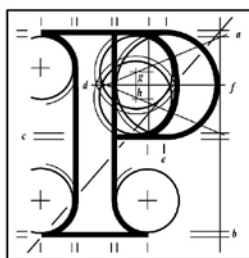


An Bord Pleanála



INSPECTORS REPORT

Application to An Bord Pleanála to compulsorily acquire lands made by the Shannon Foynes Port Company, in exercise of the powers conferred upon them by Section 16 of the Harbours Act 1996 to 2015 and Fourth Schedule thereto and as amended by the Planning & Development Acts, 2000 (as amended).

Applicant : Shannon Foynes Port Co.

Local authority : Limerick City and County Council

Location of Lands : Lands at Durnish, Foynes, Co. Limerick

Objectors : Limerick City and County Council
Irish Cement Limited

Date of site inspection : 15th December 2015

Date of Hearing : 16th December 2015

Inspector : Philip Green

Enclosures : **Appendix 1** - Inspector's photographs
Appendix 2 - Order of Proceedings,
Persons making submissions, Attendance Sheets and Documents presented to the Hearing
Appendix 3 - Digital recording of Hearing

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1.0 INTRODUCTION

1.1 This report concerns an application by Shannon Foynes Port Company (SFPC) to compulsorily acquire lands in exercise of the powers conferred upon them by Section 16 of the Harbours Act 1996 (as amended) and Fourth Schedule thereto and as amended by the Planning & Development Acts, 2000 (as amended). The acquisition is described in the public notice for purposes as follows:

“ .. developing the said land as covered and uncovered storage areas to ensure the implementation of a scheme of development of the harbour of Shannon Foynes Port Company at the Port of Foynes, County Limerick, comprising the reclamation of lands behind the East Jetty and developing associated storage space permitted under Grant of Planning Permission number P12/212 issued by Limerick County Council and the joining of the East and West Jetty by constructing a suspended deck structure measuring circa 20 meters deep by 120 meters long together with necessary revetment walls and jetty furniture and developing associated storage space”. (further description provided below).

1.2 S.16 of the Harbours Act states:

“—(1) A company may, in accordance with paragraphs 1 to 6 of the Fourth Schedule, acquire compulsorily any land (whether situate within or outside its harbour) or any interest in or right over any such land, for the purposes of ensuring the implementation of any scheme of development of its harbour or any part thereof which, in the opinion of the company, would prove impracticable without the land, interest or right concerned being included in the scheme.

(2) (a) The provisions of paragraphs 7 and 8 of the Fourth Schedule shall, where appropriate, have effect in the circumstances set out in subparagraph (1) of the said paragraph 7 for the purposes of vesting land in a company.

(b) The making of a vesting order by virtue of paragraph 7 of the Fourth Schedule shall not of itself prejudice any claim to compensation made after the making of the order in respect of any estate or interest in or right over the land, or any part thereof, to which the order relates and, accordingly, the provisions of paragraph 6 of the Fourth Schedule shall apply to such a claim”

1.3 **The Board should note that at this time it is solely considering the merits of the application to make the Acquisition Order itself under s.16(1) rather than the further and separate Vesting Order referred to in s. 16(2). The need for a Vesting Order will only arise in certain specified circumstances as set out in the Fourth Schedule (paragraphs 7 & 8) of the Harbours Act and after the Acquisition Order has been made.**

- 1.4** The current application for a compulsory acquisition order follows the procedures set out in the Fourth Schedule where by letter dated 17th September 2015 the applicant previously sought approval of the associated draft public notice and the Board's consent in relation to a suitable location or place where the relevant maps, plans and book of reference accompanying the application would be made available for public inspection. The Board responded by letter dated 23rd September 2015 (see documents on file).
- 1.5** The powers to determine such acquisition order cases was transferred from the Minister for Transport to the Board under the Harbours Act 2009 which inserted s. 215C into the Planning and Development Act 2000 (as amended). Under related s. 217C of the Planning and Development Act (as amended) the Board has
- “ the power to confirm a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof”.
- 1.6** I would point out that S. 217C would appear to introduce a slight anomaly in the relevant legislation given the wording of paragraph 2 of the Fourth Schedule of the Harbours Act 1996 (as amended). This paragraph which does not appear to have been deleted states that “The Board shall, where no objections to the application is lodged or any such objection is rejected ..., make an order authorising the company to acquire the property concerned compulsorily in accordance with the terms of the application or subject to such modifications, if any, it may determine and specifies in the acquisition order”. S. 217C appears to give the Board the further powers to annul an acquisition or any part thereof (whether or not an objection has been made) albeit that in these cases the Port Company is actually making an application to the Board for an acquisition order rather than serving an Order itself in the first instance (which is the procedure involved in local authority CPO's for example).
- 1.7** Documentation on file indicates that Notice was served on four named parties as 'owners or reputed owners' by the Port Company on the 30th September 2015 in addition to a public newspaper notice in the Limerick Leader (edition dated 3rd October). Following this public notification process two no. objections were received to the application. These are from Limerick City and County Council and from Irish Cement Limited. The Board should note that the lands within the ownership of Limerick City and County Council were withdrawn by the SFPC from the application for an acquisition order at the oral hearing (see below).
- 1.8** A Hearing to consider the application and these objections was held at the Fitzgeralds Woodlands House Hotel, Adare, Co Limerick on the 16th December 2015. The Board should note that prior to this Hearing

details of relevant planning applications relating to the current port lands including the permission for the development referred to as Phase 1 (P12/212) was sought and obtained from the planning authority. These details are contained on the Board's file (no relevant planning application history was provided in relation to the acquisition lands themselves). In addition the Board should note the further submissions made at the Hearing particularly by Mr Keating and Mr Carlton for the SFPC in regard to the development, history and current use of the port holding at Foynes.

2.0 DESCRIPTION OF THE LANDS SUBJECT OF THE ACQUISITION ORDER AND SURROUNDINGS

- 2.1** It was confirmed at the oral hearing that with the omission of the lands within the control of Limerick City and County Council (which constitute roadside verges adjacent to the access road into the port) that the remaining lands subject of the application is 37.53ha.
- 2.2** The subject lands lie immediately to the east and north east of the village of Foynes and immediately to the east and south of the existing port facility. The Shannon Estuary lies to the north whilst to the north east and following the north eastern boundary of the lands proposed to be acquired is the Robertstown River beyond which is Aughinish and the alumina plant complex. There are embankments along the boundary of the lands with the Robertstown River with drainage ditch running alongside. There are also drainage ditches and streams running along the northern boundary of the lands separating them from the existing port estate and also along the southern boundary of lands to be acquired. The lands which consist of fields were not in use at the time of my site inspection but it was evident and was confirmed at the oral hearing that they were used for agricultural purposes (cattle grazing). Ground conditions on parts of the site were poor and waterlogged at my site inspection particularly those alongside the watercourses. I draw the Board's attention to annotation on the submitted maps in regard to ground conditions particularly on the south western parcel of land subject of the application.
- 2.3** The port is accessed at its eastern end by the existing port road which runs from its junction with the N69 Limerick to Tarbert road. There is a security gate at the port entrance. The lands proposed to be acquired are located to both the east and west of this port access road and also to the north and south of the disused single track railway line (track still in place) which runs in to Foynes.
- 2.4** I attach as Appendix 1 to this report photographs of the lands subject of the application for acquisition and their surroundings taken at my site inspection. I also draw the Board's attention to maps and photographs of the lands and port itself originally provided in written submissions to the Board and subsequently provided as part of documentation presented to the Hearing.

3.0 THE 'SCHEME OF DEVELOPMENT'

3.1 As noted in s.1.2 above the Port Company can seek to acquire lands under s. 16 pursuant to any scheme of development where, in the opinion of the port company, without such lands the scheme is considered impracticable. Accordingly, accompanying the application for an acquisition order is a document entitled 'Scheme of Development'.

3.2 The scheme of development supports the case for the acquisition and includes an introduction and sections on need for expansion of the port, identification of the lands, policy context and conclusions. I summarise the document below:

- SFPC is a company incorporated in Ireland on 11th September 2000 pursuant to s. 7 of Harbours Act 1996 and is owner of harbour property at Foynes.
- Lands sought at Durnish (identified in red on Map 1B) for purposes of securing implementation of scheme of development
- Scheme consists of two interrelated phases:

Phase 1 reclamation of lands behind East Jetty granted planning permission under P12/212 and developing associated storage space and

Phase 2 joining of the East and West Jetty by construction of a suspended deck structure measuring circa 20 metres deep by 120 metres long together with necessary revetment walls and jetty furniture and developing associated storage space

- Acquired lands required for much needed additional covered and uncovered storage areas for port users to ensure implementation of scheme. Virtually all land currently owned by SFPC is occupied and developed.
- Improvement to jetties will facilitate larger ships and off loading efficiencies and greater tonnage throughput and which requires storage by port users in or adjacent to Harbour.
- Virtually no further lands available to SFPC and subject lands identified as only suitable lands available adjacent to Harbour that can be developed;
- Subject lands are therefore necessary and required as critical supporting infrastructure to Phase 1 and 2 for their implementation and delivery
- Permission granted under P12/212 for reclamation of 2.49ha. of lands at east Jetty including dredging, importation of fill material, retaining walls, surfacing drainage and site lighting has commenced on site;
- That permission subject to condition (8) confining materials, and storage methods in accordance with EIS lodged.

- Condition restricts storage use of extended jetty for construction materials, project cargoes such as wind turbine components and steel pipes and to containers stacked approx. three no. high;
- EIS did not specify where other materials traded at Port would be stored (although when permitted at the time there was 10Ha of undeveloped land within port estate). This has since been fully utilised;
- Engineering works for Phase 1 will be completed by Nov '16. Phase 1 cannot however be delivered until additional supporting infrastructure provided including additional storage to accommodate 20% in ship handling resulting from jetty improvements and land reclamation and delivery of new crane new hopper as identified in Capital Investment Plan;
- Subject lands are only lands SFPC have identified which are suitable for this;
- Phase 2 consists of joining East and West jetty by a suspended deck structure measuring 20m. x 120m. along with revetment wells and jetty furniture. Additional berthage space of 120 metres will allow five vessels to be serviced simultaneously. Planning application for this is currently being prepared with possible lodgement in late 2016;
- Works within SFPC ownership and on third party lands are integral part of delivery and implementation of phase 2 of development scheme which is dependent on subject lands being secured for storage facilities including covered warehousing and open storage;
- SFPC adopted Vision 2041 in Feb '13 setting out its port development strategy which is aligned with all stakeholder interests and whilst having regard to other policy documents;
- Nationally recognised that additional port capacity required in medium to long term. National ports policy supports market driven approach to port investment. It requires ports generate viable port capacity projects to ensure modern facilities and promote competition;
- Forecasts provided for increased cargo tonnage at terminals at Foynes and Limerick;
- Vision 2041 noted that whilst Limerick Docks required proactive management, Port of Foynes necessitated expansion including further land requirement, extended berthing and deep water berth. A deficit in any of these would prevent Port from realising projected growth;
- Vision 2041 identifies overall lands required to facilitate port development. Since document prepared 10 ha. of available land has been utilised. Current seasonal occupancy levels for covered storage in Foynes are averaging over 90%. Document identifies additional storage requirements ranges from 63 to 127ha. between 2020 and 2041;
- Subject lands comprise only 38.42 Ha. Whilst initially high it must be viewed in context of port operations in Foynes. Port

presently has a land area of 64Ha. Accommodating 1.62 million tonne throughput;

- Proposed scheme intended to double existing tonnage levels to 3.5 million tonnes. Phase 1 will lead to 25% efficiency of ships meaning faster discharge times reducing berth occupancy and more tonnage into the port. Phase 2 will give greater berth length increasing berth availability and reduced occupancy times increasing tonnage. Theoretically an increase in tonnage would require doubling of the port estate however with economies of scale and use of existing infrastructure 38.42 Ha. is adequate;
- Subject lands comprise 38.42 Ha. consisting of 37.53ha. in ownership of Irish Cement and 0.89ha. in ownership of Limerick City and Co. Council. Consideration has been given to extent and spatial location of lands required to implement the scheme particularly having regard to services and facilities and connection to the rail network. Lands already connected to Port Estate via the internal port road network and with access direct to the N69;
- Lands identified as a strategic site within the SIFP as area with significant potential to provide further employment in association with Port. It states that site should be safeguarded maintained and promoted as a key economic driver within Shannon estuary and Limerick City with ability to support and enhance the function of the gateway;
- Limerick County Development Plan was recently Varied identifies lands for expansion of port activities and has zoned lands along with lands adjoining for marine related industry. Plan states that lands shall provide for marine related industry and large scale uses that create a synergy with the marine use. Marine related industry shall be taken to include the use for industry that, by its nature, requires a location adjacent to estuarine/deep water including a dependency on marine transport, transshipment, bulk cargo or where the industrial process benefits from a location adjacent to the marine area;
- Having regard to zoning and need to adopt a plan led approach subject lands deemed most appropriate to accommodate additional storage to implement scheme of development;
- Subject lands identified in SFPC Strategic Plan and Capital Investment Programme for development of 20ha. of additional covered storage space and 10 ha. of uncovered hard stand storage;
- Irish Cement offered 30.4ha. of subject land for sale in open market in early 2014. Land remains for sale. While SFPC have been engaging with sales agents for purchase no agreement has been reached. Acquisition is necessary to ensure successful implementation of the scheme of development of its harbour;
- Acquisition of lands and future growth at Foynes supported by international and national policy;

- Ten-T Guidelines identifies Shannon Foynes Port as a port of international significance. Ten-T supportive of other European policy including European Transport Policy for 2010 Time to decide and Europe 2020 Strategy. Supports development of modern efficient and sustainable ports to support maritime freight operations and to ensure connection of Ten-T ports with railway, roads and where possible inland waterways, availability of at least one terminal in the port open to all operators and adequacy of sea canals, port fairways and estuaries for connecting adjacent seas or providing access from the sea to the maritime ports;
- Identification of Shannon Foynes as a core port in the Ten-T network is significant as it provides a framework for future development;
- National Ports Policy 2013 effectively mandates SFPC along with other Tier 1 ports to expand and grow as demand requires and to ensure investment in ports meets ports capacity requirements;
- Significance of ports in Ireland as economic driver is recognised at a regional level;
- Mid West Regional Planning Guidelines recognises significance of the Shannon Estuary and its ports as providing a major goods transport link for the region. Seeks to protect the capacity of the ports and improved access as a priority. Seeks to maximise the development potential of the Estuary and to facilitate the provision of the transport infrastructure that will make this possible;
- Similar to the RPG the Draft Mid West Area Strategic Plan acknowledges the strength of port activity in the region and recognises the opportunities presented by the Port of Foynes as an employment hub whilst recognising the infrastructural constraints facing the ports and promotes improved road and rail access as a priority;
- The inter jurisdictional Strategic Integrated Framework Plan recognises the Estuary as a strategically important site within the Irish economy and provides a spatial plan to recognise its economic potential;
- This document was adopted by means of a Variation into the Limerick County Development Plan 2010. Plan concludes that growth should seek to use existing industrial connectivity and synergy as well as infrastructure and safeguards the role of Foynes Port as a key strategic driver of economic growth and as the premier deep water bulk port offering the greatest economies of scale in Irelands bulk freight supply chain at a key Gateway in the Mid West Region. Further it identifies the subject lands at Foynes as necessary for future port development and designates most of these lands as Strategic Development Locations for Maritime Development;
- It is an Objective ED04 of Limerick County Development Plan to safeguard the Strategic Development Locations at Foynes Port

... for the sustainable growth and development of marine related industry;

- Further the Development Plan supports (Objective ED05) to safeguard the marine related industrial zoned land in Foynes for port related uses and other industrial activities, to support the expansion of the Port and the economic and industrial development of the Shannon Estuary and to support the consideration of a new deep water berthage within the Estuary
- Subject lands are zoned for Marine Related Industry;
- Policy SE02 states that the Council will support efforts to expand and upgrade the port facilities in Foynes harbour in line with the Strategic Integrated Framework Plan, and Vision 2041 Masterplan;
- County Development Plan seeks to implement Vision 2041 and this has been legally made. Acquisition of land in furtherance of Development Plan constitutes a reasonable purpose for the acquisition and for the specific provision of marine related industry and associated uses;
- Scheme of development impracticable without inclusion of subject lands;
- Vision 2041 identifies that enhancing capacity is a core strategic objective which is expounded in the five year Strategic Plan and the Capital Investment Plan. Berthage, water depth and storage capacity are critical to the ports expansion. Capacities need to be achieved in all of these;
- A significant growth in cargo capacity is forecast in Foynes Port over the next 10 years. To accommodate growth additional facilities are required;
- Vision 2041 justifies rationale for expanding port to the south east including subject lands due to existing services and facilities. Of further consideration is the sensitive environment surrounding the Shannon Estuary and Robertstown River and need to take environmental considerations into account including amenity designations;
- Appropriate zoning facilitating the expansion is now in place;
- Use of the subject lands for storage purposes is necessary for the implementation of Phase 1 and the delivery and implementation of Phase 2 as detailed in the scheme of development.

4.0 GROUNDS OF OBJECTION RECEIVED BY THE BOARD

4.1 Grounds of objection of Limerick City and County Council:

- Have objected to the application “insofar as it affects lands owned or under the control of Limerick City and County Council. The Council is concerned that the CPO would affect the operation and maintenance of the adjoining public road”.

4.2 Grounds of objection of Irish Cement Limited

- Irish Cement own lands identified on plan (attached). Land ownership in total consists of 2 parcels comprising c. 50.25 ha. The larger parcel of c. 37.53 ha. is the subject of this acquisition order;
- Note that phase 1 permission 12/212 documents do not refer to any requirement for approx. 95 acres of additional lands to facilitate the reclamation works authorised in that permission;
- According to Vision 2041 and permission 12/212 there were 10ha. of undeveloped land within the port estate in 2012/13. This is confirmed in the HRA planning report;
- It is noted that HRA report that lands have become fully utilised. Assumed that this refers to map entitled committed lands enclosed with CPO application which lists seven different land parcels which have been developed or which planning permission has been granted since 2012. Some of the recently approved works on 'committed lands' involves open and covered storage and are owned by Foynes Harbour Trustees so it is not demonstrated that all these lands are committed and unavailable for development purposes ancillary to the scheme of development;
- No explanation in documentation why these lands undeveloped and available less than three years ago could not have been made available to facilitate Phase 1 works. It is surprising their potential storage role was not identified at that time;
- SFPC obtained planning permission under Phase 1 and would have been aware of implications for scheme of development from attached planning conditions restricting storage uses on extended jetty. If these lands were so vital for storage why did Port Company not act to reserve all or some of 10ha. for such purposes following grant of permission;
- Case for acquisition to facilitate Phase 1 is not proven and it is straining credibility to state that Phase 1 could not be achieved without acquisition;
- No application has been submitted in respect of the Phase 2 jetty works and Irish Cement reserve right to consider information and express their opinions in respect of same in due course;
- Analysis carried out in regard to tonnage growth predictions does not quantify the extent of existing storage within the port estate or provide details of typical storage requirements at similar ports so plans lodged are inadequate to compare storage requirements with existing provision or to reach an informed conclusion on storage requirements for future growth;
- Requires details of quantum of storage (covered and uncovered) at port. Neither is it demonstrated why increased tonnage would warrant storage areas described in report. Storage areas shown cover less than 50% of the CPO lands which raises questions for justification of extent of lands sought;
- Consider there is error in estimated land requirements in Table 5.3 of Vision 2041. Using figures in Vision 2041 we estimate additional

land requirement is 122.6ha. and not 160 ha. as contended. This over estimates land requirements;

- Land requirements based on documents prepared by and on behalf of SFPC. Even cursory examination of the figures suggest they are not well founded but based upon optimum cargo growth forecasts and unsubstantiated land demands;
- Strategic Integrated Framework Plan s. 5.4.4.4 identifies that this Strategic Development Location is prioritised for 'marine related industry'. Following adoption of the Integrated Framework Plan the Development Plan was varied to zone significantly more land for marine related Industry at Foynes;
- Zoning Map from Development Plan attached. Map marked to include extent of lands zoned for marine related industry, five applications for permission since 2012 and four parcels of undeveloped lands (10ha.);
- One of these parcels is affected by a planning permission. The others (the bulk of the 10ha.) appear ideally located close to the jetties to facilitate open and covered storage uses and enjoy a better location compared to lands subject of CPO. Although these appear substantially undeveloped or in temporary use it appears these sites have been excluded from consideration for no obvious planning reason.
- In seeking to acquire lands port availing of considerable statutory powers which interfere with private property rights. Accordingly there is heavy onus upon the acquiring authority to justify the inclusion of all lands in application;
- Acknowledged that future development of Foynes envisaged in range of planning and policy documents including Regional Planning Guidelines, Development Plan, Strategic Integrated Framework Plan for the Shannon Estuary and Vision 2041. However projections upon which land requirements are based are not justified by reference to objective criteria. In addition Port Company does not appear to have considered potential of suitable undeveloped lands at the port;
- Acquiring Authority has not met test required to compel Board to exercise powers to grant this Order.

5.0 INTERNATIONAL/ NATIONAL/REGIONAL/DEVELOPMENT PLAN & OTHER POLICY CONTEXT

5.1 International: The Trans European Network (TEN-T) Guidelines identifies Shannon Foynes Port as a port of international significance and one of a number of 'core' ports throughout Europe. The core network is intended to form the backbone for transportation in Europe's Single Market. By 2030, it is intended to remove bottlenecks, upgrade infrastructure and streamline cross border transport operations for passengers and businesses throughout the EU. Its implementation will be pushed ahead by the setting up of 9 major transport corridors. The new TEN-T core network will be supported by a comprehensive network of routes, feeding into the core network at regional and

national level. The aim is to ensure that progressively, throughout the entire EU, the TEN-T will contribute to enhancing internal market, strengthening territorial, economic and social cohesion and reducing greenhouse gas emissions. Taken as a whole, the new transport network is intended to deliver:

- safer and less congested travel
- smoother and quicker journeys
- as well as less impact on the climate.

- 5.2 National:** The **National Ports Policy 2013** identifies Shannon Foynes Port Company as operating as a Port of National Significance (Tier 1). The continued commercial development of Ports of National Significance (Tier 1) is a key objective of National Ports Policy. The Policy refers to the SFPC as being the largest bulk port in the country handling approx. 20% of all seaborne trade in the State with its dominance in the dry bulk sector particularly pronounced. It acknowledges the Company's diversification into other sectors such as a specialist energy hub. It notes that the Company is going through a master planning exercise for its vision for the next 30 years and that it is working with other stakeholders in the estuary to complete an Integrated Framework Plan for the estuary as a whole as provided for in the Mid West Regional Planning Guidelines. The Ports Policy identifies as a matter of reasonable priority the improvement of road and rail freight connections to the port. In particular it supports the re-opening of the rail freight connection provided it is commercially viable. The development of Shannon Foynes Port Company is a key strategic objective of the National Ports Policy.
- 5.3** The Ports Policy is not prescriptive regarding location for future port capacity and states that this should be set out in the existing planning and development hierarchy. The Policy seeks to set a framework for the continued development of the commercial port network and emphasises that provision of adequate and efficient capacity into the future is a critical Government strategic objective. This includes addressing new trends such as larger vessels and emerging markets. It states that Ports of National Significance must be capable of the type of port capacity required to ensure continued access to both regional and global markets for our trading economy.
- 5.4 Regional:** The **Mid West Regional Planning Guidelines 2010 – 2022** recognises the significance of the Shannon Estuary and its ports as providing a major goods transport link for the region. The protection of the capacities of existing ports and improvement of access to them is a regional priority. The RPG directs local authorities to include specific economic development objectives which seek to harness the economic potential of the estuary and capitalise on its deep water characteristics for enhanced maritime activity. It states that economic growth must be promoted along the shore of the estuary in order to harness the true natural assets of the estuary and its potential economic benefits to the Region.

- 5.5 It is also a regional objective to facilitate the carrying out of an inter jurisdictional Strategic Integrated Framework Plan (SIFP) for the Shannon Estuary. This will identify the nature of the development, economic growth and employment that can be sustainably accommodated within the Shannon Estuary and the location of sites that could accommodate specific types of development while ensuring that designated European sites and other environmentally sensitive sites would not be reduced.
- 5.6 The Limerick City and County Council representative in attendance at the Hearing (Ms Woods) stated that the formal Review of this RPG had not commenced at this time which would be part of the new Regional Assembly's work.
- 5.7 **Development Plan and other policy context: Limerick County Development Plan 2010 – 2016**: The Plan was amended in May 2015 (Variation No.3) to incorporate the Strategic Integrated Framework Plan for the Shannon Estuary (see below). The SIFP was commissioned by the Clare, Kerry, Limerick City and Limerick County Councils and was attached by way of Volume 7 to the Development Plan. The SIFP was forwarded by the SFPC prior to the Hearing at the Board's request and is attached to this file. The Development Plan designates the port itself, all lands subject of the application for acquisition and further lands to the south and east as a Strategic Development Location and on Map No. A-2 is zoned for marine related industry (total of 186.21ha. comprising 61.33ha. developed and 124.88ha. undeveloped).
- 5.8 In Volume 1 Appendix 1 Section 3 (Foynes) of the Development Plan Objective F1 directs development to within the boundaries of the settlement identified on Map A-2 and indicates that all development will have regard to the content of the SIFP and the Foynes Theme Town Plan. Objective F8 Marine related industry and flooding states that 'prior to any development taking place on marine related industrial zoned sites full details of any flood mitigation measures shall be furnished. These are to include appropriate design both of buildings and also measures such as attenuation areas and possible flood storage areas within the development'.
- 5.9 **Policy ED P7 Integrated Planning of the Shannon Estuary** - seeks to facilitate integrated planning to develop the capacity of the Shannon Estuary as a prime transport and tourist asset. The Council will promote overall environmental sustainable development within the Shannon Estuary and support all legislative environmental commitments provided in the SIFP, inter alia the EU Habitats Directive, the EU Birds Directive, the Floods Directive and the Water Framework Directive
- 5.10 **Objective ED 04 Safeguard Strategic Development Locations along the Estuary** - it is an objective to safeguard the Strategic

Development Locations at Foynes Port, Foynes and Aughinish Island for the sustainable growth of development of marine related industry and industrial development at Askeaton. All proposed developments shall be in accordance with regional and national priorities and the SEA Directive, Birds and Habitats Directive, Water Framework Directive, Shellfish Waters Directive, Floods Directive and EIA Directive.

- 5.11 Objective ED O6: Marine Related Industry** - Land zoned for Marine Related Industry, shall provide for marine related industry and large scale uses that create a synergy with the marine use. Marine related industry shall be taken to include the use of land for industry that, by its nature, requires a location adjacent to estuarine/deep water including a dependency on marine transport, transshipment, bulk cargo or where the industrial process benefit from a location adjacent to the marine area.
- 5.12 Objective ED 07 Appropriate marine related industrial development of Foynes and deep water facilities in the Shannon Estuary** - (a) It is the objective of the Council to ensure that the marine related industrial zoned land in Foynes is safeguarded for the accommodation of port related uses and other industrial activities (see map A2 in Appendix 1). The lands indicated in the Shannon Integrated Framework Plan are also included in this zoning. The application of appropriate Volume 1 Economic Development Limerick County Development Plan 2010-2016 November 2010 5- 12 mitigation measures for this zone as detailed in SIFP Vol 2 appendices C and D, the Environmental Report and Natura Impact Report of the variation to this plan to incorporate the SIFP will apply for proposed developments within this zone.
- (b) Support the expansion of the Port at Foynes and promote the economic and industrial development of the Shannon Estuary as a strategic transport, energy and logistics Hub serving the County and wider region by utilising naturally occurring deep water characteristics and by identifying and safeguarding existing and future strategic transportation links, subject to fulfilling the requirements of the Habitats Directive and the conservation objectives of the Lower River Shannon SAC site.
- (c) Support the consideration of new deep water berthage within the estuary to enhance the strategic economic function of the Port subject to compliance with the ecological objectives of the Lower River Shannon SAC site and other policies of the County Development Plan.
- 5.13 Policy SE 01 Strategic Integrated Framework Plan for the Shannon Estuary** - It is a Policy of Limerick City and County Council to support and implement the interjurisdictional Strategic Integrated Framework Plan (SIFP) for the Shannon Estuary in conjunction with the other relevant local authorities and agencies. All proposed developments shall be in accordance with regional and national priorities and the SEA Directive, Birds and Habitats Directive, Water Framework Directive,

Shellfish Waters Directive, Floods Directive and EIA Directive. All proposed developments shall be informed by the mitigation measures for ensuring the integrity of the Natura 2000 network outlined within the Limerick County Development Plan 2010-2016 (as varied).

5.14 Objective SE O2: Promoting Development - The Council will seek to promote the economic and industrial development of the Shannon estuary in order to capitalise on its location in the Mid West industrial and business region. Sufficient land will be zoned or identified for industrial and business use through the medium of Local Area Plans or zoning within this Plan including zonings in the Strategic Integrated Framework Plan for the Shannon Estuary.

5.15 Objective SE O3: Port Facilities - The Council will support efforts to expand and upgrade the port facilities available in the Foynes Harbour in line with the Strategic Integrated Framework Plan for the Shannon Estuary and the Vision 2041 Shannon Foynes Port Company Masterplan.

5.16 Objective SE O4: Rail Transport - It is an objective of the Council to safeguard the Limerick-Foynes rail line against encroachment by inappropriate uses that could compromise the long-term development of the rail facility.

5.17 Strategic Integrated Framework Plan for the Shannon Estuary (SIFP) - The key objective of the SIFP is to deliver an integrated approach to facilitating economic growth and promoting environmental management within and adjacent to the Shannon Estuary. Section 5.4.4 sets out a Strategic Aim for marine related industry/industry

‘to capitalise on the natural deep water potential and existing port and maritime infrastructure by facilitating and proactively encouraging the environmentally sustainable development of maritime industries at appropriate locations within the Shannon Estuary while seeking to improve and promote the road and rail connectivity of the deepwater ports’.

The lands subject of the application for acquisition are located within part of a larger area designated as Strategic Development Location D Lands to rear of Foynes Port prioritised for marine related industry.

5.18 SIFP MRI 1.1 Safeguarding the Role and Function of Strategic Development Locations – to safeguard the role and function of the Strategic Development Locations identified for marine related industry ...and encourage their sustainable, growth, development and appropriate diversification for economic development in accordance with regional and national priorities and subject to the requirements of environmental objectives ENV 1.1 to 1.12 where relevant.

- 5.19 SIFP MRI 1.2 & 1.3** set out general considerations, planning and environmental matters and flood risk criteria to be considered in considering development proposals in such areas.
- 5.20 SIFP MRI 1.2.6 Port of Foynes** – To safeguard the role and function of Foynes Port as a key strategic driver of economic growth and as the premier deepwater bulk port facility offering the greatest economies of scale in Irelands bulk freight supply chain at a key gateway in the Mid West Region.
- 5.21 SIFP MRI 1.2.7 Expansion of the Port of Foynes** – To support and facilitate the sustainable growth and expansion of Foynes Port, to ensure greater capacity, more competitive trade potential and diversification of trade patterns to meet national and international market demands. Proposals for marine related industry and more specifically sustainable port related uses will be encouraged, along with alternative uses, which complement the existing proposed marine related uses within the site, and that demonstrates compatibility with the level of flood risk, including provision of estuarine buffer areas. Proposals will be subject to compliance with the criteria in Objective SIFP MRI 1.2.
- 5.22** In the preamble to development objectives SIFP MRI 1.2.6 and 1.2.7 in section 5.4.4.4 it is also noted under the heading ‘Assets’ that ‘this SDL derives significant benefit from the existing port facilities and access to deep water. SFPC have identified a number of key growth sectors involving new berthing facilities, onshore infrastructure and the ability to accommodate larger vessels to serve wider markets. To complement the growth in maritime infrastructure, a parallel growth in the hinterland available for storage, warehousing and other port related uses is also required. This is a vital opportunity for the Port of Foynes, and a key asset in the growth dynamic and sequential expansion of Port activity, to be safeguarded and maintained as a vital port asset...’
- 5.23 SFPC Vision 2041** – A copy and precis of this (non statutory planning) document was provided by the SFPC at the Hearing. The precis is attached as Document 5 submitted to the Hearing and was also referred to in particular in the submissions of SFPC representatives including Mr Keating (Document 7) and Mr Carlton (Document 8). It is noted that the Vision which was prepared with extensive public consultation and having regard to international, national, regional and local strategies and guidance documents provides a framework setting out the Port’s aspirations. It is intended to assist in informing the consideration of projects and planning applications made as and when necessary. Three key objectives are identified as being the significant expansion and infrastructural development at Shannon Foynes, promoting non core assets at Limerick Docks and managing the natural attributes of the Estuary and its destination as an Ocean Energy Hub.

- 5.24** The document identifies key challenges in planning for the future which include trend towards larger ships requiring deep water ports, increased integration of maritime transport into the door to door global logistics and supply chain, emergence of the concept of port centric logistics, intensified inter port competition due to improved landside hinterland connections, opportunities afforded by the energy industry and importance of maintaining high environmental security and safety standards. The Vision seeks to address these challenges by sustainable growth of port infrastructure on the Shannon Estuary particularly at the Port of Foynes.
- 5.25** The Vision identifies growth over the period to 2041 due to factors such multinational manufacturing and energy sectors, contribution of food and drink exports from Food Harvest 2020, structural changes in the energy sector and likely consolidation in the port sector. As a result it is anticipated that cargo throughput will increase substantially through the Port of Foynes, remain constant in Limerick and will increase on the wider Shannon estuary as opportunities arise from the promotion of the Estuary as an Ocean Energy Hub and as the 'Shannon Energy valley'. With changes in shipping and significant increases in tonnages throughput it is considered that this will necessitate significant expansion and infrastructural development of the Port of Foynes. This is anticipated in the Vision document as requiring an additional 127ha. of port development land (this figure was amended to 122ha. at the Hearing) over the Vision 2041 period with additional requirements for berthing facilities and deep water berthage.
- 5.26** It is stated in Vision 2041 that the Port of Foynes is the one SFPC facility on the Estuary most likely to experience significant change over the period of the document. The document identifies (at that time) 10 ha. of undeveloped land within the Port with an additional 28ha. (then) zoned in the Development Plan for industrial use associated with the expansion of the Port thus leaving a requirement for 89ha. It states that spatially the only logical expansion area is to the south east of the existing port. It also identifies an opportunity for remote operations at the 92ha. State owned land bank at Askeaton Business park. The document further identifies the need for additional berthing facilities and for providing deep water berthage as close as possible to existing customer facilities at Foynes with Foynes Island as the preferred option.

6.0 THE ORAL HEARING

- 6.1** The Oral Hearing was held on 16th December 2015 at the Fitzgeralds Woodlands House Hotel, Adare, Co. Limerick. I attach as Appendix 2 to this report the Order of Proceedings, Persons Making Submissions, signed Attendance Sheets and a List of Documents presented to the Hearing. The proceedings were digitally recorded and this digital recording is attached as Appendix 3 to this report.

- 6.2** Objections to the application were originally received from the Limerick City and County Council in respect of lands within their ownership (roadside verges on the approach to the port's vehicular entrance). At the opening of the Hearing Mr Galligan for the SFPC indicated that the SFPC did not wish to pursue the inclusion of these lands as part of the application for acquisition. A letter to this effect was provided (see Document 2 presented to the Hearing). No written submission from the Council on this issue (further to its original objection) has been received. Ms Woods (Senior Executive Planner Forward Planning with the Council) was present at the Hearing and commented that it was also her understanding that the acquisition was not being pursued in respect of the Council owned lands. Ms Woods gave no further substantiation on the issues raised in the Council's initial written objection but did provide an update during the course of the Hearing, at the Inspector's request, on Development Plan and other policy issues.
- 6.3** The SFPC were represented by Mr Eamonn Galligan SC, Mr Gary Rowan (Planning Consultant), Mr Pat Keating (CEO SFPC), Mr John Carlton (Engineering & Port Services Manager SFPC) and Mr Colm McCarthy (Economist).
- 6.4** Irish Cement were represented by Mr Tom Flynn (BL), Mr John O'Malley (Planning Consultant), Mr Raymond Burke (Maritime and Transport Economist) and Mr Jack Dalton (Managing Director Irish Cement). As indicated above, Appendix 3 includes a full digital record of the Hearing and I refer the Board to that full recording of the proceedings which broadly followed the Order of Proceedings set out in the Board's letter dated 9th December 2015 to the Parties. The main issues arising are set out below.

THE APPLICANTS CASE

- 6.5 Mr E Galligan opening statement (Document 1 presented to Hearing):**
- Sets out principal objects and general duties of a harbour company (s. 11 and 12 of 1996 Act);
 - Scheme of development consists of a construction and an operational phase;
 - In order to ensure implementation of scheme of development it is necessary to acquire lands for provision of ancillary storage and port centric activities to service the additional business generated;
 - No statutory requirement for planning permission to be obtained prior to grant of acquisition order. EIA/AA also not required in this context;
 - Anticipated Phase 2 application to be lodged end 2016. Increase in port activity will not occur unless ancillary storage and land for port centric activity provided adjacent to port;
 - Implementation of scheme impracticable without lands;

- No requirement for maps, plans or drawings to be lodged with scheme although this has been done in this instance (see Figure 9 of Document 3 submitted to Hearing – Book of Maps);
- If Board grants approval for acquisition it is intention of SFPC to lodge application for Phase 2;
- AA only required when application for development consent made. Order does not allow for development requiring planning permission to be carried out;
- Phase 2 planning application may trigger requirement for EIA;
- Foreshore lease/Licence are required for Phase 2 and application for Licence already made;
- Scheme of development would not constitute a Plan requiring screening for and/or appropriate assessment for purposes of Birds and Natural Habitats Regulations as it would not establish ‘public policy’ although scheme is underpinned and supported by such. Application for acquisition order does not constitute a ‘plan’ and does not establish public policy in relation to land use or infrastructural development. This was done by SIFP and Development Plan where was AA carried out. Similarly an AA will also be dealt with under planning application process. Board must have regard to S143 of Act in determining this application in relation to matters such as national interest, social and economic importance etc. Nowhere in regard to CPO legislative consideration do first principles need to be established but regard should be had to relevant policy;
- Phase 2 may constitute strategic infrastructure should Board deem it to be so under s. 37B.
- Issues in relation to flooding will be dealt with at planning application stage and were dealt with in policy documents referred to.

6.6 Mr G Rowan Statement (Document 4 presented to Hearing):

- Core port Ten-T designation provides a framework for future development and funding mechanisms and effectively supports ports growth and expansion at an international level;
- Use of lands for port storage purposes is in accordance with land use zoning of land;
- Figure 2 of Document 3 presented to Hearing shows environmental designations which largely surround harbour lands with some small encroachment. This is not however relevant to acquisition order but will be relevant to any planning application consideration;
- County Development Plan, including Variation No. 3, SIFP and Vision 2041 Masterplan have all been subject of appropriate assessment;
- Planning history of port set out;
- Pre planning for Phase 2 likely to commence Q1 2016;

- Operational land use requirements justify immediate need for additional lands to be acquired and are based on comprehensive analysis of port company land. Economic and land use rationale for future port development has already been identified in statutory plans and strategies which is recognised by Irish Cement;
- Figure 2.1 of Vision 2041 did identify 10ha. of undeveloped land within Port however this was a snapshot at the time (2011) and there is currently a deficiency in land for future port development, open storage and enclosed warehousing (see Figure 5 of Document 3 of Documents presented to Hearing. This refers to the five parcels making up the 10ha. and existing uses that renders it impossible their use for storage ancillary to Phases 1 and 2;
- Other lands (other than 2 small undevelopable areas of lands) within existing port are also committed/occupied as illustrated on Figure 5;
- There is a relationship between new quay length, tonnage growth and supporting land requirements therefore with increased tonnage growth increased port lands are required;
- Storage areas required are based on assumptions in 2041 Masterplan. The port deals with cargo with generally a longer dwell time (dry bulk, break bulk and liquid cargos) and associated storage facilities are required;
- Given diversity of port handling requirements it is considered impractical and impossible to provide direct comparisons between Port of Foynes and other national Tier 1 ports to justify 'typical' storage requirements as suggested;
- Anticipated uses as illustrated in the 'Schematic layout Plan' based on consideration of land requirements having regard to national outlook for ports, existing throughput requirements, trends in commodities and anticipated growth areas;
- Figure 6 of Document 3 presented to Hearing shows diversity of covered and uncovered storage areas within port. Open storage equally as important as covered and liquid storage areas as they provide handling areas;
- All different storage types are directly related and necessary to port operations;
- Figure 5.3 of Vision 2041 Plan incorrect insofar as conversion into square metres and liquid storage for high growth and 127ha. should read 122 ha. Associated explanation in text (p43) should also be 122ha. In any case Port not relying on high growth figures but medium growth levels.
- No other lands within existing port estate other than 2ha. at Durnish Point available for future port development and port growth;
- Plan led approach taken. Variation to Development Plan had regard to matters such as environmental designations and

flooding and Variation to Plan was subject of AA and flooding assessments.

6.7 Mr P Keating (Document 7 presented to Hearing).

- Foynes's core port status under TEN-T further recognised in 2015 when granted funding under this facility. Part of this relates to the Scheme of Development subject of application for acquisition;
- DTTS investment framework report in 2015 'Investing in our Transport Future' indicates a key priority to target investment to improve connections to key seaports. In accordance with this Government have funded Foynes to Limerick Road (Adare By Pass and N69 Shannon to Foynes Road Improvement Scheme) in Capital Plan demonstrating investment in connecting infrastructure and ensuring SFPC growth potential can be realised;
- Provision of lands to be acquired is critical objective under Strategic Plan to achieve the medium term expansion of port necessary to meet increase in demand for its port facilities in short term;
- Key elements of water depths, sufficient berthage/quay length and sufficient land available for covered and uncovered storage and/or to promote port centric activities must all be addressed by Port to manage and expand its business. If additional storage not provided implementation of scheme of development impracticable;
- SFPC on target to achieve specified mid to high growth projections set out in Vision 2041;
- Under Vision 2041 Foynes Port considered for major expansion whilst 'steady state' considered for Limerick Docks. Perceived growth therefore focused on Foynes;
- Factors such as Tier 1 status attracting Port centric development, road infrastructure improvement, policy support, merger of Foynes harbour trustees and Limerick harbour Co. resulting in a better resourced company, rationalisation, and reorganisation, deep water advantage and attracting new business will lead to stronger further growth;
- Foynes Port has not suffered significant downturn and has been successful in recession;
- Vision 2041 identified capacity constraints to serve projected future growth;
- Irish Cement lands only lands in vicinity suitable for purpose;
- Available of lands within Port itself for short term cargoes decreasing due to other projects within Port;
- In addition to publicly known projects Port currently in negotiation for 5 other port centric type projects forecast as requiring approx. 36ha. Such projects require significant lead in

times before construction commences placing pressure on the deliverability of lands;

- In addition to these projects currently under negotiation, forecasts for Foynes Port identifies a requirement for 63ha. of additional storage capacity (see Fig 11 of Document 3 presented to the Hearing);

6.8 Mr J Carlton (Document 8 presented to Hearing).

- Provided historical overview of development of Port and its cargo traffic growth;
- Forecast berthing rates utilising the existing berth facilities indicate that rates are too high for the Port to operate efficiently (figures provided). Using mid line growth rates to 2025 120m of additional quay length will be required to maintain annual average berth occupancy rates and sustained seasonal berth occupancy rates at generally accepted industry levels of 50-60%;
- Using Vision 2041 projections additional berthing will be required by 2020 to remove berthing capacity constraints (see table 2 of Document 8 presented to Hearing);
- Description of 'Scheme of Development provided. Indicative details of Phase 2 of scheme of development provided on Figures 9 and 10 of Document 3 submitted to Hearing;
- Historical data shows close relationship between new quay length, tonnage growth and supporting land requirements;
- Figure 16 to Document 3 submitted to Hearing highlight this historic and projected relationship in a linear trend plotting tonnage against area of port (hectares);
- Historical development of port demonstrated on Figures 8a to 8f of Document 3 of documents presented to the Hearing which provide details of port estate and associated throughput tonnages;
- Projected additional storage land requirements in 2020 of 101ha. There is only 64ha. at present of operational land leaving 37ha. needed to be operational and in place. Such land is required well in advance due to long lead in times for planning and supporting services and infrastructure;
- Figure 5 of Document 3 presented to Hearing demonstrates storage area currently available (2ha. for short term storage of cargo);
- Table 4 summarises findings of Vision 2041 for future additional storage requirements in Foynes. That projection shows that 105 ha by 2041 of additional storage requirements required (under medium growth scenario). Only 3% of projected 2020 requirements can be met from SFPC existing lands at Port;
- Port at 100% capacity with limited scope to accommodate increase in customer existing storage requirements. To meet

projected growth in Vision 2041 Port requires additional land immediately;

- Based on historical data and latest projections to 2025 and beyond SFPC can predict land requirements. As Graph 1 shows it is estimated that Foynes Port requires additional 37ha. to be developed and available by 2020, c. 70ha. by 2025 and 113 ha. to be developed and available by 2040.

6.9 Mr C McCarthy (Document 9 presented to Hearing)

- Provided general introductory comments to the history of economic decline and crisis and current health of the economy;
- Downturn appears over with some recovery evident;
- Growth rates of 3-4% now plausible;
- Traffic at sea ports is volatile and cyclical;
- Shannon/Foynes only substantial general cargo port on west coast and does not do RoRo or ferry business;
- Realistic for port to plan for rising traffic volumes over next decades and prudent to plan for such;
- Forced to take long term view which makes it difficult for projections however assets being built are for long term;
- Issue is are forecasts prudent and sensible. Faster growth in volume of sea borne traffic the greater the land take required'
- Whilst long term projections difficult and uncertain projections prepared by Port are within range of plausibility with current general cargo tonnage of 2 million tonnes approx. expected to double over next 25 years which would approximate to a 3% compound expansion per annum. This is not inconsistent with expectation of moderate economic growth in Ireland over period and does not rely on port dramatically increasing market share;
- Central projections relied upon are plausible and figures imply a requirement for additional landside capacity.

THE OBJECTORS CASE

6.10 Mr J Dalton

- Irish Cement have owned lands for number of years and rented out for farming activity. Lands are for sale and were acquired as a strategic land bank. Expressions of interest in lands have been invited;
- Irish Cement have always facilitated Port for its expansion having previously sold 30 acres for its expansion and for the eastern access route. Open to consider working with SFPC and others for development of lands subject of acquisition;
- Irish Cement in process of selling one ha. site in area (not within subject lands) for port storage related activity (transport company);

- Lands for sale and some engagement with Port but no agreement reached and lands have been for sale for c.18 months;
- No operational or commercial reason why lands should be sold. Irish Cement happy to work with developers to develop lands in accordance with zoning requirements;
- If third party made similar offer to use subject lands Irish Cement would be open to offers (Irish Cement currently so engaged with a company for sale of small piece of land for port related transport activity adjacent to port entrance);
- Whilst lands originally purchased to protect Irish Cements strategic interests (related to their own port related activity) such strategic interests no longer exist and lands for sale;
- No planning permission applied for in regard to lands however Irish Cement applied for zoning for industrial use in previous Development Plan

6.11 Mr R Burke (Document 10 presented to Hearing)

- SFPC submitted extra data as part of their presentation at Hearing and therefore changes to presentation required;
- Figures now available solely for traffic at Foynes;
- Traffic forecasts for Port unclear ambitious and uncertain;
- No rationale for projections and reliance placed on gross annual growth rate to reach 2025 and 2041 targets
- Use of same compound growth rate is misleading due to variables involved;
- Reliance on environmental and carbon reducing policies will have significant impacts on traffic forecasts;
- Other competing infrastructure developments proposed include Port of Cork Ringaskiddy development and acquisition of Marino Point, expected harbour extension at Galway and the Alexandra Basin at Dublin Port;
- Storage requirements set out lack justifying detail and no information on nature, type and volume of expected product to be handled;
- Unclear where growth in Liquid Bulk coming from;
- No linear relationship between storage and usage and growth in liquid bulk volumes can be achieved by more regular call offs;
- No break down between liquid and dry bulk;
- 20ha. space proposed for liquid bulk excessive;
- 20ha. of space for covered storage excessive;
- Based on figures presented of 20.ha suggests 56,000 sqm. of storage required before 2020;
- No details of nature and volume of products for which storage required and no evidence of productivity efficiencies accounted for;
- Master Plan suggests 25ha. for port centric projects. This is optimistic with Dublin Port only requiring only 12 acres;

- More detailed information required on freight composition, associated storage requirements and phasing.

6.12 Mr O'Malley (Document 11 presented to Hearing)

- Applicant must prove scheme of development impracticable without lands concerned. Applicant must meet this significant burden;
- No valid scheme of development and SFPC has not demonstrated that scheme of development impracticable without lands;
- Scheme artificial and created to support application for acquisition;
- P12/212 as referred to in scheme of development makes no reference to a Phase 2 of development. Phase 1 was described in related EIS lodged with P12/212 as part of the solution to the storage problem at the port with storage in a reclaimed area of land;
- Assertion that Phase 1 can't be implemented without additional storage lands is incorrect as phase 1 commenced and no information lodged with that application to support that argument;
- EIS indicates operational issues at the jetty are the main driver for the reclamation works;
- Alternatives section of that EIS do not refer to a 2 phase development or extent of storage required to implement permission;
- Whilst policy context assists SFPC in identifying sites it can still acquire lands on open market. However in circumstances where lands being compulsorily acquired it must be demonstrated that without lands scheme of development is impracticable. Policy context supports development of lands however this is not sufficient justification for acquiring lands compulsorily;
- Analysis by SFPC does not quantify extent of existing storage within estate or typical storage requirements at similar ports. Some evidence given by SFPC at hearing does however now provide some further information;
- All lands zoned marine related development are available for such development. It does not have to be owned by Port Company and could be developed by current owners or others. Third parties already own approx. 20% of port estate and is a proven development model. Unclear what consideration port company has given to development of marine related industry for storage purposes on third party lands;
- In absence of a real scheme of development in any application made so far the scheme of development has been created and was not referred to in any planning application;

- Analysis is only taken from generalised projections rather than objective or quantitative assessment of Scheme of Development. SFPC has not demonstrated that implementation of Scheme of Development cannot proceed because it is impracticable without subject lands.

6.13 Legal submission on behalf of Irish Cement (by Mr T Flynn)

- Burden on proof is on acquiring authority to discharge all statutory requirements before Board can approve application;
- Recent decision in regard to IDA compulsory acquisition powers (Reid judgement) relevant to this case in regard to legal process in which powers must be exercised (see Document 12 presented to Hearing);
- In that Judgement a key requirement was that powers of acquisition must be strictly adhered to;
- Two key components in this case are that lands must be required for implementation of SOD and that in opinion of Port implementation of this SOD is impracticable without the lands. Burden of proof is on applicant in these regards and Board itself must be satisfied that it would be impracticable without the lands. This is a high standard to be met;
- Applicant has not discharged its significant obligations in this respect;
- Concerns that SOD not based in reality. It is artificial with previous permission brought into SOD even though that permission contained no reference to any phasing or Phase 2. This is unusual and demonstrates an artificiality to process;
- Only now port centric developments brought in to SOD. Public notice did not mention such and demonstrates how Scheme is being changed and its artificiality. Notice was confined to physical works and associated storage;
- SOD and Phase 1 and 2 do not require subject lands. Acquisition arises from associated storage space requirements. Therefore critical that relationship and need for storage space clearly demonstrated and this has not been done;
- Emphasis only given on throughput and potential growth figures but even if these accepted the associated storage has not been established. Don't accept applicants view on relationship between increased in traffic/output and storage requirement.
- In addition applicant must demonstrate that the only way this can be achieved is through the acquisition of the subject lands however this has not been done in regard to alternative sites, internal reorganisation and off site storage;
- No assessment why this SOD and storage requirements could not be provided in conjunction with third parties;
- No attempt[t to analyse storage requirement with comparative data from other ports;

- No definition of practicability in legislation. This is a high standard. It is not simply an operational preference or less risk averse or allowing for ordered development. These may be desirable but this is not the statutory test. It must be impracticable. Fact is lands could be development by current owners or third parties and this is a practical solution;
- Irish Cement's view is that they could in joint or part develop lands in accordance with policy. Irish Cement happy to entertain such with third parties;
- Already third party lands within port;
- SFPC may have a preference for acquisition but this is not requirement of legislation which must be strictly construed;
- It is practical for SOD to proceed without lands and zoning exercises control of subject lands compatible with objectives of Port;
- Query storage need requirements. SFPC introduced new 'emergency' requirement from list of projects identified at hearing but this not clarified. It may be that these would justify a smaller quantum of lands for acquisition. Therefore this appears to be a strategic approach or land banking by SFPC rather than related to SOD itself;
- Criteria used to choose lands unclear;
- Reid (IDA) decision noted that CPO powers could not be inferred if it did not relate to purpose of acquisition and lands not immediately required (para 52 of that judgement). Applicants cannot use acquisition powers in circumstances where lands not immediately required for SOD;
- SOD meets definition of a 'plan' for purposes of Birds and Natural Habitats Regulations and thus requires screening for and/or appropriate assessment. Board therefore has to consider issue and SOD subject of requirements of those Regulations;
- Irrelevant whether underlying planning policy documents have been screened for and or subject to appropriate assessment. This does not negate any further requirements for the SOD if it constitutes a 'plan' by definition. This is also notwithstanding any further screening and/or appropriate assessment required to be carried out at the planning application stage

6.14 Response of Mr E Galligan to legal submission of Mr Flynn

- Reid decision makes no new law in regard to compulsory acquisition;
- Burden of proof justifying acquisition has been discharged by SFPC in information made available. Implementation of SOD contingent on additional storage space which is based on increased tonnage growth the forecasts of which were considered reasonable by Irish Cement witnesses;

- Reid judgement needs to be seen in regard to particular legislation concerning IDA compulsory acquisition powers and other circumstances relevant to that case. This case and associated legislation is different. Justification for acquisition is based on assessments of future land requirements and forecasts. It is also necessary to plan for long lead in time to implement development. There is a requirement for lands now so it is operational in 2020. SFPC have indicated potential users and demands for lands at this time;
- Test of impracticability means that if it is difficult it is not practicable. The position suggested by Irish Cement where it sells off lands to third parties is clearly not tenable and would make it difficult for SFPC to plan and organise infrastructure for the proper operation of the port.
- SFPC has to meet its statutory obligations to conduct business at all times in cost effective manner as required in the legislation. It cannot be restricted in situations where a private landowner may be holding out for a very significant price;
- Reading of Mr Flynn in regard to definition of a 'Plan' and requirement for screening and/or appropriate assessment under the Habitats Directive in relation to SOD is not sustainable. Critically it must establish public policy in relation to land use. Definition must be read in full and it must be noted that this is an application for compulsory acquisition and does not permit development itself.

6.15 Closing statement on behalf of Irish Cement (Mr T Flynn)

- Allegation that Irish Cement holding SFPC to ransom in regard to purchase of lands unfounded. Irish cement have appointed professional Valuers to assess lands and advise and company is under obligation to maximise potential of lands. Entirely unsustainable amounts for lands have not been sought;
- Burden of proof is on applicants and has not been met;
- Concerns identified in regard to reality and validity of the SOD;
- Statutory power requires impracticality to be demonstrated. No statutory definition however it is not to be interpreted as simply difficult. It is what it means. Cannot just be a preferable option. SFPC has not made its case particularly where third parties can provide these storage facilities;
- Don't accept that extent of land or their location justified;
- Application for acquisition should be refused

6.16 Closing statement on behalf of SFPC (Mr E Galligan)

- Mr Flynn changing test set out in legislation by suggesting that Port Company must prove impracticability without use of its acquisition powers. This is not what section says. No onus on

SFPC to demonstrate not possible to acquire lands voluntarily at reasonable cost;

- Section states that SFPC must demonstrate that implementation of SOD would be impracticable without lands concerned;
- Port has entered in to negotiations but no agreement reached;
- Advantages in SFPC in acquiring lands demonstrated. These included as a one stop shop for potential businesses and that port needs to be in control of its own destiny. It is the statutory agency for the development of the port;
- It would be unsatisfactory model if lands sold off separately and private developers developed lands incrementally as port company best placed to implement supporting infrastructure rationally and given powers to do so in legislation;
- SOD is the entirety of engineering works in Phase 1 and 2 and use to which those works can be put. Port centric uses also referred to on maps submitted to Board in original application;
- Applicant has predicted tonnage growth for Foynes Port, set out associated land requirements for storage and port centric activity, established reasonableness of its 3% growth rate projections, established link between tonnage growth and need for storage space which are peculiar to port by analysing historic patterns and set out need and requirement for acquisition and use of these lands;
- Legislation specifically allows for port company to use its opinion, expertise and knowledge in such circumstances to acquire lands.

7.0 ASSESSMENT

In my opinion the main issues to be considered in this case are:

- General/procedural matters;
- Withdrawal of Limerick City and County Council lands from application;
- Scope of assessment;
- Need for screening for and/or appropriate assessment
- The scheme of development;
- Case for acquisition;
- Policy (including Development Plan) considerations;
- Impracticability
- Implications of recent Reid v IDA Supreme Court ruling
- Application for payment of certain costs

7.1 General/procedural matters: Reference at the Hearing was made to the powers of SFPC to make this application to acquire lands under s. 16 of the Harbours Act 1996 to 2015. I set out my comments and recommendation on the merits of the application for acquisition having regard to relevant matters below. In addition reference was also made by Mr Galligan to the broader statutory role and responsibilities

imposed on Port authorities under that legislation. I consider that this is of some relevance to the Board in considering the context in which the port company is operating and indeed to the proposed acquisition subject of this application.

7.2 S. 11 and 12 of the Harbours Act set out the objectives and general duties of the Port Company. This includes in s.11 to “take all proper measures for the management, control, operation and development of its harbour...”, “to provide such facilities, services, accommodation and lands in its harbour for ships, goods and passengers as it considers necessary..”, “to promote investment in its harbour” and “to engage in any business activity, either alone or in conjunction with other persons, that it considers to be advantageous to the development of its harbour..”. Amongst the Port’s general duties set out in s. 12 are to “conduct its business at all times in a cost effective and efficient manner”, “to regulate operations within its harbour” and “to have due regard to the consequences of its activities on the environment, the heritage (whether natural or man made) relating to its harbour and the amenities generally in the vicinity of its harbour”.

7.3 It would appear from the these objectives and general duties and, the further powers given to make applications for acquisition orders that the legislation has acknowledged and provided for the Port Company to play a key and central role in promoting and developing its own business operations. Whilst acknowledging that this allows for such to be done in conjunction with others it appears to me that the legislative environment in which the Port operates places the SFPC in a primary position in terms of managing and developing its operations.

7.4 The particular wording of s.16 should be noted in requiring (1) a scheme of development and (2) the opinion of the Port Company on the impracticability of implementing such without the land to be acquired (albeit that neither of these concepts are defined in the legislation) being included in the scheme. This similarly in my opinion gives further emphasis to the central and important role given in the legislation to the Port Company in itself establishing such matters. That is not to say however that an application for an acquisition order for third party lands where valid objections have been made can be treated lightly or dismissed without full consideration of the specific legislation applying and particular circumstances and issues surrounding the application. The merits and justification for the acquisition and interference in private property rights must be demonstrated and a case for the acquisition must therefore be made as in other compulsory acquisition cases that the Board deals with. I would note and accept in principle the views of Mr Flynn and Mr O’ Malley on behalf of Irish Cement in regard to the requirement imposed on the SFPC to demonstrate their case in this regard although I do not accept their view that the SFPC has failed to achieve this in this instance. I set out my assessment of these matters in the following paragraphs.

- 7.5 Withdrawal of Limerick City and County Council lands from application:** At the opening of the Hearing Mr Galligan on behalf of the SFPC stated that assurances had been received from the Council which allowed for the lands within their control to be excluded from the lands proposed to be acquired (see letter submitted as Document 2 to the Hearing). A map was attached to that letter identifying the lands concerned which conform to the Notice maps originally lodged with the Board as part of the application. The Map reference is annotated Job Number 15043 dated 24/09/2015 Revision Number 1 Drawing Title Limerick County Council Lands to be Acquired. I would recommend that should the Board be minded to make an order authorising the SFPC to acquire the remaining lands in the application currently within the ownership of Irish Cement that it excludes those lands referred to above in the ownership of Limerick City and County Council by way of modification. My assessment is based on the exclusion of these lands from the application and I have suggested accordingly in my recommendation and Reasons and Considerations below.
- 7.6 Scope of assessment:** The Board will note the particular provisions of s. 16 of the Harbours Act relating to a scheme of development. As a result related and detailed submissions were made from both the applicants and objector concerning planning applications and their implications (both permitted and proposed) in addition to reference to supporting policy (see section 5 of this report for a policy summary). I consider it necessary to make clear in this report that any assessment contained herein is particular and specific to the jurisdiction of the Board in this case being solely an application for the making of an order for the acquisition of lands. Whilst there is reference to both supporting policy and pending planning application (and an existing permission) in support and against the proposed acquisition which might assist the Board in deciding whether or not to make the order nothing in this report or in the Board carrying out its statutory role in the legislative context that applies to this case should be seen as prejudging a decision under other formal and entirely separate planning application processes that may be required for those related developments.
- 7.7** In the circumstances it might have been an option for the SFPC to have lodged an application(s) for Phase 2 and associated storage and port centric developments at the same time as making this application for an acquisition order. It appears to me for example that the works proposed under Phase 2 as described by the SFPC may possibly constitute strategic infrastructure development requiring an application direct to the Board under s. 37B. The Board should also be aware that under pre application consultation request reference 13. PC0040 the SFPC had previously approached the Board seeking consultations on the expansion and upgrade of the port facilities. That consultation was withdrawn in October 2008 at the request of the SFPC. I would point out that such a 'dual' approach or indeed the presence of an extant

permission (or indeed a concurrent planning application) for a future Phase 2 for example albeit perhaps logical and potentially providing a greater level of background material on which the decision on whether to make the order or not might be made would not appear to be a statutory obligation or requirement on the SFPC under the particular and applicable provisions of s.16 of the Harbours Act.

- 7.8 Need for screening and/or appropriate assessment in relation to the scheme of development under the European Union (Birds and Natural Habitats) Regulations 2011 to 2015:** I am aware that the powers of compulsory acquisition as for example more commonly exercised by a local authority under the Housing/Planning and Development Acts would not trigger a requirement for appropriate assessment. Should the underlying local authority development project itself require this then this would then be the subject of a separate application for approval to the Board under s. 177AE. In regard to the scheme of development however I do not consider that it would comprise a 'project' for the purposes of those Regulations which specifically exclude projects that are development projects requiring development consent under the Planning and Development Acts. A discussion however took place at the Hearing (initiated by the Inspector) and particularly led by Mr Flynn for Irish Cement and Mr Galligan for the SFPC in regard to whether the scheme of development might constitute a 'Plan' requiring consent for the purposes of the above Regulations. By definition under Reg. 2 (Interpretation) a Port or Harbour Authority including Port Companies established under the Harbours Act 1996 are a 'public authority' under that Regulation. An Bord Pleanála is similarly defined as a public authority under Reg. 2. The Harbours Act 1996 to 2009 is referred to in the Second Schedule to the Regulations as associated legislation to which its provisions apply.
- 7.9** Reg. 42(1) requires "a screening for appropriate assessment of a plan (or project) for which an application for consent is received or which a public authority wishes to undertake or adopt and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority ...". Reg. 42(2) states that "a public authority shall carry out a screening for appropriate assessment under paragraph (1) before consent for a plan (or project) is given, or a decision to undertake or adopt a plan (or project) is taken".
- 7.10** By definition under Reg. 2 (Interpretation) a 'consent' "includes any licence, permission, permit, derogation, dispensation, approval or other such authorisation granted by or on behalf of a public authority, relating to any activity, plan or project that may affect a European Site, and includes the process of adoption by a public authority of its own land use plans or projects". I am not convinced however that the application for an acquisition order being considered by the Board is for 'consent'

for a 'plan' as defined in the Regulations and by the Board making such an order would formally authorise any such 'plan'.

7.11 By definition under Reg. 2 (Interpretation) a 'plan' "subject to the exclusion, except where the contrary intention appears, of any plan that is a land use plan within the meaning of the Planning Acts 2000 to 2011, includes—

(a) any plan, programme or scheme, statutory or non-statutory, that establishes public policy in relation to land use and infrastructural development in one or more specified locations or regions, including any development of land or on land, the extraction or exploitation of mineral resources or of renewable energy resources and the carrying out of land use activities, that is to be considered for adoption or authorisation or approval or for the grant of a licence, consent, permission, permit, derogation or other authorisation by a public authority, or

(b) a proposal to amend or extend a plan or scheme referred to in subparagraph (a)"

7.12 In my opinion a key consideration around the scheme of development is does it establish public policy in relation to land use and infrastructural development including any development of land or on land...and the carrying out of land use activities that is to be considered for adoption or authorisation or approval or for the grant of a licence, consent, permission, permit, derogation or other authorisation by a public authority? There were contrary views on this issue expressed by Mr Galligan and Mr Flynn (summarised above).

7.13 It is my opinion that the scheme of development itself does not statutorily 'establish public policy' in its own right nor does it specifically grant any consent or authorisation for the project works and uses that may be described therein. The Board does not appear to have any general or specific power to actually approve or reject the plans of a Harbour or Port Authority and I do not consider that the 2011 Regulations can be interpreted as specifically giving it such powers. In this context the Board's powers in these cases appears to be limited to the making or otherwise of the acquisition order. The scheme may be led and supported by public policy as set out for example in Development Plans which I assess in the context of this application below (and which itself may have been subject to the relevant SEA, Appropriate and other assessments). However its purpose would appear to be to provide background and to indicate the future broad development of the port in the event that the Port Authority has ownership and without which, in the opinion of the SFPC, its implementation would prove impracticable. I consider it to be a 'device' which allows for the Port Company to set out the basis, need for and extent of acquisition of lands concerned in a contextual sense. I

consider the reasonableness of this in this particular case and on the basis of the information available in my further analysis below.

7.14 Should any subsequent planning application be lodged pursuant to the scheme of development then this would itself likely be subject to consideration, as necessary of relevant AA (and EIA) requirements. The determination of these would be independent of any decision made by the Board in making the order itself (see also comments in 7.6 above) notwithstanding that there is likely to be some overlap in terms of issues to be considered (such as rationale for proposals and relevant and applicable planning policy). I conclude that an application such as this which seeks the making of an acquisition order by the Board based on a scheme of development which if made transfers land ownership from one party to another does not 'establish' public policy and would not trigger the requirement for screening for and/or appropriate assessment under Reg. 42. It is however open to the Board to seek further legal advice on this matter prior to reaching its conclusions on whether or not to make the order.

7.15 The Scheme of Development: Both Mr O'Malley and Mr Flynn on behalf of Irish Cement expressed reservations and some scepticism in regard to the validity and authenticity of the scheme of development as proposed. It was considered that this had been prepared retrospectively and only to attempt to artificially establish a case for the application for acquisition. This was in circumstances where the land was presently for sale and expressions of interest were being invited but agreement had not been reached in particular between the SFPC and Irish Cement. It was stated that Irish Cement remained open to develop the lands for marine related uses in accordance with Development Plan policy and in conjunction with SFPC itself or other third parties. It was considered that the scheme, particularly given the permission for Phase 1 and proposals for Phase 2 could be implemented without acquisition and that the need for the extent of lands sought for storage/port centric uses was excessive and exaggerated and had not been indicated, referred to or substantiated in the previous permission P12/212 or other submissions (or as part of this process) notwithstanding their currently stated significance and necessity to the SFPC. In support of this argument it was stated that the associated EIS lodged with application P12/0212 did not refer to the necessity for associated storage lands or port centric developments particularly of such extent nor did it refer to any further phasing including a phase 2. It was also stated that the public notices had omitted reference to the port centric related uses.

7.16 There appears to be some basis in the submissions of Irish Cement in regard to the absence of reference in application P12/212 of clear and explicit reference to a further phasing stage and the full extent of additional/associated storage/port centric lands now required as a result of the physical expansions and improvements proposed under both Phase 1 itself and any further Phase 2. There is however no

statutory definition of what a scheme of development constitutes under the Harbours Act. It seems to me that this is entirely a matter for the Port Company to establish and can be as wide ranging or as limited as it sees fit particularly given the use of the word "... any ..." in the legislation in conjunction with the scheme of development. What is critical is that a case for either scenario has to be made to allow the Board to consider whether or not to make the order and intervention into private property rights. In this case the SFPC is seeking an acquisition order on the basis of the scheme of development which refers to the physical works set out in Phases 1 and 2 and the associated demands for storage, warehousing and port centric related uses of lands that it states will stem from increased capacity and tonnage throughput that are a corollary of the improvement and expansion of its core port physical infrastructure (in addition to meeting more immediate demands for port related lands as outlined by Mr Keating at the Hearing). I return to the merits of this below. I do not however consider the approach of the SFPC in the manner in which they have set out their scheme of development to be contrary to the statutory provisions. Further I consider its general content, in principle, to be reasonable in setting out the justification for the acquisition as being expansion of port infrastructure and associated port lands and facilities given its statutory objectives and the wider policy status and context that applies to Foynes Port.

7.17 As pointed out by Mr Flynn for Irish Cement the public notice does not make specific reference to the 'port centric uses' which form part of the SFPC's case for the acquisition of the lands. The Notice states "if made the Acquisition Order will authorise Shannon Foynes Port Company to acquire compulsorily the land described in the maps, plans and book of reference that accompany the application for an Acquisition Order for the purpose of developing the said land as covered and uncovered storage areas to ensure the implementation of a scheme of development of the harbour of Shannon Foynes Port Company at the Port of Foynes, County Limerick, comprising the reclamation of lands behind the East Jetty and developing associated storage space permitted under grant of planning permission P12/212 issued by Limerick County Council and the joining of the East and West jetty by constructing a suspended deck structure measuring circa 20 metres deep by 120 metres long together with necessary revetment walls and jetty furniture and developing associated storage space".

7.18 The emphasis in the written text of the Notice is on covered and uncovered storage. However the accompanying Booklet of Maps (Maps 4 and 5 – Schematic Layout Maps) both make reference to port centric projects as well as warehousing and open and covered storage in the Schematic Layouts. In addition, the 'Scheme of Development' document itself lodged with the application in referring back to Vision 2041 also mentions Port Centric projects. Given the further discussion that took place around this subject at the Hearing and the nature of the statutory decision being made by the Board in this instance I do not

consider any injustice has arisen to any party from the particular omission of port centric projects in the precise wording of the Public Notices.

- 7.19 Case for acquisition:** The ‘need’ for the development as set out by the SFPC in the scheme of development is on the basis of forecasted increases in traffic tonnages and associated open and covered storage and other ‘port centric’ uses resulting from and required to implement the enhanced port infrastructure as proposed for Phases 1 and 2. The analysis carried out by the SFPC is based on its non statutory Vision 2041 document (see 5.23 above) which included an emphasis on significant expansion and infrastructural development at Foynes Port to provide adequate quay length and berthage facilities, sufficient storage capacity and necessary water depths to accommodate increasing ship sizes. This expansion approach appears to have been reflected and incorporated into the various statutory planning documents such as the Development Plan and SIFP (see further discussion below).
- 7.20** The analysis carried out by the SFPC in determining the need for and quantum of associated port related storage lands in Vision 2041 and in this acquisition was criticised by the Irish Cement representatives. This included that existing lands and permission granted could meet the ports previously stated requirements. No reference to the extent of storage lands required (or further phasing) had been made in previous planning submissions, Phase 1 was seen as a remedy to addressing storage issues and Condition 8 imposed on that previous permission could not be read as imposing a restrictive planning control as suggested by the applicants. Further submissions were made at the Hearing that no suitable analysis had been done of actual storage requirements based on increased throughput at the Port associated with the scheme of development. For example no analysis using data and example from ports elsewhere had been provided to establish the relationship between increased throughput and associated storage land requirements. Mr Burke for Irish Cement in particular sought at the Hearing to question the approach taken by the SFPC on the basis of absence of available statistics breaking down tonnages between Foynes and Limerick (this was however addressed by submissions made by SFPC representatives including Mr Carlton in Document 8 presented to the Hearing), absence of detailed breakdown between different cargo types, absence of clarity on the basis for which projections were being made, unrealistic assumptions in regard to growth rates which were unpredictable and not constant and impact of infrastructure developments at other ports such as Cork, Dublin and Galway not being accounted for. As a result in his opinion forecasts presented were considered unclear ambitious and uncertain.
- 7.21** Notwithstanding these submissions I consider that a supporting case has been made by the SFPC for the need for expansion of the port holding for the purposes of implementation of the scheme of development. I deal more specifically with the issue of whether this

can be achieved by Irish Cement or other third parties as opposed to the SFPC itself in dealing with the issue of impracticability below.

7.22 At the time Vision 2041 was prepared in 2011 there were a stated 10 ha. of undeveloped land available within the Port holding. This would no longer appear to be the case. On the basis of the information and detailed analysis presented in particular by Mr Rowan and Mr Carlton (see Documents 3, 4 and 8 presented to the Hearing) it would appear that these 10ha. are accounted for and are no longer available to provide for port growth and increased operational capacity relating to Phases 1 and 2. In addition notwithstanding the cyclical occupation of lands leased within the port which may present a temporary impression of vacancy or under use on certain sites the detailed analysis provided indicated all remaining lands within the Port estate being substantially occupied and utilised (with a minor exception of Durnish Point of c. 2 ha.). Mr Flynn in cross questioning of Mr Carlton sought to highlight the short to medium term letting of lands within the port which would result in leases and sites becoming available regularly within the port. Mr Carlton accepted that this was the nature of the business (6 months from 2-3 years leases) however there were always companies waiting for these short term sites. Mr Keating also stated that new projects within this existing land bank (including for example as a biomass centric port providing substantial tonnage through the port) are reducing the port's existing potential for short term cargoes (as evidenced by various planning applications for example). Mr Keating also considered that the availability of associated lands were a key and integral component in the ports activity and part of its 'shop window' in attracting business to the port.

7.23 I consider that the approach taken by the SFPC in relating the historic extent and development of port lands (amongst other matters) to tonnage handled in establishing its storage land requirements to be not unreasonable in the circumstances. As indicated by Mr Rowan and Mr Carlton and as set out in Vision 2041 these are based on established work practices. It would appear from the submissions and other documents including the National Ports Policy that Foynes Port specialises in dry bulk, break bulk and liquid cargoes as a general port. Such types of cargo were stated by the SFPC representatives to have typically greater storage requirements than container and/or other ferry ports due to sizes of each shipment and duration that these types of cargo are stored in port. This necessitates need for facilities nearby to the port to facilitate storage (and processing) of cargoes. The submissions of Mr Keating, Mr Carlton and Mr McCarthy were also noteworthy in indicating the success of the port to broadly maintain throughput during the economic recession and to attract business (Mr Keating for example referring to five entirely new port centric projects potentially requiring land urgently albeit accepting that not all may come to fruition). These submissions described how the ports lands were utilised with typically users requiring substantial land take as a

result of access and other operational needs and for the associated service infrastructure.

- 7.24** The concerns of Irish Cement in regard to lack of 'comparative' port data are noted. However I consider that the particular and specific nature of the port activities and indeed the experience and knowledge of SFPC in this area and in operating its facility should carry significant weight. To support this contention I would also add that during the cross questioning between Mr McCarthy for the SFPC and Mr Burke for Irish Cement it was conceded by Mr Burke that the 3% annual growth rate projection from 2014 to 2041 forecast by the SFPC for Foynes Port itself was reasonable.
- 7.25** I conclude that on the basis of the submissions made that there appears to be a shortage of storage lands within the confines of the existing port lands to accommodate expansion of the ports storage and other related and ancillary uses. I also consider it reasonable to conclude on the basis of the information presented that an enhancement of physical infrastructure as described in the scheme of development as Phases 1 and 2 will necessitate the requirement for additional and related storage lands and port centric uses and without which the implementation of the scheme of development could prove impracticable. Further the information provided at the Hearing also demonstrated some short to medium term demand for land for port centric type projects representing new cargo types for the port and potentially significant additional cargo traffic.
- 7.26** More broadly I consider that general support for the need for expansion of the port and its facilities is very clearly established in the relevant supporting policies of the SIFP and Development Plan. In particular the Development Plan designates the Port and surrounding lands including the acquisition lands as a Strategic Development Location and zoned for marine related industry. Objective SEO3 of the Development Plan (see Section 5.15 above) supports the expansion of the port facilities in line with the SIFP and Vision 2041. SIFP MRI 1.1, 1.2.6 and 1.2.7 (see sections 5.18, 5.20 and 5.21 above) relate to the safeguarding of strategic development locations and the significance of the port and its expansion and sustainable growth. Whilst this policy is not conclusive in itself in terms of the Board concluding on the merits of the acquisition order it does amongst other matters add weight to the case made by the SFPC.
- 7.27** With the omission of the Limerick City and County Council lands the extent of acquisition now proposed is 37.53ha. entirely within the ownership of the objector Irish Cement. Irish Cement have indicated that their full holding at Foynes is approximately 50.25ha. The initial objection to the Board dated 29th October 2015 contains a map outlining the full extent of their ownership. The lands subject of the acquisition were stated as currently for sale. A fallen sign to this effect was on the lands at the time of my site inspection. Some engagement

would appear to have taken place between the objectors and the SFPC in regard to the lands however it would appear that no agreement has been reached.

- 7.28** The submission of Mr Carlton (Document 8 presented to the Hearing) sets out a detailed analysis and justification for the extent of acquisition. As indicated this cites historical growth related to cargo tonnage and key port infrastructure, growth rates set out in Vision 2041, need for additional berthage facilities, impact of the scheme of development on the ports operations and future capacity and projected relationship between tonnage growth and supporting land requirements (see in particular tables 1 and 3 and Graph 1 of Document 8). The proposed acquisition of 37.53ha. should be read in conjunction with Mr Carltons conclusions that Foynes port current lands of 64ha. will require an additional 37ha. to be developed and available by 2020, an additional 70ha. to be developed and available by 2025 and an additional 113ha. by 2040 to accommodate predicted tonnage growth. I have indicated above that I consider the approach taken by the SFPC in their method of calculating additional storage land requirements to be not unreasonable and particularly in the short term where there appears to be an immediate lack of lands within the established port holding. Any longer term assessments clearly are dependent on a number of variables and are more difficult to estimate accurately. Nevertheless I consider a sustainable case has been made for the extent of acquisition now being proposed in this application as being reasonable and not excessive.
- 7.29** I note in this context the Development Plan reference (see Section 5.7 above) to the extent of zoning shown on Map No. A-2 for marine related industry (total of 186.21ha. comprising 61.33ha. developed and 124.88ha. undeveloped)
- 7.30** In cross questioning by Mr Flynn for Irish Cement, Mr Rowan confirmed that criteria used to consider the lands for acquisition included absence of lands within the existing port, land use policy, operational efficiencies resulting from proximity to the established port, topographical constraints to the west of the port, constraints resulting from proximity to Foynes village and environmental designation considerations.
- 7.31** It would appear that the location of the acquisition lands is plan led to a significant extent having regard to the relevant policy documents referred to above including the SIFP and Development Plan which identifies the lands as part of a Strategic Development Location and imposes relevant marine related industry zoning. Clearly the proximity to the established port, the port access road and indeed the 'straddling' of the railway link into Foynes is also material in regard to the potential suitability of the lands for the purposes for which they are being acquired. I would be concerned that the lands are close to certain environmentally sensitive designations, to the village of Foynes itself and potentially subject to constraints such as flood risk. At the Hearing

for example the Inspector raised the CFRAM study mapping which indicates potential flood risk on sections of the southern parts of the lands to be acquired. However they also indicate that the majority of the lands to be acquired were 'Defended Areas' which was to some extent verified at my site inspection and confirmed by Mr Rowan that significant coastal embankments and deepened drainage channels were present on, around and in proximity to the lands to be acquired. From an analysis of the relevant Development Plan documents I am satisfied that such sensitivities will be matters of material consideration should planning applications subsequently be lodged (see for example the policies and objectives of the Development plan set out in sections 5.7 to 5.16 above)

7.32 Development Plan and other policy considerations: I have already made reference to the substantial policy basis which relates to Foynes Port (see section 5 and further analysis in the above assessment). The Port has an international significance under the Ten-T network and this is reflected through to the National Ports Policy which identifies the SFPC as operating a Port of National Significance (note that this includes Foynes Port and Limerick Dock). The Regional Planning Guidelines also recognises the importance of the Shannon Estuary and its ports and directs that local authorities prepare specific economic development objectives harnessing its economic potential and enhancing maritime activity. Reference has already been made to the SIFP and amendments made to the Development Plan to incorporate the SIFP. Again I would repeat that whilst this policy is not conclusive in itself in terms of the Board concluding on the merits of the acquisition order it does amongst other matters add weight to the case made by the SFPC given the ports statutory objectives and duties. I perceive the scheme of development as set out to be broadly in conformity with the strategic policy approach that applies to Foynes Port

7.33 Impracticability: The legislation requires the SFPC to consider whether implementation of the scheme of development would be impracticable without the lands. It states that a company may acquire any land within or outside its harbour) “ .. for the purpose of ensuring the implementation of any scheme of development of its harbour or any part thereof which, in the opinion of the company, would prove impracticable without the land ... being included in the scheme”. There is no definition of 'impracticable' in the legislation.

7.34 Mr Dalton Managing Director for Irish Cement referred to the lands that had been within their ownership for a number of years. It was acquired and had been held as strategic land to protect their interest ancillary to their historical activities of importing material through the port. It was confirmed by Mr Dalton in response to a question from the inspector that this strategic interest no longer existed. It was stressed however that it was not necessary for Irish Cement to sell the lands at this time and that Irish Cement would be open to develop the lands in accordance with the zoning provisions alone, with third parties or in

conjunction with the SFPC although no formal application for such had been lodged.

- 7.35** This is a key issue to the objector. It is the view of Irish Cement that the SFPC has fundamentally failed to demonstrate that without the lands concerned that its implementation of the scheme of development would be impracticable. Phase 1 was already being implemented in this regard without the subject lands. It was also considered that the development of the lands to be acquired for storage and port centric uses could be carried on by Irish Cement itself and/or with other third party developers and the ownership of the lands by the Port Company would not be necessary to implement the scheme of development. The Irish Cement representatives including Mr O Malley and Mr Flynn cited the existing model of ownership by third parties of some 20% of the Port estate and that Irish Cement had previously accommodated the ports development by selling off 30 acres for its expansion and for the eastern access route (Mr J Dalton). Mr Dalton also confirmed that there would be no reason why Irish Cement would not work with developers to develop the lands in accordance with its zoning requirements.
- 7.36** To support this contention it was pointed out by Mr Flynn and Mr Dalton that Irish cement were already in a process of selling a small area of land close to the port's vehicular entrance (outside of the subject acquisition lands) to a company for a port related transport activity. It was confirmed at the Hearing that this sale had not yet been completed and no planning permission had been obtained. It was noted by Mr Galligan for SFPC that this would require agreement with SFPC to access the lands from the port itself which had not been sought or obtained and no planning permission had yet been applied for or granted.
- 7.37** In further response on this Mr Galligan indicated that the scheme of development which required the use of the lands for associated storage and other ancillary activities is a direct consequence of the infrastructural enhancements proposed under Phase 1 and 2 and associated assessments of future land requirements and forecasts due to increased traffic (see discussion above). There was a need for long lead in times to implement development. It was not considered to be a tenable or sustainable position for the lands to be in the control of one or a number of third parties and where proper planning and organisation of infrastructure for the operation of the port was required to meet its statutory obligations. The most practicable and sustainable solution was for the Port Company itself to act as a one stop shop to coordinate development proposals given the strategic commercial need for the lands and requirement for the prompt role out and integration of the necessary infrastructure. Furthermore Mr Galligan queried how the port could retain control of its estate management and carry out its statutory role and duties where individual plots of one hectare were being sold in piecemeal fashion.

- 7.38** I consider the responses of Mr Keating to questions put by Mr Flynn to be material. He indicated based on his experience that there were problems with not owning the land as the port estate is full and the third party landowner may not necessarily have the direct interest of the port in mind. Customers do approach the port directly and expect the port to have the lands to accommodate their proposals. A strategic land bank was not being sought due to the port's immediate requirements and the extent of acquisition was moderate in this regard. Immediate land availability is critical in attracting operators. It was port policy not to relinquish its current land ownership. Whilst accepting that third parties may develop the lands there were operational benefits and cost effectiveness to have a land area close to the existing port establishment and there is no control in perpetuity over the uses of the land if they remained outside the ownership of the SFPC. Zoning would only control use of the lands to a certain degree and the port were mandated to develop their harbour under the legislation.
- 7.39** Mr Keating indicated that tonnage throughput was an important consideration and control of which could be exercised within the terms of the leases offered that retains the SFPC ownership of the land. He considered that in practice land ownership by the port was paramount in attracting recent operators to the port. He again accepted that strictly speaking the lands could be developed by third parties however it was least risky for such operators to deal with the port as a one stop shop and as a single entity and was the best option for the SFPC. Without land in its ownership and in its control the port would not be in control of its own destiny and developers would go elsewhere. The port facility still needs associated support service infrastructure which the SFPC is best placed to manage and provide. When looking at national port infrastructure of this significance it is important that the port needs to be able have at its disposal the necessary tools of operation and land availability certainty to manage and expand its business effectively and in accordance with its statutory obligations.
- 7.40** I consider that there is some basis to the views expressed by Mr Keating and Mr Galligan on this issue. The status of the Port as a Tier 1 port is itself significant. I consider that the weight of evidence provided supports the view that the requirement for overall coordination and management of the port and its infrastructure appears to be best placed with the SFPC itself having regard to its statutory objectives and duties and significant status as set out in policy.
- 7.41** Whilst noting the stated willingness of the objector to promote development of the lands in accordance with zoning provision the evidence available to me is that this has not to date been done in a substantial and comprehensive manner and no planning application for such appears to have been lodged. Indeed on the information available this appears to have been progressed on a limited basis only for a small area of land (albeit outside the acquisition lands). If

continued this could prove problematic for the SFPC to operate effectively and efficiently in the management of its facility. It could prejudice the use of the scarce resource of these strategic lands which could serve to meet the immediate needs of the SFPC as set out in the scheme of development and as supported by various policy documents. I consider on the basis of the information available that implementation of the full scheme of development as set out, without the lands within the scheme and within the control of the SFPC, would be discouraged, potentially undermined and impracticable.

- 7.42** As further example I would cite the environmental constraints that might apply to the acquisition lands. To develop the lands (and indeed other marine related industry zoned lands in the vicinity) in accordance with proper planning and sustainable development would appear to me to necessitate a comprehensive overview of the entirety of the lands concerned that could not be achieved by its piecemeal development. The areas that appear to be prone to flooding and also closest to the village of Foynes might be considered as areas required to be kept free from or less intensively developed in the interests of the amenities of the area or the environment. An inconclusive discussion also took place at the Hearing led by the inspector on the implications of re-opening the rail link and any associated land demands this might place on the acquisition lands (for sidings/loading and unloading areas/associated equipment etc). The implications of such had not been shown on the indicative site layout – see page 7 of Document 3 presented to the Hearing. Such matters should be properly considered in a comprehensive approach which the SFPC appear to be ideally and properly placed having regard to its statutory role and interests.
- 7.43 Implications of recent Reid v IDA Supreme Court ruling:** In his legal submission Mr Flynn cited the recent Reid v IDA Supreme Court ruling in supporting his view that the applicant in this case had not discharged the substantial ‘burden of proof’ required to justify the acquisition (Ruling attached as Document 12 presented to the Hearing). He also indicated that this placed an onus on the Board itself to ensure that the powers of acquisition must be correctly exercised and adhered to.
- 7.44** Having read that Ruling I would agree with the views expressed by Mr Galligan in response that it does not create new law in regard to compulsory acquisition and relates to the particular (and different) legislation and circumstances that applied in that case. If anything I consider the approach set out in the Ruling somewhat and broadly reaffirms the approach traditionally taken by the Board in determining CPO cases. In this case the relevant legislation is the Harbours and Planning and Development Acts (as amended) and I have considered their provisions and specific requirements in the context of this report.
- 7.45** As set out in the opening of this report s.16 (1) states

“A company may, in accordance with paragraphs 1 to 6 of the Fourth Schedule, acquire compulsorily any land (whether situate within or outside its harbour) or any interest in or right over any such land, for the purposes of ensuring the implementation of any scheme of development of its harbour or any part thereof which, in the opinion of the company, would prove impracticable without the land, interest or right concerned being included in the scheme..”.

7.46 S16(1) sets conditions requiring 1) a scheme of development and 2) an opinion from the company as to the impracticability of implementing this scheme of development without the lands being included in the scheme. I consider that the SFPC has addressed such matters in their submissions and to the extent that has justified the acquisition. The legislation has provided the Company with powers to make such an application for acquisition to the Board and I have considered the merits of such in conjunction with all the submissions made including those of the objector and all other relevant matters in my assessment above. I consider the case for making the order has been sufficiently demonstrated in accordance with the requirements of the statutory provisions that apply in this case.

7.47 Application for payment of certain costs: I note that S. 219 of the Act (as amended) allows for the Board to direct payment by the applicant to any person appearing at an oral hearing as a contribution towards the costs incurred by that person of attending the Hearing. A letter requesting such has been received from solicitors Dundon Callanan on behalf of Irish Cement (letter dated and received by the Board on the 31st December 2015). I would suggest that the Board indicates its conclusions on this matter in determining this application for an acquisition order.

8.0 CONCLUSION AND RECOMMENDATION

8.1 I recommend that:

the Board makes the Acquisition Order authorising the Shannon Foynes Port Company to acquire the property concerned subject to the modification set out in the Schedule hereto for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having considered the objections made to the application for an acquisition order, the report of the person who conducted the oral hearing into the objections and having regard to the purposes of the compulsory acquisition as set out for:

developing the said land as covered and uncovered storage areas

to ensure the implementation of a scheme of development of the harbour of Shannon Foynes Port Company at the Port of Foynes, County Limerick, comprising the reclamation of lands behind the East Jetty and developing associated storage space permitted under Grant of Planning Permission number P12/212 issued by Limerick County Council and the joining of the East and West Jetty by constructing a suspended deck structure measuring circa 20 meters deep by 120 meters long together with necessary revetment walls and jetty furniture and developing associated storage space at lands at Durnish, Foynes, Co Limerick

and to

- (i) the provisions of the National Ports Policy 2013,
- (ii) the provisions of the Mid West Regional Planning Guidelines 2010 – 2022,
- (iii) the provisions of the current Limerick County Development Plan 2010 – 2016,
- (iv) the provisions of the Strategic Integrated Framework Plan for the Shannon Estuary 2013 – 2020,
- (v) the objectives and general duties of the Shannon Foynes Port Company as set out in Sections 11 and 12 of the Harbours Act 1996 to 2015 and to
- (vi) the scheme of development and maps, plans and book of reference accompanying the application as submitted by the Shannon Foynes Port Company

it is considered that the acquisition of the lands in question by the Shannon Foynes Port Company is necessary for the purpose of ensuring the implementation of the scheme of development of its harbour and without which its implementation would prove impracticable without the lands concerned being included in the scheme, and the objections cannot be sustained having regard to this necessity

SCHEDULE

1. All lands referenced on Drawing entitled Job Number 15043 dated 24/09/2015 Revision Number 1 Drawing Title Limerick County Council Lands to be Acquired being lands within the ownership of Limerick City and County Council shall be omitted entirely from the acquisition and shall not form any part of this Acquisition Order.

Reason: To reflect the Shannon Foynes Port Company request made at the oral hearing held on the 16th December 2015 to consider this application to have such lands omitted from the application for acquisition.

Philip Green
Assistant Director of Planning
23rd February 2016