

SECTION 131 FORM

Appeal NO: PL 16.207212.

Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission ~~dated~~ received 12/07/04 from

Peter Sweetman. I recommend that section 131 of the Planning and Development Act, 2000

☒/not be invoked at this stage for the following reason(s):. No new issues.

E.O.: Kieran Somers

Date: 13/07/04.

To EO: _____

Section 131 not to be invoked at this stage. ☒

Section 131 to be invoked – allow 2/4 weeks for reply ☐

S.E.O.: M. Dala

Date: 13/7/04

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/4weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File with Section

OBSERVER FORM

Appeal No: PL 16.207212

S.37

Received: <u>12/07/04</u>	Date Appeal Lodged: <u>19/05/04</u>
	Date Last Appeal Lodged: <u>27/05/04</u>
	Date of E.I.S. Publication: <u>14/06/04</u>

Name: <u>Monica Muller</u>
Address/Agent: <u>Peter Sweetman and Associates</u>
<u>14 Postret, 184 Lower Rothmines Road, Dublin 6</u>
Status: Invalid – (insert reason): _____

VALID	INVALID
M: <u>r Fagan</u>	1. RETURN TO SENDER with BP _____
1. Acknowledge with BP <u>40</u>	2. Keep envelope <input type="checkbox"/>
2. Keep copy of Board's letter <input type="checkbox"/>	3. Keep copy of Board's letter <input type="checkbox"/>
3. Prepare refund form <input type="checkbox"/>	4. Prepare refund form <input type="checkbox"/>

Attach to file (a) R/S <input type="checkbox"/> (d) Screening <input type="checkbox"/> (b) Mapping <input type="checkbox"/> (e) Inspectorate <input type="checkbox"/> (c) Processing <input type="checkbox"/> _____	RETURN TO EO <input checked="" type="checkbox"/>
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EO: <u>Kieron Somers</u>	AA: <u>James Fagan</u>
Date: <u>13/07/04</u>	Date: <u>13/7/04</u>
Comments:	

PETER SWEETMAN & ASSOCIATES

14 POSTNET
184 LOWER RATHMINES ROAD
DUBLIN 6

sweetiep@eircom.net

The Secretary
An Bord Pleanála
184 Marlborough Street
Dublin 1

AN BORD PLEANÁLA	
TIME _____	BY <u>E-MAIL</u>
12 JUL 2004	
LTR.- DATED _____	FROM _____
PL _____	

RE: Development: Gas Terminal for the reception and separation of gas from the Corrib Gas Field at Bellagelly South and a site for the deposition of peat at Srahmore.

AT; Bellagelly South, Bellanaboy Bridge, Belmullet and Srahmore and Attavally, Bangor Erris, County Mayo

Applicant: Shell Exploration & Production Limited.

Appeal Reference No: PL 16.207312

Dear Sir,

We have been instructed by Monica Muller, Rossport, South Ballina, Co. Mayo to make an observation to the above application which is covered by the EIA Directive 85/337/EEC as amended. This submission is part of the public consultation required under the directives.

We wish to bring to the attention of the Board some of the requirements of the Directives.

The preamble of the directives states; (In European Law the preamble has the full force of law)

"Whereas the disparities between the laws in force in the various Member States with regard to the assessment of the environmental effects of public and private projects may create unfavorable competitive conditions and thereby directly affect the functioning of the common market ;whereas, therefore, it is necessary to approximate national laws in this field pursuant to Article 100 of the Treaty;

Whereas, in addition, it is necessary to achieve one of the Community's objectives in the sphere of the protection of the environment and the quality of life;

Whereas, since the Treaty has not provided the powers required for this end, recourse should be had to Article 235 of the Treaty;

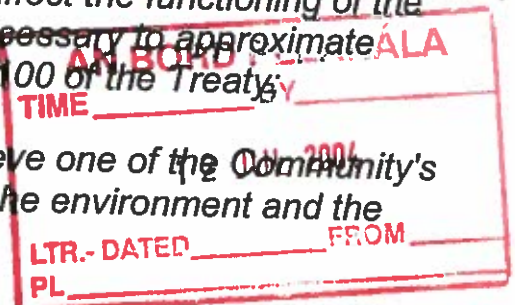
Whereas general principles for the assessment of environmental effects should be introduced with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

Whereas general principles for the assessment of environmental effects should be introduced with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

*Whereas development consent for public and private projects which are likely to have significant effects on the environment should be granted **only after prior assessment of the likely significant environmental effects of these projects has been carried out**; whereas this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;*

It is our submission that the directives have not been implemented into Irish Law, as the duties of the assessing agency have not included not been laid out therefore the direct effect of the directives must be applied.

The implementation into Irish law of the Directives only covers the following section;



AN BORD PLEANÁLA	
TIME	BY
12 JUL 2004	
LTR.- DATED	FROM

"Whereas, for projects which are subject to assessment, a certain minimal amount of information must be supplied, concerning the project and its effects;"

It is our submission that that information has not been submitted. I examined the Environmental Impact Statement submitted in the offices of the Board and found the following necessary information was not included in the Environmental Impact Statement

1. There is no details of the SAC which will be significantly effected by the road improvements required between the two proposed developments.
2. There is no mention of the SAC which will be significantly effected at Glengad.
3. There is no assessment of the risk of landslide at Glengad. The road to the valve station was seriously effected by the landslide last winter.
4. There is no mention of the waste pipe which is not ancillary to the pipeline but is a definite part of this application.
5. There is no mention of the SAC into which this pipe is to discharge.
6. There is no adequate description of the content of this discharge, the proposer seems to rely on the Environmental Protection Agency license, and does not seem to be aware of the change in law since the last application, brought about by the 2000 Planning and Development Act.
7. The same applies to the likely discharges to water caused by the disposition of peat at Srahmore. The developer seems to rely on the experience of Bord na Mona in this case, the Environmental Protection Agency file on this bog shows that they are not very good at complying with suspended solid conditions or are not able to. The evidence submitted is totally at odds with the Environmental Protection Agency file.
8. The traffic implementations of raw materials coming onto site have not been dealt with in a manner from which the Board could perform an assessment. The source of the stone has not been identified. At the last hearing we were informed that it would be from Lennon's Quarry, this quarry has no planning permission, having been refused retention by the Board.

AN BORD PLEANÁLA	
TIME _____	BY _____
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ET _____	DATED _____ FROM _____
PL _____	

ANNEX IV of the directive states:
INFORMATION REFERRED TO IN ARTICLE 5.
 (1)

1. Description of the project, including in particular:

—a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,

—a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,

—an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

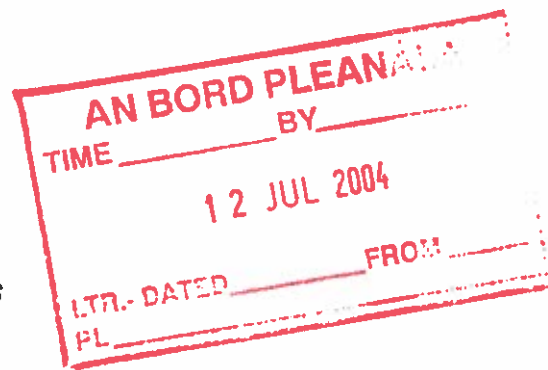
2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description (1) of the likely significant effects of the proposed project on the environment resulting from:

- the existence of the project,
- the use of natural resources,

—the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the developer of the forecasting methods used to assess the effects on the environment.



5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

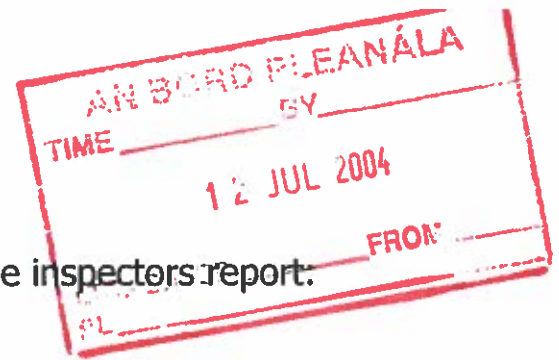
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

(1) This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project

It is clear that the Environmental Impact Statement submitted did not contain this information.

Now under both Irish and European Law a development must be sustainable or a consent can not be issued. This refers to the fundamentals of sustainability not just whether or not a proposed development comes within the requirements of Government Policy of the Local Development Plan.

We would remind the Board that neither the Mayo County Development Plan nor Government Policy has been environmentally impact assessed.



We refer the Board to pages 133 and 134 of the inspectors report:

"13.8 LAND USE AND SUSTAINABILITY

The third party appeals on this issue generally relate to the siting of the development 8km inland from the landfall as being inappropriate and being in a rural area not zoned for industry. My considerations on this issue are as follows:

The area in which the development is proposed to be sited is a remote rural area, forming no linkage with an urban settlement or industrial uses. The dominant land uses relate to agricultural activities, forestry and peat extraction, i.e. uses that are clearly associated with the land. There are other uses in the general area such as quarrying at a small scale that again have a direct association with the land resource. There is sporadic rural housing and small scale, loosely defined, villages in the vicinity that do not take the form of built-up service centres for the local population. The proposed site itself was once used as a peat experimentation centre, used for purposes that were again directly associated with the development of the land, in this case the blanket bog. Some of the lands on the site have up to recently been forested, a use that has prevailed in the area in recent times. Thus, it is apparent that the primary uses that exist in this area are those that are directly associated with the land as an agricultural resource. Commercial and industrial activities such as that proposed do not exist. The proposed development would unequivocally be unique to this area having regard to its industrial nature, its sheer scale, its form, and pattern of activities that would be associated with it. This large industrial plant in this remote rural location would bear no relationship with the land. The issue of 'sustainability' as it relates to a short-term large industrial plant sited in a remote rural location is a serious concern.

The existing visual environment is dominated by blanket bog, forestry, agricultural fields, and high amenity rugged landscape with panoramic scenic views. Is this the context for an expansive industrial and commercial plant that bears no relationship with the area in which it would be sited? This development is to be sited in excess of 8km away from its direct link with the gas field resource, the landfall. It is proposed in a location remote from any centre of population, away from public infrastructure and public services. It would necessitate the provision of significant services - upgrading of the road and bridge network, water supplies for the plant's operation and as a back-up for fire services, and effluent treatment facilities, are to name but a few. Again, when one takes into account the existing rural land use context, the visual landscape, the deficiency of infrastructure, remoteness from services, the distinctive lack of linkage of the development with the area, the question must be posed: could the development be regarded as being in accordance with the proper planning and *sustainable* development of the area? The incongruity with and damage to the landscape and amenity value of this area would be severe in my opinion. It is on this basis that I submit that this development is wholly misplaced as proposed. If there is to be a terminal development of the form presently proposed, this remote bogland hill site is not the appropriate location. I do not accept that close linkage with the landfall cannot be achieved. The availability of a large remote bogland site should not be the yardstick upon which the proper planning and *sustainable* development of the Erris Area is to be measured. The damage to the environment and hence to the local community would be significant. The imposition of this large industrial complex would have significant adverse implications despite the short life expectancy of the gas field. The alterations to the visual character of the area, effects on habitats, changes in

AN BORD PLEANALA	
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drainage patterns, and the large scale industrial nature of the activities on the site are but a few of the inevitable changes that would occur. While the current Mayo County Development Plan makes no reference to 'sustainability', there is a requirement to consider the effects on and compatibility with existing and future proposed land-uses and amenities when considering commercial development proposals. This development would, in my opinion, be unquestionably incompatible and out of character with the area and would have long-term damaging effects on the environment and on the amenities enjoyed by the local community and visitors to the area. To conclude, it must be cited that the principles of sustainability require planning authorities to deal with our landscapes such that we do not hand them on to future generations in a degraded condition. This development proposal, consisting of the siting of an onshore processing terminal 8km inland on a remote bogland hill in an unserviced area, runs contrary to these principles. The long-term degradation of the landscape character and visual amenity of an expansive area by this large industrial development, the threat to the ecological balance of important areas of conservation value, and the real potential to adversely effect local communities and the environment in which people live implies that if the issue of sustainability is to be seriously considered, as is required under the Local Government (Planning and Development) Act, 2000, then this proposal should be regarded as one out of context."

It is our submission that this passage is an un rebuttable assessment of the sustainability of the proposed project.

It is also our submission that the current proposal is less sustainable than the original.

The risk of landslide at Bellanaboy from blasting is still an un assessed risk. The developer states there is no history of bogslides at this site and therefore no risk. It is not that simple.

Mr. David Ball in his assessment stated:

Therefore I do not recommend that permission is granted for this development with conditions.

The site is unsuitable.

No evidence has been placed before the Board or for that matter the Planning Authority that these assessments were wrong.

The Planning Authority decision was fundamentally flawed in EU law. The directives state:

"only after prior assessment of the likely significant environmental effects of these projects has been carried out "

No assessment of the risk to the public and to my client in particular as to the risk of having a pipeline of this pressure(upstream) less than 70m from the wall of her house.

The response to the planning authority on this point shown that they do not have the information. It is our submission that the gas in the pipe from the refinery (i.e. inside the fence) to the valve station at Glengad must be assessed. It has not been

The planning authority relied on conditions to gather the information which it formed the opinion was required to fully assess the proposed development.

We made an application for our client's costs during the first planning application, we are awaiting a response.

Please note that the newspaper advertisement advertising this Environmental Impact Statement and this development and the site notice are invalid under the 2000 regs as this is a designated Gaeltacht region and the ads were only in English.

We apply for our client's costs in the matter of this application.

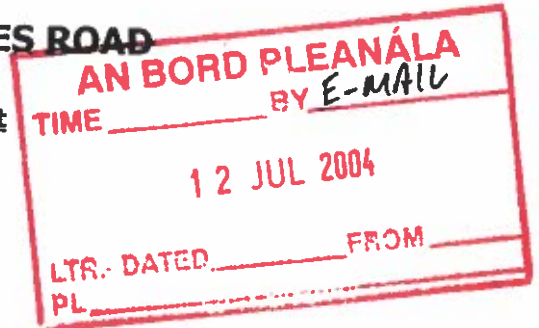
Yours faithfully

Peter Sweetman and on behalf of
Monica Muller

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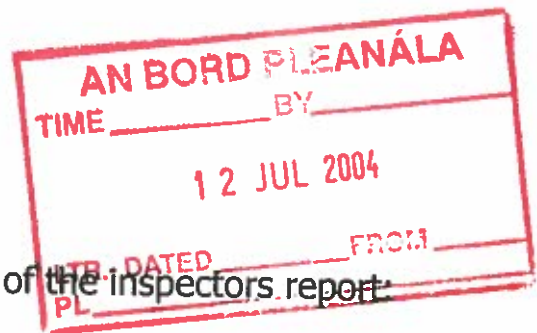
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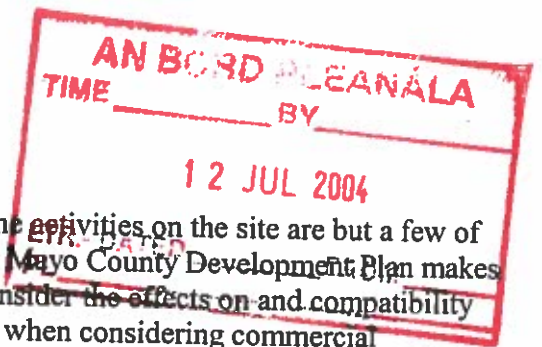
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14 POSTNET
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Whereas, since the Treaty has not provided the powers required for this end, recourse should be had to Article 235 of the Treaty;

Whereas general principles for the assessment of environmental effects should be introduced with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

Whereas general principles for the assessment of environmental effects should be introduced with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

*Whereas development consent for public and private projects which are likely to have significant effects on the environment should be granted **only after prior assessment of the likely significant environmental effects of these projects has been carried out**; whereas this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;*

It is our submission that the directives have not been implemented into Irish Law, as the duties of the assessing agency have not included not been laid out therefore the direct effect of the directives must be applied.

The implementation into Irish law of the Directives only covers the following section;

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"Whereas, for projects which are subject to assessment, a certain minimal amount of information must be supplied, concerning the project and its effects;"

It is our submission that that information has not been submitted. I examined the Environmental Impact Statement submitted in the offices of the Board and found the following necessary information was not included in the Environmental Impact Statement

1. There is no details of the SAC which will be significantly effected by the road improvements required between the two proposed developments.
2. There is no mention of the SAC which will be significantly effected at Glengad.
3. There is no assessment of the risk of landslide at Glengad. The road to the valve station was seriously effected by the landslide last winter.
4. There is no mention of the waste pipe which is not ancillary to the pipeline but is a definite part of this application.
5. There is no mention of the SAC into which this pipe is to discharge.
6. There is no adequate description of the content of this discharge, the proposer seems to rely on the Environmental Protection Agency license, and does not seem to be aware of the change in law since the last application, brought about by the 2000 Planning and Development Act.
7. The same applies to the likely discharges to water caused by the disposition of peat at Srahmore. The developer seems to rely on the experience of Bord na Mona in this case, the Environmental Protection Agency file on this bog shows that they are not very good at complying with suspended solid conditions or are not able to. The evidence submitted is totally at odds with the Environmental Protection Agency file.
8. The traffic implementations of raw materials coming onto site have not been dealt with in a manner from which the Board could perform an assessment. The source of the stone has not been identified. At the last hearing we were informed that it would be from Lennon's Quarry, this quarry has no planning permission, having been refused retention by the Board.

ANNEX IV of the directive states:
INFORMATION REFERRED TO IN ARTICLE 5 (1)

1. Description of the project, including in particular:

—a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,

—a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,

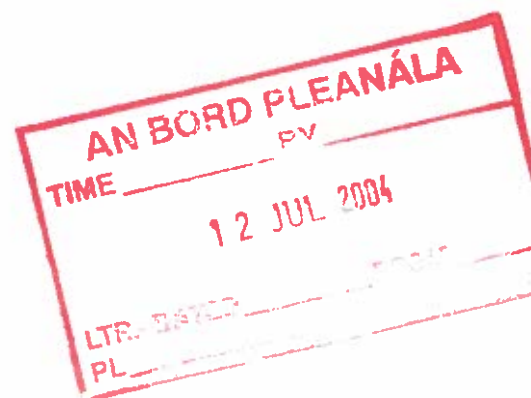
—an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description (1) of the likely significant effects of the proposed project on the environment resulting from:

—the existence of the project,
—the use of natural resources,



—the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the developer of the forecasting methods used to assess the effects on the environment.

AN BORD PLEANÁLA	
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5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

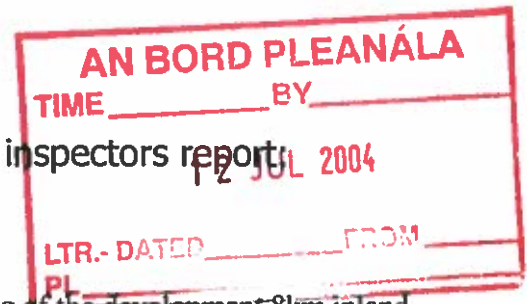
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

(1) This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project

It is clear that the Environmental Impact Statement submitted did not contain this information.

Now under both Irish and European Law a development must be sustainable or a consent can not be issued. This refers to the fundamentals of sustainability not just whether or not a proposed development comes within the requirements of Government Policy of the Local Development Plan.

We would remind the Board that neither the Mayo County Development Plan nor Government Policy has been environmentally impact assessed.



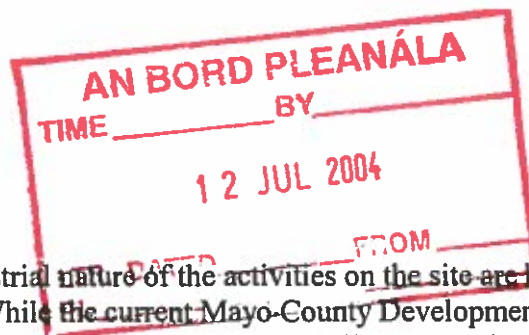
We refer the Board to pages 133 and 134 of the inspectors report.

"13.8 LAND USE AND SUSTAINABILITY"

The third party appeals on this issue generally relate to the siting of the development 8km inland from the landfall as being inappropriate and being in a rural area not zoned for industry. My considerations on this issue are as follows:

The area in which the development is proposed to be sited is a remote rural area, forming no linkage with an urban settlement or industrial uses. The dominant land uses relate to agricultural activities, forestry and peat extraction, i.e. uses that are clearly associated with the land. There are other uses in the general area such as quarrying at a small scale that again have a direct association with the land resource. There is sporadic rural housing and small scale, loosely defined, villages in the vicinity that do not take the form of built-up service centres for the local population. The proposed site itself was once used as a peat experimentation centre, used for purposes that were again directly associated with the development of the land, in this case the blanket bog. Some of the lands on the site have up to recently been forested, a use that has prevailed in the area in recent times. Thus, it is apparent that the primary uses that exist in this area are those that are directly associated with the land as an agricultural resource. Commercial and industrial activities such as that proposed do not exist. The proposed development would unequivocally be unique to this area having regard to its industrial nature, its sheer scale, its form, and pattern of activities that would be associated with it. This large industrial plant in this remote rural location would bear no relationship with the land. The issue of 'sustainability' as it relates to a short-term large industrial plant sited in a remote rural location is a serious concern.

The existing visual environment is dominated by blanket bog, forestry, agricultural fields, and high amenity rugged landscape with panoramic scenic views. Is this the context for an expansive industrial and commercial plant that bears no relationship with the area in which it would be sited? This development is to be sited in excess of 8km away from its direct link with the gas field resource, the landfall. It is proposed in a location remote from any centre of population, away from public infrastructure and public services. It would necessitate the provision of significant services - upgrading of the road and bridge network, water supplies for the plant's operation and as a back-up for fire services, and effluent treatment facilities, are to name but a few. Again, when one takes into account the existing rural land use context, the visual landscape, the deficiency of infrastructure, remoteness from services, the distinctive lack of linkage of the development with the area, the question must be posed: could the development be regarded as being in accordance with the proper planning and *sustainable* development of the area? The incongruity with and damage to the landscape and amenity value of this area would be severe in my opinion. It is on this basis that I submit that this development is wholly misplaced as proposed. If there is to be a terminal development of the form presently proposed, this remote bogland hill site is not the appropriate location. I do not accept that close linkage with the landfall cannot be achieved. The availability of a large remote bogland site should not be the yardstick upon which the proper planning and *sustainable* development of the Erris Area is to be measured. The damage to the environment and hence to the local community would be significant. The imposition of this large industrial complex would have significant adverse implications despite the short life expectancy of the gas field. The alterations to the visual character of the area, effects on habitats, changes in



drainage patterns, and the large scale industrial nature of the activities on the site are but a few of the inevitable changes that would occur. While the current Mayo-County Development Plan makes no reference to 'sustainability', there is a requirement to consider the effects on and compatibility with existing and future proposed land-uses and amenities when considering commercial development proposals. This development would, in my opinion, be unquestionably incompatible and out of character with the area and would have long-term damaging effects on the environment and on the amenities enjoyed by the local community and visitors to the area. To conclude, it must be cited that the principles of sustainability require planning authorities to deal with our landscapes such that we do not hand them on to future generations in a degraded condition. This development proposal, consisting of the siting of an onshore processing terminal 8km inland on a remote bogland hill in an unserved area, runs contrary to these principles. The long-term degradation of the landscape character and visual amenity of an expansive area by this large industrial development, the threat to the ecological balance of important areas of conservation value, and the real potential to adversely effect local communities and the environment in which people live implies that if the issue of sustainability is to be seriously considered, as is required under the Local Government (Planning and Development) Act, 2000, then this proposal should be regarded as one out of context."

It is our submission that this passage is an un rebuttable assessment of the sustainability of the proposed project.

It is also our submission that the current proposal is less sustainable than the original.

The risk of landslide at Bellanaboy from blasting is still an un assessed risk. The developer states there is no history of bogslides at this site and therefore no risk. It is not that simple.

Mr. David Ball in his assessment stated:

Therefore I do not recommend that permission is granted for this development with conditions.

The site is unsuitable.

No evidence has been placed before the Board or for that matter the Planning Authority that these assessments were wrong.

The Planning Authority decision was fundamentally flawed in EU law. The directives state:



"only after prior assessment of the likely significant environmental effects of these projects has been carried out "

No assessment of the risk to the public and to my client in particular as to the risk of having a pipeline of this pressure(upstream) less than 70m from the wall of her house.

The response to the planning authority on this point shown that they do not have the information. It is our submission that the gas in the pipe from the refinery (i.e. inside the fence) to the valve station at Glengad must be assessed. It has not been

The planning authority relied on conditions to gather the information which it formed the opinion was required to fully assess the proposed development.

We made an application for our client's costs during the first planning application, we are awaiting a response.

We apply for our client's costs in the matter of this application.

Yours faithfully

Peter Sweetman and on behalf of
Monica Muller

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