/observations and further submissions/observations made to An Bord Pleanála, in connection with the planning application, and
- the report and recommendation of the Inspector, including the examination, analysis and evaluation undertaken in relation to

appropriate assessment screening and environmental impact assessment.

**Appropriate Assessment Screening:**

The Board considered the Screening for Appropriate Assessment and the Appropriate Assessment of the proposed development (submitted as Habitats Directive Assessment), and all other relevant submissions and carried out an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European sites. The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site and considered the nature, scale and location of the proposed development, as well as the report of the Inspector.

The Board agreed with the screening assessment and conclusions carried out in the Inspector's report that the Lower River Shannon Special Area of Conservation (Site code: 002165) and the River Fergus Estuaries Special Protection Area (Site code: 004077) are the European Sites for which there is a likelihood of significant effects.

The Board was satisfied that all other European Sites could be screened out of any further assessment because of the nature of the European Site, the nature of the qualifying interests, the location of the proposed development significantly outside the core foraging range of qualifying bird species and the absence of an aquatic connection between the European site and the proposed development.

**Appropriate Assessment:**

The Board considered the Natura impact statement and all other relevant submissions, including the applicant's response to the submission from the Department, and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the sites' Conservation Objectives (Lower River Shannon Special Area of Conservation (Site code: 002165) and the River Fergus Estuaries Special Protection Area (Site code: 004077)). The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered:

- (i) The likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, specifically the impact on the qualifying interests including the mapped location of priority habitats,
- (ii) The mitigation measures which are included as part of the current proposal,
- (ii) The Conservation Objectives for the European Sites in question, and
- (iii) The view of the Department of Culture, Heritage and the Gaeltacht.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the Lower River Shannon Special Area of Conservation (Site code: 002165) and the River Fergus Estuaries Special Protection Area (Site code: 004077) European Sites, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European Sites in view of the sites' Conservation Objectives.

### **Environment Impact Assessment:**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- the nature, scale, location and extent of the proposed development,
- the EIAR and associated documentation submitted in support of the planning application,
- the submissions from the planning authority, the observers, the prescribed bodies and the developer, in the course of the planning application, and
- the Inspector's report.

The Board considered that the EIAR, supported by the documentation submitted by the developer, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board agreed with the examination, set out in the Inspector's report, of the information contained in the EIAR and associated documentation submitted by the developer and submissions made in the course of the planning application. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- Pluvial and coastal flood impacts will be mitigated by the augmentation of the capacity of existing drainage ditches and lagoon and the retention of the existing coastal berm,
- Noise and vibration impacts on population will be mitigated by the Construction Environmental Management Plan and the use of noise barriers,
- Impacts on Biodiversity including on birds, bats, benthic and marine mammals arising from habitat loss, noise, visual or lighting disturbance and or the release of hydrocarbon or spills either during construction or operational stages will be mitigated as follows:
  - the implementation of the Construction Environmental Management Plan
  - retention of habitats including the railway corridor and the water channels,
  - use of noise barriers and new planting and boundary treatments,
  - directional lighting along the perimeter of the proposed development,
  - the observation of buffer zones and graduated noise levels to allow marine mammals to leave the area (in accordance with the NPWS Code of Practice for the Protection of Marine Mammals during Acoustic Seafloor Surveys in Ireland Waters),
- Impacts on the landscape/seascape and visual will be mitigated through the adoption of built-in design measures including the use of directional lighting, the

retention and protection of site hedgerow boundaries and the implementation of the Landscape Management Plan (Volume 3 of the EIAR).

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity would be acceptable. In doing so, the Board accepted and adopted the report and conclusions of the Inspector.

**Proper Planning and Sustainable Development:**

It is considered that the proposed capacity extension at Shannon Foynes port which is a designated Tier 1 port, would positively accord with national, regional and local planning policy in particular the policy objectives of the National Planning Framework and the National Development Plan 2018-2027, the National Ports Policy 2013 and the Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020. Furthermore, the Board considered that the proposed development would not have an unacceptable impact on biodiversity, or flooding, would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the proposed development shall be carried out in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2.
  - a) Prior to the commencement of the development, the developer shall prepare a Schedule of Environmental Mitigation Measures that were identified for the proposed development as part of the planning application including those detailed in the EIAR and in the Habitats Directive Assessment. This Schedule of Environmental Mitigation Measures shall be submitted to the planning authority and shall be made publicly available on the planning authority's website.
  - b) The measures detailed in the Schedule of Environmental Mitigation Measures shall be implemented in full by the developer, except as may otherwise be required in order to comply with the conditions in this order. The developer shall appoint a person with appropriate ecological and construction expertise as an environmental manager to oversee the construction phase of the development and to ensure that the mitigation measures are implemented in full.

**Reason:** In the interest of clarity and to protect the environment during the construction and operational phases of the proposed development.

3. All proposed works to the western masonry wall (NIAH record number 21829004) shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

**Reason:** To secure the authentic preservation of this structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

4. A four-arm roundabout junction shall be provided on the realigned access route from the junction with the N69 to the application site at Durnish. This roundabout shall, generally, be in accordance with the developer's submission received by An Bord Pleanála on the 7<sup>th</sup> day of September 2018. Prior to commencement of development, the specific location and design details of this roundabout shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In order to facilitate access to undeveloped lands zoned for port-related activities.

5. Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works in respect of both the construction and operation phases of the proposed development.

**Reason:** To ensure adequate servicing of the proposed development and to prevent pollution.

6. The management of surface water shall generally be in accordance with the proposals set out in the plans and particulars including those outlined by the developer in their response to submissions/observations dated 7<sup>th</sup> September 2018. Final details shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.

**Reason:** To ensure adequate servicing of the proposed development and to prevent pollution.



7. (a) The proprietary effluent treatment and disposal system provided for in the plans and particulars shall be generally as per the proposals set out in the EIAR (Volume 1, Section 2.2.5.2.7). Details of the system to be used, and arrangements in relation to the ongoing maintenance of the system, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Within three months of the first use of any sanitary facility permitted under this grant of planning permission, the developer shall submit a report from a suitably-qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner.

**Reason:** In the interest of public health.

8. The site shall be landscaped generally in accordance with the landscaping proposals set out in the EIAR. A finalised Landscape Management Plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

A plan to scale of not less than 1:500 showing:

- (i) Existing trees and hedgerows to be preserved and details for the protection of same during the construction and operational phases of the proposed development.
- (ii) The species, variety, number, size and locations of all proposed trees and shrubs which shall be comprised of
- (iii) Details of all hard and soft landscaping works, specifying surfacing materials and finished levels.
- (iv) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment

- (v) A timescale for implementation.

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 five years from the completion of the proposed 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 interest of visual amenity.

- 9. The construction of the development shall be managed generally in accordance with the High Level Construction Environmental Management Plan submitted with the planning application. A final version of the plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, water and sediment management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

- 10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the

provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

11. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

12. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

13. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

## Schedule of Costs

In accordance with the provisions of section 37H(2)(c) of the Planning and Development Act 2000, as amended, the amount due to be reimbursed to the applicant is **€25,793**.

**A breakdown of the Board's costs is set out in the attached Appendix 1.**

**Board Member**

**Date:** 19/12/2018

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Maria FitzGerald