

20140626-ABP-PA0035

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

26.06.14

Re: Redevelopment of Existing Port Facilities
Ringaskiddy, Co Cork.
Ref: PL04.PA0035

Dear Sir/Madam,

An Taisce has been notified of this application and referred documentation. including an Environmental Impact Statement, by the agent for the developer, McCutcheon Halley Walsh, who advised that this development was being considered strategic infrastructure and that all submission with regard same be made to An Bord Pleanála by the 26th June 2014.

An Taisce wishes to raise the following:

1.0 Consideration of Previous An Bord Pleanála Refusal

This is largely repeat application of a previous proposal refused by An Bord Pleanála on 25th June 2008 (Ref: 04.PA0003), for development at Oyster Bank, Ringaskiddy.

The refusal was on grounds that relocation of current port facilities from Tivoli which is served by a railway line and *'has reasonably direct access to the national road network'* to Ringaskiddy *'which is not connected to the national rail system and would be totally reliant on road based transport'* would be *'contrary to the proper planning and sustainable development of the area'*.

It was stated that *'while the Board accepts that there is a need to move port activities from Tivoli Docks and expand at other location(s) within the Cork Harbour area'* the proposed development would:

'Result in of the port related traffic traversing the city road network' and *'would exacerbate serious traffic congestion'*

and

'be unable to make use of rail carrying facilities in the future'

There is now a 'de novo' application under the Environmental Impact Assessment (EIA) Directive requiring consideration for all issues and impacts in relation to the proposal including climate and traffic.

While there is no explicit obligation under Irish planning law for the Board to have regard to a previous planning decision in determining a substantially repeat application the *res judicate* principle does apply to An Bord Pleanála as an administrative tribunal.

2.0 Changed Circumstances since 2008 Development Refusal

2.1 European Court Judgement Case C 50-09

This judgment against Ireland rules on the explicit responsibility of consent bodies for applications under the EIA Directive, to provide, in making any consent decision, an environmental impact assessment on the application. This requires assessment of:

- i. the information provided by the developer, which in Ireland is defined as an Environmental Impact Statement and associated documentation
- ii. the information gathered through consultation with public and prescribed bodies

An Bord Pleanála has not as yet put in place legally appropriate procedures to address this requirement.

Irrespective of the content of an inspectors report, any Order issued by An Bord Pleanála needs to be based by an assessment by the Board as an entity, of the application under all of the headings set out in Articles 3 and 5 and Annex iv of the EIA Directive.

2.2 Climate Mitigation and Adaptation

Ireland has no current strategy for mitigation of climate emissions and adaptation to climate change. There is currently a consultation process for a *Low Carbon Road Map to 2050*, and a proposal for legislation for which Heads of Bill were published in 2013.

This is not linked to any scientifically credible emission reduction of targets or effective legal implementation strategy. We attach as a formal part of our submission the summer 2014 An Taisce magazine¹(ENCL 1), on which Page 3 sets out an overview by Professor John Sweeney on

- i. the 5th. UN Intergovernmental Panel on Climate Change (IPCC) assessment report.
- ii. the inadequacy of current proposed Irish climate legislation to set targets
- iii. Ireland's vulnerability to climate impact.

Pages 3 to 10 sets out the actions required to address the Irish situation. Pages 17 and 18 relates to energy, pages 19 to agriculture in Ireland.

¹ http://www.antaisce.org/sites/antaisce.org/files/2014-05-an_taisce_magazine-lowres.pdf

The Board's 2008 determination of the previous Port of Cork Strategic Infrastructure application, did not address or determine the sustainability of the national and transboundary climate impact, which was the overriding concern in the An Taisce submission.

This reflects the systemic disregard of climate impact by Board inspectors and Board members in the determination of infrastructure and other proposals over the last 20 years and

- i. the lack of scientific competence in the Board's decision making process with regard to climate impact.
- ii. the lack of legal competence by the Board in relation to assessment of projects under the EIA directive.

This is reflected in the range of decisions by the Board on airport expansion, motorway development, peat power generation, milk powder production, and car based retail locations without addressing climate mitigation.

Pages 22 and 23 of the attached An Taisce magazine highlight the particularly deleterious role of An Bord Pleanála over the last year in disregarding the climate impact of increased car based development and dependency in three significant applications in the Greater Dublin Areas, namely the Liffey Valley Shopping centre expansion, the Kildare Retail Village extension and the continued permission for 10,2200 car parking spaces at Dublin Airport.

There is now an overriding imperative to address mitigation and adaptation of climate change, given the global average temperature for the May period has been the highest since records began. We attach a report from the NOAA National Climactic Data Centre published June 2014² (ENCL 1).

The 2014 5th United Nation Intergovernmental Panel on Climate Change assessment report establishes 97% scientific certainty on that human caused or anthropogenic green house gas emissions are accelerating climate change.

The only current uncertainty is the in the extent and time frame of the sea level rise, temperature and climate volatility that will occur regardless of what mitigation measures on reducing global emissions are taken.

Ireland because of :

- i. Its extensive coastline,
- ii. the concentration of major population centres on tidal rivers along the coast,

The unpredictability of north Atlantic ocean temperature warming in generating more regular and intense storm patterns, increased risks from the combination of high tides, Atlantic storm conditions and concentrated periods of high rainfall in river catchments upstream from urban centres. This was reflected in the floods which affected Cork and

² <http://www.ncdc.noaa.gov/sotc/national/2014/5>

Limerick cities in the early part of 2014, and storm damage over a wide area of coastline particularly in Co Clare.

Serious risk modelling is required to address ongoing adverse impact on coastal and estuarine infrastructure and settlements, including sea walls, roads, railway lines and waste water treatment plants, and direct investment capacity into adapting to climate impacts.

Despite this the National Roads Authority and individual state bodies including Port Companies are still putting forward uncoordinated projects for development predicated on continued growth in fossil fuel demand, disregard for climate emissions and uncritical assumption of growth in global resource consumption.

Ireland has limited investment capacity for infrastructural development in the future. A national investment programme is required to ensure protection of urban settlements and key infrastructure.

Accordingly available financial capacity needs to be invested prudently in:

- i. Mitigation of climate change through setting an international lead in reducing agricultural, energy and transport emissions.
- ii. Adapting to climate change in particular in protecting vulnerable urban centres and infrastructure

This is particularly relevant to the Cork area where investment priority is needs to protect the historic centre of Cork city from continued and future increased flood risk, a risk only highlighted today in the Irish Independent where its states the economic cost of sea and river flooding will treble unless climate change is tackled, a June 2014 European Commission report has warned³ (ENCL 3).

No consideration should be given to any infrastructural investment by any State company in the Cork area, without an integrated strategy being in place for the South West region in climate mitigation and adaptation including protection of Cork city from continued and future increased flood risk.

3.0 Relevant Policy Considerations

3.1 National Ports Policy 2013

The *National Ports Policy 2013* does not in any way address climate change mitigation or adaptation.

The policy emerged from a consultation document published by the Department of Transport where in 2010 bizarrely the only reference to 'climate' was financial climate. The submission by An Taisce is attached (ENCL 4). We request that it be considered as a formal part of our submission on this project.

³ <http://www.independent.ie/irish-news/news/ireland-will-bear-brunt-of-flooding-in-climate-change-30385986.html#sthash.yBX1XMXq.dpuf>

National Ports Policy 2013 does not address the emission impact of shipping or the wider emission and resource consumption impact on Irish per capita carbon, ecological or land use footprint. No modelling is provided on the risk exposure of Irish port facilities to increasing storm conditions and rising seas levels.

The strategy is based on an uncritical assumption of continued growth in resource consumption and indifference to anthropogenic climate change. It is largely preoccupied with defining an Irish port development hierarchy

Cork is defined as a Tier I port in the *National Ports Policy Strategy 2013*. It is identified as the second Irish port with 20% of national tonnage throughput

The specific consideration in relation to the Port of Cork states:

'The Port of Cork's Strategic Development Plan Review, published in 2010, outlined the company's intention over time to relocate commercial trade to the lower harbour area at Ringaskiddy. The Port of Cork is continuing to engage with relevant stakeholders with a view to a phased implementation of this review's recommendations. The Government endorses the core principles underpinning the company's Strategic Development Plan Review, and the continued commercial development of the Port of Cork Company is a key strategic objective of National Ports Policy.'

However this does not set out any endorsement of any particular tonnage increase or an alteration to the ratio of port traffic handled by Cork in comparison to other ports. It leaves the issue of the Port of Cork's *'intention over time to relocate commercial trade to the lower harbour area at Ringaskiddy'* to *'engagement with the relevant stakeholders'*. This requires the provision road and rail access which formed the basis of refusal of the previous application in 2008, and has not been resolved. At the same time National Ports Policy Strategy 2013 identified a major under capacity and decline of use of Waterford Port.

Accordingly this application is premature and represents a misuse of resources by a public body.

3.2 Department of Transport's policy, Smarter Travel: A Sustainable Transport Future – A New Transport Policy for Ireland 2009-2020.

Department of Transport's policy, *Smarter Travel: A Sustainable Transport Future – A New Transport Policy for Ireland 2009-2020* on Page 16 on then available data states that 95% of all goods are moved by road in Ireland and freight is responsible for over 30% of transport greenhouse gas Emissions.

Action 10 of the policy sets out objective to *'set a target reducing the environmental impact of freight'* and organise a forum on a number of issues including *'the realistic potential for rail freight'*.

3.3 Regional Planning Guidelines for the South West Region 2004-2024

The Board refusal in 2008 in referring to the lack of rail freight provisos at Ringaskiddy representing *'a retrograde step in terms of sustainable transport planning'* and cited the references *'to the potential for rail freight'* in the Guidelines. This situation remains unchanged.

The Guidelines state that The Port of Cork is recognised as the principal port of the region and its *'continued operation and development must be facilitated, whilst at the same time protecting the high quality environment of Cork Harbour'*. The current capacity deficit is highlighted along with the need for further expansion and development. The Guidelines recommend prioritising the upgrade of the N28 Cork-Ringaskiddy route to facilitate ease of access to the port. The Guidelines also highlight the importance of rail and seek *'to work together with Iarnrod Eireann to promote the expansion of rail freight connections to port facilities. Access exists at Tivoli and Marino Point, which should be considered as strategic access points and protected in development plan policies. Use of rail reduces the need for HGV's increases the sustainability of development and reduces environmental pollution'*.

3.4 Cork Area Strategic Plan 2001 -2020

The Board refusal in 2008 in referring to the lack of rail freight provisos at Ringaskiddy representing *'a retrograde step in terms of sustainable transport planning'* cited the references *'to the potential for rail freight'* in the Strategic Plan. This situation remains unchanged

4.0 Applicants Argument For Need For Development

Section 2 of the EIS seeks to address the need for the scheme. Reference is made to the Indecon report commissioned by the applicant to justify the development.

4.1 . Increase in Tonnage

It is not clear what justification for increase in tonnages in goods for import or export is either necessary or desirable. Most of the direct foreign investment in Ireland is in high value low volume goods and services with a major cluster of pharmaceuticals around Cork.

While Food Harvest 2020 proposes major increases in agricultural exports, including 50% in increased milk output the substantial proportion of projected extra exports resulting will be in milk powder. The Port of Cork has been a focus of controversy a number of times over the last decade as the source of waste export.

No particular case for increasing the tonnage of material through Cork has been made.

4.2 . Accommodation of Larger Container Vessels.

The major argument made is for the accommodation of deep water larger container vessels, in new berthing at Ringaskiddy.

Tivoli is constrained in berth depth and turning movement. It is noted that alternative greenfield sites outside Cork Harbour have been appropriately rejected on six separate

grounds including *'general lack of adequate road access to coastal locations'*. The 2008 Board refusal accepted *'the need to move port activities from Tivoli Docks'*.

However, the lack of rail access is a key consideration in the previous board refusal, and the adequacy of the measures to address the Board refusal on grounds of traffic congestion must be resolved.

5.0 Consideration of Alternatives

5.1 Alternatives within Cork harbour

The EIS refers to consideration of other alternative locations in the Cork Harbour area which are rejected on grounds of lack road access or adverse amenity impact. Adequate consideration Marino Point which has rail access from the former fertilizer factory is not provided. This was a major issue in the consideration of the previous application. Page 99 of the 2008 inspectors report states:

'Throughout the course of the application, the Port of Cork has highlighted the need for extensive deepwater berthage which can only be achieved, the Port contends, at the Oyster Bank site. I remain to be convinced based on the information presented, that Oyster Bank provides significantly inherent natural advantages over other locations within the harbour, particularly Marino Point when it comes to navigation issues. It must also be borne in mind that, in the case of the Oyster Bank proposal, significant development works are required, namely the reclamation of 18 ha of land in order to achieve the required depths to accommodate larger vessels. Furthermore depth restrictions at the spit bar may ultimately dictate vessel size for the entire harbour area inland of Haulbowline Island.'

5.2 Alternatives on South and Southwest Coast

This application must be assessed in conjunction with existing and proposed development by other Irish ports. While there is currently a major expansion application proposed in Dublin Port before An Bord Pleanála, it is not desirable that Dublin develop disproportionately in comparison to the regions.

Consideration is therefore required on development in other location on the South or South West coast. Foynes Port is proposing a major expansion and has a redundant rail line which can be restored. Waterford Port which has relocated to Belview in Co Kilkenny has excellent rail connection and national road access.. It has suffered a decline in traffic and has underutilised capacity which is highlighted in the 2013 Ports policy. The effective development of Waterford as a container port maximising rail use has not been assessed.

6.0 Transport Issues Raised in 2008 Refusal

The Inspector's Report on the 2008 refusal outlines a number of issues which have not been addressed in the current application. The reasons for refusal included the traffic impact and lack of rail provision.

Concerns for the impact on traffic and congestion at the Jack Lynch tunnel and Interchanges have not been addressed particularly at the Shannon Park and Shanbally Roundabout. The N28 upgrade was highlighted in the 2008 Inspectors report being a requirement to facilitate the increase in traffic, but no commitment to this upgrade is evident.

The new application outlines a Mobility Management Plan which restricts the operation of the port during rush hours(07:45 - 09:15 & 17:00 - 18:00, page 6 of the 'Planning Report'). This amounts to only 2 hours and 30 minutes a day and is not a sufficient response to the outlined issues. There are no guarantees in this respect given the practicalities of scheduling the arrival of container ships.

Nothing has been done to reduce the dependence of the development on the road based transport. The absence of any rail based transport is considered a major drawback especially when alternatives such as Marino Point are compared.

7.0 Other Environmental and Amenity Issues

The 2008 An Bord Pleanála Inspector's Report highlighted the potential impact this development may have upon the local communities amenity in the and recreational activities and tourism such as sailing. Community gain has been proposed in the form of an amenity area but the adequacy of this for the local community is questionable.

The visual disruption and noise pollution resulting from the port operation, the increased traffic and the everyday operations of the port also needs to be addressed

The 2008 Inspector's Report makes a strong statement in relation to visual impact:

My general conclusions in relation to the visual impact of the proposed development will be as follows: -

The proposed development will have a profound visual impact from some vantage in and around Cork Harbour. This point is acknowledged by the applicants and in particular the submission presented by Mr. Holbeach on behalf of the Port of Cork (see Submission No. 15), it is acknowledged that the proposed crane structures on site will dominate the background and setting of Ringaskiddy. The proposed development would also continue to have a permanent significant negative impact on the river estuarine landscape character area around the harbour. Significant visual impact is likely to result from vantage points at Cobh, Monkstown and Ringaskiddy.

With regard to amenity impact the 2008 page 98 of the report states:

I also consider that the proposed development would result in irreparable damage to the sailing and leisure craft activities, which are firmly established, and are well renowned as an important recreational amenity of the lower harbour area. Cork Harbour and Oyster Bank in particular, provide very important natural amenities for leisure craft and sailing. The leisure industry is a critically important element in the mosaic of activities carried out within the

harbour. The proposed development will result in a significant and profound relocation of boating, sailing and leisure activities away from the existing concentration that is currently centred on the harbour area between Monkstown, and Cobh. This would result in a significant diminution of recreational activity within the lower harbour area and as such would be contrary to the proper planning and sustainable development of the area.'

The inspector recommended refusal on two grounds, of which only the first on traffic congestion and lack of rail linkages was attached to the Boards order.

The second grounds of the Board inspectors refusal recommendation in 2008 was:

It is considered that the proposed development by reason of excessive noise and the curtailment of boating and leisure activities in the lower harbour area and Oyster Bank in particular, would seriously injure the amenities of the residents of the lower harbour area and in particular the residents of Ringaskiddy, White Point, Black Point and parts of Monkstown. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.'

While this was not carried into the Boards refusal it remains entirely relevant to the current application.

8.0 Legal Issues of Development by Port of Cork In Oyster Bank Ringsakiddy Area

We request that as preliminary matter before proceedings with the further determination of this application that An Bord Pleanala investigate the legal compliance under all relevant legislation of all works carried out within and around the application site area since 2008. This includes attention to berthing, reclamation, alteration to hard standing areas and use of cranes. If development works are found to have been carried out which require particular consent, this has significant legal implications for this application under the EIA directive.

9.0 Conclusions

We request that adequate support be provided for environmental NGOs in the conduct of any oral hearing in this project. The issues raised in this application were exhaustively addressed at the oral hearing before the 2008 decision and the costs awarded did not meet the burden imposed. Since then Ireland has ratified the Aarhus Convention, so that new considerations on equity of public participation apply.

Please acknowledge receipt of this submission and advise us of any further consultation periods.

Yours sincerely,

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