

Mr Dave Walsh, Chairperson
An Bord Pleanála
64 Marlborough Street,
Dublin 1
D01 V902

Friends of the Earth
Mount Street
Dublin 2
D02 X285

7 September 2021

RE Letter re Application of Government Policy Statement on Fracked Gas and Strategic Infrastructure Designation

Dear Mr Walsh,

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.

These issues are raised in the context of the Government's Policy Statement on Fracked Gas adopted on the 18th of May this year 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 2nd of June 2021.

The Department of Environment, Climate and Communications has 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. The Department of Housing, Planning and Local Government has also noted 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. 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, from the Department of Environment, Climate and Communications and the Department of Housing, as well as An Bord Pleanála's subsequent actions.

- In light of information received following an AIE request, we understand that on the 25th of May the DECC emailed counterparts in the Department of Housing 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 26th of May, the chairperson of An Bord Pleanála was duly informed by Department of Housing 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 27th of May the Department of Housing 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 relation to the current energy security review, DECC were asked to provide information on when this "*has been completed so that [the Department of Housing] 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 26th of May, An Bord Pleanála approved the strategic infrastructure designation on the 2nd 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 27th of May, it is our current understanding that the **chairperson made a decision to not consider the Policy Statement. It is not clear whether this was communicated by the chairperson 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 An Board Pleanála investigates this matter, clarifies which scenario has transpired, and re-opens the relevant strategic infrastructure decision.**

2) Shannon LNG lodged a new planning application with An Bord Pleanála on the 27th of August (PA08.311233). At the time of writing, it appears that An Bord Pleanála is willing to consider this application. This is the case notwithstanding the clear understanding between DECC and the Department of Housing, as evidenced by the exchange of emails on 25th May, that the Department of Housing'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 27th of May. **We believe it is now incumbent upon An Bord Pleanála to clarify that it will respect Government policy and that therefore no LNG application is proceeded with.** Indeed, we consider that any consideration of the application by An Bord Pleanála, given the official policy to ensure that it is not proceeded with, would fly in the face of Government policy.

We ask that this letter is also passed to Board members for their attention and would welcome the opportunity to meet with you to discuss these issues.

Is mise le mórmheas

Jerry Mac Evilly,
Head of Policy
Friends of the Earth