



Submission

Submitter:	Mr Brian Harrington
Organisation Name:	Harrington & Company Solicitors
Submission Title:	08.09.2023 Submission on behalf of WID re EIAR
Submission Reference No.:	S011300
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: Wild Ireland Defence CLG

Dear Sirs,

We are instructed by our above-named clients 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 set out hereunder the basis of our submission.

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 Éireann 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 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

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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.

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 Eireann 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.

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.

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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.

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

Yours Faithfully,



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