



Submission

Submitter:	Mr Peter Sweetman
Submission Title:	submission re D0126-02
Submission Reference No.:	S011534
Submission Received:	05 April 2024

Application

Applicant:	Uisce Éireann
Reg. No.:	D0126-02

See below for Submission details.

Attachments are displayed on the following page(s).

PETER SWEETMAN & ASSOCIATES

SUBMISSION RE D0126-02 Environmental Protection Agency

EPA reg no	D0126-02
DESCRIPTION	Upgrade works at the wastewater treatment plant which will consist of 1. Construction of a new storm overflow and flow splitting chamber, inlet works including grit removal system and full flow to treatment pumping station, 2 no. new integrated fixed-film activated sludge reactor tanks (Aeration Tanks), 2 no. final settlement tanks, final water sampling manhole while retaining the existing outfall to the River Sullane, return and waste activated sludge pumping stations, chemical building including lime and ferric sulphate dosing systems with bunded chemical storage tanks, 1no. storm water storage tank equipped with storm water pumps, 1 no. sludge picket fence thickener, odour control system, a sheet pile flood protection wall within the site boundary, boundary treatments include a weld mesh security fence, new internal access road and public lighting. 2. Construction of a new control and administration building. 3. Decommissioning of the existing wastewater treatment plant, equipment and associated structures as part of the upgrade works. 4. Construction of a 42 kWp photovoltaic (PV) solar panels on ground mounted frames on the north western area of the site. The PV panel shall be used to supplement the energy demands of the proposed WwTP and will be arranged with a panel area of 185sqm approximately. 5. Establishment of a designated area to be utilized by Cork County Council Roads Department and construction of a new entrance point. 6. All associated site development works above and below ground. A Natura Impact Statement (NIS) will be submitted to the planning authority with the application.
ADDRESS	Wastewater Treatment Plant (WwTP), Sleveen East, Macroom Co. Cork
APPLICIANT	Uisce Éireann

I wish to make a submission in respect of the above development namely an application by Irish Water for Upgrade works at the wastewater treatment plant in Macroom. I also make this submission on behalf of and with the Authority of Wild Ireland Defence CLG.

Please find below our submission.

The Agency's Legal Functions.

The Agency has four distinct sets of legal tasks when it deals with an application such as this one.

1. Firstly, the Agency is the competent authority having responsibilities under the **Habitats Directive (92/42/EC)**

It is notable from the Application documents on the Agency's website that the Applicant has submitted an AA screening. I contend that the screening document prepared by Tobin does not comply with the requirement 6 of the Habitats Directive and has not had regard to the relevant Habitats and species affected by the proposed development.

The agency must assess the overall development and its constituent parts in compliance with the requirements of the Habitats Directive, as follows:

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 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 that 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 agency does not have legal jurisdiction to give permission if it is not met as in this case. The following issues arise under this heading.

- A. The applicant has submitted an NIS dated December 2023. It is apparent from a preview of this document that it does not comply with the requirements of article 6 of the Habitats Directive and has not had regard to the proper protection of relevant issues and habitats and species affected by the proposed development and in particular the Fresh Water Pearl Mussel.
- B. We have reviewed the AA screening determination of the agency dated 19 Feb 2024 and while we agree with its conclusion we contend that this conclusion has been improperly reached in circumstances where it is predicated on the AA screening submitted by the Developer.
- C. The cumulative impacts of the proposed development has not been properly considered by the developer. There is significant ongoing developments in Macroom and its environs which have not been

considered as a part of the proposed application notwithstanding their likelihood of adverse impact in particular I would draw the agency's attention to the 22/4630 and 236518 but to name a few.

- D. No proper consideration has been given in respect of conservation objectives of the relevant and affected SAC's.
- E. The Gearagh is an SAC (000108), listed for [3260] Floating River Vegetation [3270] *Chenopodium rubri* p.p. and *Bidention* p.p. vegetation [91A0] Old Oak Woodlands [91E0] Alluvial Forests* [1355] and the Otter (*Lutra lutra*). The Sullane river is a very important tributary feeding into the Gearagh SAC. As the Agency is aware there is a requirement to protect "typical" species of Annex I habitats. As Alluvial Forests are known to support the most important area of Fresh water Pearl mussels, such as the case in the Bandon River, there is an important responsibility to consider the protection of freshwater pearl mussels in this SAC.

- 2. Secondly, the Agency is required to form and record a view as to the environmental impacts of the overall development and take full account of the views of the public concerned. Thereafter it must apply its own expertise with respect to screening the development for Environmental Impact Assessment in line with its obligations under the **Environmental Impact Assessment Directive (2014/52/EU)**.

It is notable that the Agency has conducted an AA screening determination dated 19 Feb 2024 and have concluded therein that an EIAR is not required. I contend that this is fatal mistake on the part of the agency and an improper consideration of the requirements and obligations under the Environmental Impact Assessment Directive particularly in respect of the consideration of alternatives, the surrounding environment, the likelihood of significant impact and the question of cumulative impact.

- 3. Thirdly, the Agency is required to ensure that the development is assessed for compliance and is compliant with the requirements of the **Water Framework Directive (2006/60/EC)**. The Developer has provided NO or scant reference to the Water Framework Directive and/or compliance with its provisions. The agency must have proper regard to its obligations under the Water Framework Directive in line with its jurisdiction.

This fact means that the proposal does not comply with the recent Judgment of Ms Justice Hyland in my case entitled *Peter Sweetman v An Bord Pleanala and Ors* in which the High Court has referred specific questions to the European Court of Justice on the proper application of the Water Framework Directive. This proposed development comes within the Judgment and the terms of the reference to Europe. As the Agency ought to be aware it is

precluded from granting permission to this development under the terms of the ruling of Hyland. J.

The European Court of Justice is due to deliver Judgment on the Sweetman/ An Bord Pleanala reference on 25 April 2024 in circumstances where the Advocate General has already given an opinion on the strict machinations of the Water Framework Directive and I submit that on the basis of Advocate General's opinion the agency is precluded from granting permission in the instant case.

In a recent judgment of the second chamber of the ECJ dated 21 March 2024 Case C-671/22, the Court held as follows:

43. *Article 4(1)(a) of Directive 2000/60 does not simply set out, in programmatic terms, mere management-planning objectives, but has binding effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive. That provision does not therefore contain solely basic obligations, but also concerns individual projects (judgment of 5 May 2022, Association France Nature Environnement (Temporary impacts on surface water), C-525/20, EU:C:2022:350, paragraph 24 and the case-law cited).*
44. *During the procedure for authorisation of a project, and therefore before the decision is taken, the competent national authorities are required, under Article 4(1) of Directive 2000/60, to ascertain whether that project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater (judgment of 5 May 2022, Association France Nature Environnement (Temporary impacts on surface water), C-525/20, EU:C:2022:350, paragraph 26 and the case-law cited).*
48. *Having regard to all the foregoing considerations, the answer to the questions referred is that point 1.2.2 of Annex V to Directive 2000/60 must be interpreted as meaning that, first, as regards the criteria for assessing the biological quality element 'fish fauna', 'anthropogenic disturbance', within the meaning of that point, should be understood as any disturbance caused by human activity, including any change capable of affecting the composition and abundance of fish species, and, second, all those disturbances are relevant for the purposes of classifying the ecological status of 'fish fauna'.*

It is obvious to me as a person that has singularly read the European wide cause of the protection of the environment that the agency has no choice other than to refuse permission in circumstances where it is clear from any ordinary reading of case C 671-22 that the agency cannot be satisfied that

the proposed development will prevent deterioration and/or improve the status of the bodies of surface water namely the Sullane River and the Gearagh SAC which are presently at risk/significant pressure.

Finally, we are filing our submission electronically through the online portal provided by the Agency and we look forward to confirmation of receipt.

Dated 05 April 2024

A handwritten signature in black ink, appearing to read "Peter Sweetman".

Peter Sweetman & Wild Ireland Defence,

PLEASE RESPOND ONLY BY EMAIL