

[email to minister@housing.gov.ie]  
Minister Darragh O'Brien, TD  
Department of Housing, Local Government and Heritage  
Custom House,  
Dublin  
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Friends of the Earth  
Mount Street  
Dublin 2

3 September 2021

## **RE Policy Statement on Fracked Gas and Shannon LNG Strategic Infrastructure Designation**

Dear Minister O'Brien,

I write to you on behalf of Friends of the Earth concerning the communication of the Policy Statement on Fracked Gas to An Bord Pleanála, the subsequent decision by ABP to designate the project as a strategic infrastructure development, and the latest planning application.

You will be aware that on the 18<sup>th</sup> of May this year, the Government adopted a Policy Statement on Fracked Gas which notes (*inter alia*) that *'pending the outcome of the review of the security of energy supply of Ireland's electricity and natural gas systems, it would not be appropriate for the development of any LNG terminals in Ireland to be permitted or proceeded with'*.

At this time, An Bord Pleanála were considering a pre-application consultation from the Shannon LNG developers (PC08.304007 Ballylongford, Co. Kerry) regarding a designation as a strategic infrastructure development. This process began in 2020 and concluded with the decision of An Bord Pleanála on 2<sup>nd</sup> of June 2021.

Your Department has helpfully clarified that under Section 143 of the Planning and Development Act 2000, as amended, when the Government or any Minister issues a new policy, An Bord Pleanála must have regard to Government policy. The Department for the Environment, Climate and Communications has also clarified that Section 34 of the Planning & Development Act requires An Bord Pleanála (or any planning authority) to consider the proper planning and sustainable development of an area with regard being had to relevant Government policies such as, in this case, the aforementioned Policy Statement on the Importation of Fracked Gas. It is therefore clear and a matter of public record that An Bord Pleanála (and all relevant public bodies) must respect the direction of the Policy Statement in relation to their legal functions and processes.

This clarity is important in the context of communications, and timing of those communications, to An Bord Pleanála from your Department, as well as An Bord Pleanála's subsequent actions.

- In light of information received following an AIE request, we understand that on the 25<sup>th</sup> of May the Department of the Environment, Climate & Communications emailed counterparts in your Department to inform them of the Government approval of the Policy Statement. DECC officials requested that Department of Housing officials inform them when they had notified An Bord Pleanála, *"in line with the obs on the Memo for Government provided by your Minister that your Department will notify the Board of the new policy statement to be issued by the MECC with a view to ensuring that, should a planning application for a new LNG facility be received during the period of the energy supply security review, it should not be permitted or proceeded with"* (emphasis added).

- On the 26<sup>th</sup> of May, the chairperson of An Bord Pleanála was duly informed by your officials of the Policy Statement. This notification included the instruction that *'Accordingly, should any planning application for an LNG facility be received, the Board is requested to have regard to the policy statement in the context of section 34(2)(a)(v) of the Planning and Development Act which provides that when making its decision in relation to a planning application, the planning authority shall have regard to "where relevant, the policy of the Government, the Minister or any other Minister of the Government"*.

- On the 27<sup>th</sup> of May your Department responded to DECC to confirm the chairperson's receipt and noted that the chairperson advised that the Board reached a decision on the strategic

designation “*notwithstanding the publication of the policy statement*”. In the context of the current energy security review, DECC were also asked to provide information on when this “*has been completed so that [your Department] can notify the Board of the end of the stay on ... permitting of any LNG facilities as per the policy statement and Government Decision*” (emphasis added).

We have two concerns in light of the above information:

1) Despite the receipt of the Policy Statement on the 26<sup>th</sup> of May, An Bord Pleanála approved the strategic infrastructure designation on the 2<sup>nd</sup> of June. The relevant Board Direction (304/S304007) notes that “At a meeting held on 02/06/2021, the Board considered the report of the Inspector and the documents and submissions on file generally” (emphasis added). In light of information noted in the correspondence on the 27<sup>th</sup> of May, it would appear that the **chairperson made a decision to not consider the policy statement and did not communicate it to the Board**. It is possible (and equally concerning) that the Board may have received the Policy Statement from the chairperson and also rejected its consideration, or that the Board may have considered the Policy Statement but found grounds for granting the strategic designation. We find it alarming and entirely unsatisfactory that any of these scenarios could have occurred notwithstanding the Departmental commitment to “ensure” that the application should not be proceeded with.

All of these scenarios cast doubt on the appropriateness and legitimacy of the Board’s decision-making process and ultimate approval, having received the Policy Statement. The lack of transparency is also a cause for concern. **We request that your Department investigates this matter, ascertains which scenario has transpired, and engages An Bord Pleanála on the need for the strategic infrastructure decision to be re-opened.**

2) Shannon LNG lodged a new planning application with An Bord Pleanála on the 27<sup>th</sup> of August (PA08.311233). At the time of writing, it appears that An Bord Pleanála is willing and able to consider this application. This is the case notwithstanding the clear understanding between your Department and DECC, as evidenced by the exchange of emails on 25<sup>th</sup> May, that your Department’s communication with ABP on foot of the Policy Statement would be “*with a view to ensuring that, should a planning application for a new LNG facility be received during the period of the energy supply security review, it should not be permitted or proceeded with*”. This is also the case notwithstanding the clear understanding that there is now in place “a stay” on permitting as noted on the 27<sup>th</sup> of May. **We believe it is now incumbent upon your Department to re-engage An Bord Pleanála immediately in order to guarantee that they understand and intend to respect Government policy and that therefore no LNG application is proceeded with.** Indeed, we consider that any consideration of the application by An Board Pleanála, given the official policy to ensure that it is not proceeded with, would undermine the authority of your Department and fly in the face of Government policy.

We would welcome the opportunity to meet with you to discuss these issues and help to ensure Government policy is respected.

Is mise le mórmheas

Jerry Mac Evilly,  
Head of Policy  
Friends of the Earth