

**Bea Claydon**

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**From:** Wexford Receptionist  
**Sent:** 31 January 2013 16:44  
**To:** Licensing Staff  
**Subject:** FW: Re. Observation on S0018-01 Dumping at Sea licence application  
**Attachments:** FINAL FIG and LVPA submission DCC DAS App.pdf

Rec'd at info

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**From:** Attracta Ui Bhroin [<mailto:attractaub@gmail.com>]  
**Sent:** 31 January 2013 16:37  
**To:** Wexford Receptionist  
**Cc:** [info@lvpa.ie](mailto:info@lvpa.ie)  
**Subject:** Re. Observation on S0018-01 Dumping at Sea licence application

Dear Sir / Madame,

Please find the attached observation in respect of a Dumping at Sea Application from Dublin City Council to the EPA, your ref,

S0018-01 Dumping at Sea licence application

Description of Activity: Disposal of the excavated material generated in the tunnelling operation for the construction of a Long Sea Outfall (to discharge treated effluent from the Ringsend Wastewater Treatment Works).

We would be most grateful if you could forward this to the appropriate section for consideration, and if an acknowledgement of receipt of this submission could be made in due course.

Should you have any difficulties with this request - please do not hesitate to contact me at : 087 291 4061.

Thank-you for your assistance in this matter.

Yours sincerely

A Ui Bhroin,  
Chair The Liffey Valley Park Alliance, and  
Secretary of The Finnstown Input Group.

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The Finnstown Input Group  
And  
The Liffey Valley Park Alliance,  
C/O 17 Finnsparck  
Finnstown Cloisters  
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The Office of Climate, Licensing and Resource Use,  
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31<sup>st</sup> Jan 2013

**Re: EPA Ref No. S0018-01 Dumping at Sea licence application**

**Description of Activity: Disposal of the excavated material generated in the tunnelling operation for the construction of a Long Sea Outfall (to discharge treated effluent from the Ringsend Wastewater Treatment Works)**

**Applicant: Dublin City Council Dublin.**

Dear Sir/ Madame,

The following joint observation is made in respect of the above referenced application to the EPA.

In summary it is submitted that the information submitted and available to the Agency is insufficient to comply with the Competent Authority's obligations under EU Directive 85/337/EC as amended, hereafter referred to as the EIA directive, and COUNCIL DIRECTIVE 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended and DIRECTIVE 2009/147/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 November 2009 on the conservation of wild birds (codified version), hereafter referred to as the Habitats and Birds Directives respectively.

This concern is not limited to the following considerations:

- a) The failure to specify particulars relevant to the Tunnel Boring Machine (TBM) which compromise the agencies ability to assess the impact of the proposed dumping development in accordance with its obligations under the 3 directives named above. In this regard the Agency is aware of:
  - The legal fact that an inadequate EIS cannot be completed by condition; and
  - Its obligations to actually conduct an assessment of impacts and potential effects of the proposed development, both direct, indirect and cumulative; and
  - The Court of Justice of the European Union's (CJEU) rulings against the use of 'post-consent' assessments, for example ref CJEU c-183/05.
- b) It is plainly submitted that the full set of direct, indirect and cumulative impacts of the operation of the TBM and its decommissioning, not limited to the size and nature particulate matter it will create which will require to be dispersed via this proposed Dumping at Sea cannot be determined with the necessary scientific certainty to facilitate consideration in particular, but not limited to Art 6(3) of the Habitats Directive, namely the Appropriate Assessment considerations, particularly in light of the Waddenzee decision of the CJEU ref. c-\*\*\*\*.
- c) The Appropriate Assessment conducted by the Board is inadequate for the purposes of this application not limited to the fact it fails to assess all the relevant sites which require consideration under both Irish legislation and the Habitats Directives, The proposed designation of the Rockabill to Dalkey Island SAC, for instance was not considered.
- d) We submit the impact of construction or the efficacy of an environmental management programme has NOT and can NOT have been adequately assessed by An Bord Pleanála, in the absence of the key data in the application and the technical specifications for plant, compounds, settling ponds, possible bentonite removal equipment and methods etc. The obligation in respect of the full assessment obligations for the total development proposal is therefore outstanding and falls to the EPA as the current deciding body and the emanation of the state for the purposes of this development, and to ensure all necessary requirements, not limited to but particularly in respect of the Habitats Directive have been met.
- e) The material before the EPA is not consistent with that upon which An Bord Pleanála's considerations were made. The Board's condition No 1, tie the development to the material's submitted for its considerations. We submit the application before the EPA is different, and does not provide a basis on which an application for what is in

effect a different development can be made. It is noted that The Design document presented as part of the application is dated November 2012 – subsequent to the Board's consideration of a earlier version of the document.

- f) The legal requirements in respect of species listed in Annex IV of the Habitats Directives and the legal provisions arising for the strict protection of such species appear to be significantly deficient and have not been addressed sufficiently to comply with the national and European Law.
- g) There is a failure to provide sufficient, current and up-to-date information on species upon which assessments are required to be conducted by the Competent Authorities. Any assessment based on such inadequate data will invariably be flawed.
- h) There is a failure to provide for specification and assessment of credible alternatives. It is indicative that the applicant/its agents contacted the RSPB, an eNGO based in the UK, in respect of the use of the excavated tunnel arisings for habitat creation. It goes without saying – this development is based in a different country.
- i) There is a failure in the proposed application to consider the obligations under the waste directives to credibly consider the re-use potential of the sewage waste in a more sustainable manner, for example the establishment of a humane facility which would at once address the waste disposal issue, provide for the generation of energy, reduce our reliance on fossil fuels, and avoid the manifold negative issues associated with incineration. We submit this is a material consideration for the EPA – not only given its wider remit in relation to public health, environmental protection and economic interests, but also particularly given this is the fundamental basis for the Dumping at Sea licensing requirement, being the application before the Agency. As such, such matters require its consideration. In brief - the dumping at sea application would not arise had a more effective alternative to dealing with the sewage been proposed.
- j) The issue of why it is not safe or appropriate to dump the sewage in closer proximity to Dublin, but that it is safe to dump it further out to sea has not been addressed satisfactorily within the application. The proposed approach appears to rely on a failure to consider the legal obligations to the Marine Environment, and the issues for the longer term impacts on the food chain.
- k) It is also noted the proposed dumping area for tunnel arisings is a spawning ground for several species harvested for human consumption. We again submit this is a material consideration for the EPA – not only given its wider remit in relation to public health,

environmental protection and economic interests, but also particularly given this is the fundamental basis for the requirement for the application before the Agency, and as such require its consideration.

- l) The application document in section C, C2 indicates a reliance on *Guidelines* from the Ospar Convention to exempt the applicant from providing biological and chemical analysis of previously unexcavated dredged material. We submit this is a flawed approach and that the legal obligations arising from the EIA and Habitats Directive take precedence. Analysis of the nature of materials to be deposited as part of this Dumping at Sea proposal is an essential pre-requisite and an input which is fundamentally necessary for the Agency's considerations and obligations in respect of this application as the Competent Authority for the purposes of the National Legislation and underlying Directives involved, and given the level of scientific certainty required.
- m) Insufficient variables and scenarios have been considered in respect of the hydrodynamic modelling performed on dispersal of materials to be dumped and the consequential impacts arising. As the composition and physical size/density of the material to be dumped is not known, it is impossible to determine the effect it will have on the area where it is dumped and how and where it will disperse.
- n) Insufficient detail is provided on the nature of the disposal mechanism for the tunnel arisings. The application form indicates at section: E, E2 (VI):

"The disposal methodology will likely be using a self propelled spilt bottom barge, where the hull of the whole barge splits longitudinally between the end bulkheads. The exact specifications of the vessel to be used will be dependent on the outcome of the tendering process."

A direct consequence of the Agency consenting to this Dumping at Sea permit would be the development of the tunnel and associated plant, no more than the waste arising from the excavation of the tunnel is a direct impact of the construction of the project as proposed. The Agency cannot separate itself from the serious legal inadequacies of the assessments of the overall project and the legal requirements which should be in place in advance of a consent.

The capacity and nature of disposal loads is unclear at the time of this application for a permit. This is highly unsatisfactory. In the current economic climate cost factors are likely to influence decision making significantly, and without the oversight of the decision making body to ensure the environmental consequences are appropriately considered – the environmental effect of decisions yet to be made – are not only uncertain – but unknown. Neither is it clear that sufficient alternative storage for the tunnel arising is available in the event of mechanical

breakdown, storm events, or sensitive environmental periods or unpredictable events – for example cetacean movements, and/or that excavation will be managed in the interests of the environment particularly in the context of economic pressures to utilise plant and resources.

- o) The application fails to assess the impacts of the proposed development in accordance with the obligations arising under the Birds directive given the status of the Natura 2000 sites involved.
- p) There is insufficient detail on the actual dumping proposals to ensure that effects on the environment and protected species, for example salmon can be assessed properly in the first instance and that the impacts will be addressed properly and in accordance with Ireland's legal obligations and wider economic interests.
- q) The obligations arising from the EIA directive require the assessment in advance of consent of the impacts of the development in accordance with Art 1(2), 2(1) and 3 of the EIA Directive, in other words it does not suffice to measure current status of environmental factors before and after the event.
- r) The FIG expresses concern about the completeness of the permits, licences and permissions under which this overall proposal for the extension of water treatment works is being advanced given both National & EU legislative requirements.

Finally, the issues arising in the second complaint of CJEU c-50/09, wherein an application requires consideration by both the Agency and a Planning Authority have equally relevance in this application. The Court of Justice was explicit in clarifying the obligation to ensure an Art 3 assessment is conducted prior to the granting of consent. In paragraph 81 of the Judgement in c-50/09 the court stated in reflecting upon the state of Irish legislation purportedly transposing the EIA directive that:

*"81. It is therefore not inconceivable that the Agency, as the authority responsible for licensing a project as regards pollution aspects, may make its decision without an environmental impact assessment being carried out in accordance with Articles 2 to 4 of Directive 85/337"*

We submit that it is patently obvious that the Board has not and cannot have conducted an Environmental Impact Assessment in accordance with Articles 2 to 4 of Directive 85/337 – particularly in light of the deficit of information presented to it. In this context a significant issue arises for the EPA in addressing this application. We submit that to consent to this application based on the inadequate information provided leaves Ireland open to a finding equivalent to that made by the Court of Justice on the matter of the second complaint in case c-50/09, namely :

*“by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of Directive 85/337, as amended by Directive 2003/35;”*

In conclusion we re-iterate our contention that the application provides insufficient information for the Agency as the competent authority to determine it and grant permission – without significantly compromising it and Ireland’s obligations under the Directives mentioned above – (the Agency being an emanation of the state for the purposes of this decision under ). A grant of permission would not be consistent with proper planning and sustainable development nor consistent with National and EU law, and would be open to challenge.

We thank the Agency for its consideration of our remarks

Yours sincerely

Justin Byrne, Chair The Finnstown Input Group  
A Uí Bhroin, Chair The Liffey Valley Park Alliance

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