



Submission

Submitter:	Mr Brian Harrington
Organisation Name:	Harrington & Company Solicitors
Submission Title:	08.09.2023 Submission of WID re EIAR
Submission Reference No.:	S011299
Submission Received:	08 September 2023

Application

Applicant:	Uisce Éireann
Reg. No.:	D0139-03

See below for Submission details.

Attachments are displayed on the following page(s).

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Environmental Protection Agency
Johnstown Castle Estate
Co. Wexford
V35 W821

Date: 08 September 2023

Our Ref : 22/02/BH

Your Ref: D0139-03

Re: Wastewater Discharge Licence Application Reg. No. D0139-03 for Youghal WWTP,
Mudlands, Youghal, Co. Cork

Our Client: Peter Sweetman

Dear Sirs,

We are instructed by our above-named client to make a submission in respect of the Environmental Impact Assessment Report submitted by Uisce Éireann to the Agency in connection with Wastewater Discharge Licence Application Reg. No. D0139-03 for Youghal WWTP, Mudlands, Youghal, Co. Cork.

We are aware that Mr Sweetman has already made a submission to the process in his own name and on behalf of Wild Ireland Defence CLG and we trust that this both submissions will be considered together.

Mr Sweetman submits that the agency has four distinct sets of legal tasks when it deals with an application such as this one.

1. It must assess the planning merits of the Application in accordance with the **Planning and Development Act 2000** (as amended) to ensure that the proposed development is in accordance with the proper planning and sustainable development of the area.
2. Secondly, the Planning Authority is required to form and record a view as to the environmental impacts of the overall development, considering the **EIA Report (EIAR)** submitted by the Applicant, the views of the public concerned and applying its own expertise or to screen the development for Environmental Impact Assessment.
3. Thirdly, and different in nature to the first two tasks, the Agency is the competent authority having responsibilities under the **Habitats Directive** and it must carry out those responsibilities in line with its obligation and inherent jurisdiction.

The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at 26.

26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in

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these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

This point is further explained in the CJEU decision In Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta which states;

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

The threshold the any decision to grant permission must pass in this context is explained in paragraph 44 of CJEU Case 258/11

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

This is a strict standard, and the Planning Authority does not have legal jurisdiction to give permission if it is not met.

4. The development must be assessed for compliance with the requirements of the Water Framework Directive.

In addition to the above 4 legal obligations, we set out hereunder the following submission made by Mr Sweetman in relation to each of the 4 headings.

1. EIA Directive

It appears to the Directors of Wild Ireland Defence CLG that the EIAR submitted by Uisce Éireann fails to comply with the obligations pursuant to the Environmental Impact Assessment Directive. The EIAR has failed to consider at all or properly the question of alternatives. The EIAR predicates itself on the basis of a do nothing scenario where it must be known by Uisce Eireann that it must consider all reasonable alternatives in a manner compliant with the Directive.

The EIAR has failed to properly consider the cumulative impacts of the proposed development on other developments both permitted and pending in the immediate surroundings of the subject site. The proper consideration of cumulative impacts is critical to any lawful assessment of the direct and indirect impacts of the proposal.

Incredibly the EIAR is silent on any assessment of any impacts arising from the unauthorised discharges that are currently taking place. In particular, it is evident from the current licence that all discharges from the Dunns Park location was to cease by 31 December 2015 notwithstanding that

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Dunns Park is now operating as the primary discharge, without lawful authority, Uisce Éireann has failed to consider the impacts of the discharges on the environment between 01 January 2016 and presently. This failure is abject and contrary to the provisions of the EIA Directive.

The EIAR and supporting documentation is not sufficiently clear or precise to carry out a lawful assessment for the purposes of the EIA Directive. Design drawings and design details are unclear and not sufficient precise to understand the full impacts that will arise. The details of all relevant pipes and diameters of all relevant structures to include structural methodology is not sufficiently detailed to allow a proper assessment. The construction methodology is also imprecise and in fact there is very little if any assessment of the traffic impacts both direct and indirect.

It would appear that the dispersal model is not sufficiently precise to allow for a full assessment. There seems to be a dichotomy in the modelling information contained in the EIAR from that contained in the EIS and it is submitted that it would be a matter for the Agency to determine the veracity and application of the information provided in the licence review to date.

The Agency will be aware of the proceedings entitled ***Peter Sweetman v Environmental Protection Agency & Irish Water (2017/644JR)*** which concerned the quashing of a technical amendment in connection with the Youghal agglomeration. In those proceedings the Court did not make any final orders pending a review of the licence, which is currently being undertaken. Recently, Mr Sweetman has entered a motion in those proceedings wherein he alleges that the agency does not have the lawful jurisdiction to consider the within licence review application as it does not have the power jurisdiction to carry out a remedial EIA. The hearing of that motion is listed for later this year and if it transpires that Mr Sweetman is current in his interpretation of the legal position it would mean that the Agency have no jurisdiction to consider this application any further on the basis that it cannot access the remedial aspect of the proposed development which is undoubtedly a relevant and critical consideration for the agency. We trust that the Agency will reach out to their solicitors on record in these proceedings to gain and ensure a full understanding of the nature of the proceedings, the nature of Mr Sweetman's motion and the implications for the within review in the event that Mr Sweetman's motion succeeds.

2. Habitats Directive

The NIS submitted by Uisce Éireann fails to comply with the obligations pursuant to the Habitats Directive. The NIS has failed to consider at all or properly the issue of cumulative impact. The NIS has failed to properly consider the cumulative impacts of the proposed development on other developments both permitted and pending in the immediate surroundings of the subject site.

The NIS is silent on any assessment of any impacts arising from the unauthorised discharges that are currently taking place. In particular, it is evident from the current licence that all discharges from the Dunns Park location was to cease by 31 December 2015 notwithstanding that Dunns Park is now operating as the primary discharge, without lawful authority, Uisce Éireann has failed to consider the impacts of the discharges on the environment between 01 January 2016 and presently. This failure is abject and contrary to the provisions of the Habitats Directive.

The NIS relies on the modelling carried out in AECOM reports. This modelling does not appear to adopt the precautionary principal approach.

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The NIS is absent of any proper retrospective assessment concerning the unauthorized discharge of sewage on the Youghal harbour SAC over the last number of years.

The mitigation measures as provided for in the NIS are clearly not sufficient to address and resolve the negative impacts that the proposed discharge will have on the SAC and the conservation objections of the SAC.

3. Water Framework Directive

Uisce Eireann has not considered properly or at all the impacts of the proposed development in the context of the Water Framework Directive. Taking a preview of the Agency's comments on the Water Framework Directive status for the Youghal Bay catchment it would appear that there is a risk that the WFD objective of 'good status' will not be achieved.

Uisce Eireann has provided no information or tangible evidence to dispel this fact and/or resolve the situation around the status of the catchment.

The obligations under the Water Framework Directive are clear and it is impermissible to permit a development where it is either the case that the current status will not be maintained or there is a risk that the current status will not be achieved as in the instant case.

4. Planning and Development Act 2000

The proposed development provides for what is a wastewater treatment facility. The proposed development is a specified development for the purpose of the EIA Directive wherein a mandatory Environmental Impact Assessment is required.

It is submitted that planning permission is required for the proposed development. The Directors of WID have had regard to correspondence between the Agency and Uisce Eireann in 2021 in relation to the planning status of the site and it is submitted that Uisce Eireann's reliance on the fact that the development is exempted development is misconceived.

Section 3 of the Planning and Development Act 2000 defines development as "*the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*". The activity the subject of the licence is clearly comprised of development.

Section 2 of the Planning and Development Act 2000 provides for the definition of unauthorised development, unauthorised works and unauthorised use. Unauthorised development can be summarised as all development that is all works and/or all material changes of use other than development which commenced before the appointed day that is the 1st of October 1964. It must be the case that applying the definition for unauthorised development the current proposal, in the absence of planning permission, must be unauthorised.

Section 4 of the Planning and Development Act 2000 provides for the statutory exemptions to the obligation to obtain planning permission and while it is accepted that statutory exemptions apply in certain instances it cannot be the case that the within proposal is exempted development. Article 9(1) of the Planning and Development Regulations 2001 (as amended) provides that a development cannot be relied on as an exempted development where an EIA is required as in the instant case.

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We trust that the above submission will be taken into account and properly considered and applied in the determination of the within licence review.

We look forward to acknowledgement of receipt of the within submission.

Yours Faithfully,



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Solicitors

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