

## AN BORD PLEANÁLA



### Inspector's Report

#### 13. PC0224

<b>Prospective Applicant:</b>	Shannon Foynes Port Company
<b>Planning Authority:</b>	Limerick City and County Council
<b>Issue:</b>	SID Pre-application – whether project is or is not strategic infrastructure development
<b>Nature of Development:</b>	Extension of jetty facilities including the reclamation of foreshore, and extension of the port estate.
<b>Inspector:</b>	Karla Mc Bride
<b>Date of Site Inspection:</b>	5 <sup>th</sup> August 2016

## **1.0 INTRODUCTION**

- 1.1 The subject proposal relates to a development which would comprise the extension of jetty facilities including the reclamation of foreshore and the extension of the port estate at Foynes Port in County Limerick.
- 1.2 Two pre-application consultation meetings with the prospective applicants and their representatives were held on 12<sup>th</sup> August 2016 and 19<sup>th</sup> October 2016 (see appended signed Records). The primary purpose of these meetings was to address the issue of whether or not the proposed development constitutes strategic infrastructure for the purposes of the 2000 Act as amended by the Planning and Development (Strategic Infrastructure) Act, 2006, and to consider matters relating to the proper planning and sustainable development of the area or the environment which may have a bearing on the Board's decision, and procedures involved in making the application.

## **2.0 SITE LOCATION**

- 2.1 The subject site is located at Foynes Port to the west of Limerick City in County Limerick. This deep water port is bound to the north and east by the Shannon Estuary and Foynes Village is located to the immediate west. The overall site comprises the existing port estate to the west which is owned by the prospective applicant, and the adjoining agricultural lands to the east which are currently owned by Irish Cement who have consented to this application. Vehicular access to the port estate is off the N69 Limerick to Tralee Road to the S and along an access road which separates the port estate from the adjoining agricultural lands. There is a single track rail connection between the port estate and Limerick City which crosses over the S section of the access road.

2.2 The lands within the subject site are low lying and flat and the Port Estate is mainly occupied by port related activities (including jetties, open storage and warehouses). The agricultural lands to the east which are used for grazing are traversed by several small streams.

2.3 The port estate is bound to the north and east by the Shannon Estuary SAC and SPA. A narrow strip of the existing port estate which includes the jetties is subject to these European site designations, whilst the adjacent lands to the immediate south which are used for port related activities are designated as a pNHA. None of the remaining port estate lands or the adjoining agricultural lands to the west are designated as European sites. There are several sites of archaeological interest located in the vicinity and there is a ringfort located within the southern section of the landholding to the west of the port access road and north of the rail track.

### 3.0 THE PROPOSED DEVELOPMENT

3.1 The proposed development as finally described in the pre application submissions includes two separate but inter-related and inter-dependent elements which would be located in the west and east section of the subject site and connected by the internal road network.

3.2 The proposed development would comprise the following elements which will be constructed in phases:

- The construction of a 117.5m jetty to connect the existing east and west jetty structures within the existing port estate with reclamation of c.1.75ha of the foreshore immediately behind the jetty structure to connect to the existing shoreline.

- Extension of the port estate to include the development of a 38.17ha area of land to the east which would be used to provide serviced, marine related industrial development sites, including the provision of an internal road network and all main services to each site.

3.3 It is stated that the development has been guided by the current Limerick County Development Plan and other documents including the Trans European Network (TEN-T) Guidelines, the National Ports Policy 2013, the Mid West Regional Planning Guidelines 2010-2022, the Mid West Area Strategic Plan, and the Strategic Integrated Framework Plan for the Shannon Estuary which seek to guide port developments to suitable locations, and the project is zoned for port related development in the Development Plan.

3.3 The prospective applicant confirmed at the pre-application meetings that Irish Cement had given written consent for the making of this application for the lands located in the port expansion area.

#### 4.0 PLANNING HISTORY

There is an extensive planning history on the site related to the jetty extension works, reclamation and the provision of storage areas, warehousing and energy projects and the most relevant case is summarised below.

**PL13.CQ3001:** This case relates to the compulsory purchase of the Irish Cement lands (c.38.2ha) to the east of the Port Estate which form part of the proposed port expansion area. The Board approved the compulsory purchase on 30<sup>th</sup> September 2015 and the Order is now the subject of legal challenge in the High Court. Irish Cement has consented to the current application.

## **5.0 PLANNING POLICY CONTEXT**

### **5.1 Trans European Network (TEN-T) Guidelines 2014**

European transport infrastructure policy seeks to improve connectivity throughout the EU by means of railways, roads, inland waterways, ports, airports and freight terminals. Action will concentrate on those components of the TEN-T network with the highest European added value, in particular cross-border sections, missing links, multimodal connecting points and major bottlenecks, serving the objective of reducing greenhouse gas emissions from transport. Maritime ports of the Core network must be connected with the railway and road transport network by December 2030. There is one Core Network Corridor crossing Ireland which comprises The North Sea-Mediterranean Corridor and Foynes Port is identified as a port of international significance which forms part of this network.

### **5.2 EU Ports 2030 Gateways for the Trans European Transport Network**

This 2014 document states that the EU is highly dependent on seaports for trade with the rest of the world and within its Internal Market. Ports are the nodes from where the multimodal logistic flows of the trans-European network can be organised, using short sea shipping, rail and inland waterways links to minimise road congestion and energy consumption. The 2011 White Paper on Transport and the Single Market Act II emphasised the need for well-connected port infrastructure, efficient and reliable port services and transparent port funding. The availability of adequate port infrastructure, good performance of port services and a level playing field are vital if the EU is to remain competitive in the global markets, improve its growth potential and create a more sustainable and inclusive transport system.

### **5.3 The National Spatial Strategy 2002-2020**

This document provides a 20-year national planning framework for Ireland which aims to achieve a better balance of social, economic and physical development across Ireland, supported by more effective and integrated planning. It states that more emphasis will be placed on improving transport connectivity building on the road network, public transport system and international access points, such as ports and airports. It states that in the Mid-West, Limerick/Shannon needs to be strengthened and refers to the ports in the Shannon estuary. Section 3.8.1 seeks to ensure that Ireland remains effectively linked to international markets, the existing and proposed gateways will require good quality links via nationally strategic ports and airports. The priorities in this regard include promoting alternative corridors to ports including those in the Shannon Estuary.

### **5.4 National Ports Policy, Department of Transport, Tourism and Sport, 2013**

This document sets out Government policy in relation to ports and it categorises them into three tiers. It states that the core objective of national policy is to facilitate a competitive and effective market for maritime transport services. It accepts that the long term international trend in imports and shipping is toward increased consolidation of resources in order to achieve optimum efficiencies of scale. It acknowledges that this trend will have knock-on effects in terms of vessel size, water depth in ports and the type and scope of port hinterland transport connections. The continued development of the Tier 1 ports is a key objective of National Ports Policy in order to ensure continued access to regional, European and global markets.

Foynes Port is categorised as one of three Tier 1 Port of National Significance which is responsible for handling 20% of all seaborne trade in the state with an emphasis on the dry bulk sector. The port's diversification into other sectors including energy is also acknowledged along with it's potential to lead the future development of port capacity in the medium and long term.

## 5.5 Mid-West Regional Planning Guidelines 2010-2022

This document recognises the significance of the Shannon Estuary and its ports as providing a major goods transport link for the mid-west region. It acknowledges that protecting capacity and improving access to these ports is a regional priority and local authorities are required to include specific objectives to harness the economic potential of the estuary. It also seeks facilitate the preparation of a Strategic Integrated Framework Plan for the Shannon Estuary.

## 5.6 Strategic Integrated Framework Plan for the Shannon Estuary, 2013-20

This is an inter-jurisdictional land and marine based framework plan to guide the future development and management of the Shannon Estuary. The plan was commissioned by several local authorities (Limerick, Clare and Kerry), Shannon Development and the Shannon Foynes Port Company. The Plan forms part of the Limerick County Development Plan by way of Variation No.3.

The document identifies specific sites for future growth in the estuary. It protects the role and function of Foynes Port as a key strategic driver of economic growth and as the main deep water bulk port facility in the region. It identifies lands at Foynes as being necessary for future port development and designates it as “Strategic Development Locations for Maritime Development.”

**SIFP MRI** seeks 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.

## 5.7 Limerick County Development Plan 2010-16

The subject site is located within an area identified as being suitable for port related development in the Limerick City and County Development Plans 2010 to 2016. (In accordance with S.28 of the Electoral, Local Government and Planning and Development Act 2013, the Planning Authority proposed not to commence the review of these plans which will continue to have effect until a new Development Plan for Limerick City and County is prepared.)

**Objective ED04:** seeks to safeguard the Strategic Development Locations of Foynes Port, Foynes Island and Aughinish Island for the sustainable growth and development of marine related industry...All proposed developments shall be in accordance with regional and national priorities and relevant EU Directives...Buffer zones shall be incorporated into proposals for developments where necessary to preserve potentially valuable habitats including areas of estuary which occur at or surrounding these locations.

**Objective ED6:** states that 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.

**Objective ED07:** seeks to:

- (a) ensure that the marine related industrial zoned land in Foynes is safeguarded for the accommodation of port related uses and other industrial activities,



(b) support the expansion of the Port of Foynes and promote economic and industrial development of the Shannon Estuary as a strategic transport, energy and logistics hub serving the county and the wider region,

(c) support the consolidation of new deep water berthage within the estuary and enhance the strategic economic function of the Port.

**Policy SE02:** states that 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 for 2041 Shannon Foynes Port Company Masterplan.

## **5.8 Vision for 2041 Shannon Foynes Port Company Masterplan, 2013**

This document sets out the commercial requirements and spatial objectives for all the Port Company's facilities on the Shannon Estuary between Limerick City and Loop Head. It specifically targets growth and expansion options and identifies port capacity and associated port infrastructure requirements. It acknowledges the strategic need of the estuary to be in position to ensure future capability in handling larger trade volumes in an efficient and competitive manner. The Masterplan contains the following key objectives:

- Significant expansion and infrastructural development in the deep water Port of Foynes
- Promoting non-core assets in Limerick Docks for alternative port / non port related activities
- Managing the natural attributes of the estuary and its destination as an Ocean Energy Hub

## **6.0 PROSPECTIVE APPLICANT'S CASE FOR STRATEGIC INFRASTRUCTURE**

The key elements of the Applicant's submission in support of the case being designated as strategic infrastructure are summarised as follows:

- Proposal exceeds the statutory thresholds as specified in the Seventh Schedule of the 2006 Act as amended by S.78 of the 2010 Act, and it meets the requirements for strategic infrastructure designation.
- Proposal satisfies criteria (a), (b) & (c) of S.37A (2) of the 2006 Act.
- Proposal would support the objectives of the Trans European Network Guidelines and the National Ports Policy, and it would be of strategic economic or social importance as it aims to increase the capacity of a Tier 1 Port which is of international, national and regional importance.
- Proposal would be supportive of objectives of the Mid-West Regional Planning Guidelines and the Strategic Integrated Framework Plan for the Shannon Estuary in relation to protecting capacity and improving access to Tier 1 Ports which is a regional priority, and the proposed development is of strategic importance to the region and supportive of policies for the development of ports, harbours and marine related industry in the region.

## **7.0 CONSULTATIONS – SUMMARY OF KEY ISSUES AND ADVICE**

The key issues arising during consultations may be summarised as follows (the signed Records should be consulted for further details):

- (a) The prospective applicant provided background operational and economic information for Foynes Port which is operating at almost full capacity; described the types of raw material processing that take place within the port estate which accords with the definition of marine related industrial activities; described the two elements of the proposed development (new jetty and port expansion area) as being completely interdependent on each other; and clarified that permission would be sought for the provision of serviced sites only within the proposed port expansion area and not structures.
  
- (b) The proposed development will be assessed in the context of national, regional and local policy with particular regard to the National Ports Policy, 2013 and the Strategic Integrated Framework Plan for the Shannon Estuary, 2013-20 which forms part of the County Limerick Development Plan 2010 to 2016 (Variation no.3.)
  
- (c) Regard will also be had to current national advice in relation to the implementation of EIA Directive 2014/52/EU in May 2017 with regard to EIS developments.
  
- (d) An application for a 10-year planning permission would be acceptable.
  
- (e) Public consultation should be extensive as possible and consultation should take place with prescribed bodies such as the NPWS, adjoining landowners and the local community.
  
- (f) A comprehensive and detailed EIS should be prepared which has particular regard to the impact of the proposed development on coastal processes, ecology (aquatic and terrestrial), archaeology, water quality, flood risk and traffic management (including any new or modified road or rail proposals).

- (g) Detailed assessment of construction and design of the jetty required along with layout and servicing details for the port expansion area including boundary treatment, buffers, landscaping and phasing.
- (h) A comprehensive and detailed NIS should be prepared having regard to the presence of several European sites in the surrounding area (including the River Shannon Estuary SAC and SPA).
- (i) The entire port estate and port expansion area should be included within the blue line boundary and the red line boundary should include the two elements of the proposed development and the internal road network.
- (j) The prospective applicant was advised that the planning authority may require confirmation from the Board that future proposed developments in the port expansion area are not SID.

## **7.0 STRATEGIC INFRASTRUCTURE – LEGAL PROVISIONS**

7.1 The Board is asked to decide if the proposal is or is not Strategic Infrastructure Development as defined by Section 37A of the Planning and Development Planning Act 2000 as amended by Section 5 of the Planning and Development (Strategic Infrastructure) Act 2006 and by Section 78 of the Planning and Development (Amendment) Act 2010. Strategic Infrastructure is defined in the Seventh Schedule of the 2006 Act and under Transport Infrastructure as:

“A harbour or port installation (which may include facilities in the form of loading or unloading areas, vehicle queuing and parking areas, ship repair areas, areas for berthing or dry docking of ships, areas for the weighing, handling or transport of goods or the movement or transport of passengers (including customs or passport control facilities), associated administrative

offices or other similar facilities directly related to and forming an integral part of the installation) –

- (a) Where the area or additional area of water enclosed would be 20ha or more, or
- (b) Which would involve the reclamation of 5ha or more of land, or
- (c) Which would involve the construction of one or more quays which or each of which would exceed 100m in length, or
- (d) Which would enable a vessel of over 1350 tonnes to enter within it.”

7.2 Section 37A of the Planning and Development Act, 2000, as amended by the Planning and Development (Strategic Infrastructure) Act, 2006 and the Local Government Reform Act 2014, requires that any development specified in the Seventh Schedule should be made to the Board if the proposed development falls within one or more of the following:

- (a) the development would be of strategic economic or social importance to the State or the region in which it would be situate;
- (b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate;
- (c) the development would have significant effect on the area of more than one planning authority.

## 8.0 ASSESSMENT

- 8.1 In my opinion the proposed development comprises a Seventh Schedule development as it meets the threshold requirements (c) and (d) as set out in section 7.1 above as it would comprise the construction of a 117.5m jetty and it would enable a vessel of over 1350 tonnes to enter within it. I do not concur with the view of the prospective applicant that lands covered by the proposed port extension would meet the threshold requirement (a) as the proposal would not comprise the enclosure of an area of water of or in excess of 20ha.
- 8.2 In my opinion, both elements of the proposed development (the jetty extension and the port expansion area) are interdependent on each other and could not function as separate entities. There is an identified lack of spare capacity within the existing port estate to accommodate any additional cargo generated by the predicted increase in the number of vessels and/or vessel size that would use Foynes Port in the future. The port expansion area would be used for the weighting, handling and transport of goods which would comply with the definition of strategic transport infrastructure contained in the Seventh Schedule of the 2006 Act as summarised in section 7.1 above. The prospective applicant has also confirmed that any processing of raw materials within this area would be port centric and that no manufacturing is envisaged. The use of the lands within the proposed port expansion area would also be restricted to Marine Related Industry under Objective ED6 and ED07 of the current County Limerick Development Plan as summarised in S.4.5 above.
- 8.3 I consider that the proposed development meets the requirements of condition (a) of Section 37(A) (2) of the Planning and Development (Strategic Infrastructure) Act 2006 as it would be of strategic economic importance to the state and region due to its scale, location and the contribution it would make to connecting the mid-west region to national, European and international markets. Foynes Port which has been identified as Core port of international significance in the Trans European Network (TEN-T) Guidelines and it forms part of the European Union's Core Transportation Network, and it is also

designated as a Tier 1 Port of national importance in the National Ports Policy 2013 as summarised in sections 4.1, 4.2 and 4.3 above.

- 8.4 Section 37(A) (2) (b) of the above Act requires the development to contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situated.

The National Spatial Strategy 2002-2010 seeks to ensure that Ireland remains linked to international markets, and the priorities in this regard include promoting alternative corridors to ports including those in the Shannon Estuary. The Regional Planning Guidelines for the Mid-West Region (2010-2022) recognises the regional economic and transport significance of the Shannon Estuary and its ports, it acknowledges the need to protect capacity and improve access, and it requires local planning authorities to include specific objectives to harness the economic potential of the estuary. The Strategic Integrated Framework Plan for the Shannon Estuary, 2013-2020 identifies Foynes Port as a key strategic driver of economic growth in the region and the lands at Foynes as being necessary for future port development. Policy SIFP MRI seeks 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. In my view the proposed development is of a scale that would substantially contribute to the spatial, economic and transportation objectives for the region as set out in Section 37(A)(2)(b) quoted in section 7. 2 above.

- 8.5 I do not consider that the proposed development would have a significant effect on more than one planning authority having regard to Section 37(A) (2) (c) of the above Act.

## **9.0 RECOMMENDATION**

- 9.1 I recommend that the Board serve a notice on the prospective applicant, pursuant to Section 37(B)(4) Planning and Development Act 2000, as amended, stating that it is of the opinion that the proposed development constitutes a strategic infrastructure development for the following reason:

### **REASONS AND CONSIDERATIONS**

Having regard to the size, scale and location of the proposed port related development it is considered that the proposed development of a jetty and extension to the port estate at Foynes Port, County Limerick constitutes development that falls within the definition of transport infrastructure in the Seventh Schedule and is considered to be of strategic importance by reference to the requirements of Section 37A (2) (c) & (d) of the Act. An application for permission for the proposed development must therefore be made directly to An Bord Pleanála under S.37E of the Act.

## **10.0 PRESCRIBED BODIES**

The following is a schedule of prescribed bodies considered relevant for the purposes of Section 37E (3) (c) of the Principal Act.

1. Minister for Housing, Planning, Community and Local Government
2. Minister for Communications, Climate Action and Environment
3. Minister for Agriculture, Food and the Marine
4. Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs
5. Minister for Transport, Tourism and Sport
6. Limerick County Council
7. An Chomhairle Ealaíon (Arts Council)
8. Heritage Council



9. Failte Ireland
10. An Taisce
11. Regional Fisheries Board
12. Irish Water
13. Health Services Executive
14. Transport Infrastructure Ireland
15. Railway Safety Commission

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Karla Mc Bride  
Senior Planning Inspector  
25<sup>th</sup> November 2016