

Bea Claydon

From: Licensing Staff
Sent: 16 June 2014 12:44
To: Bea Claydon
Subject: FW: Lic Reference W0282-01 - Submission on a 3rd Party Objection
Attachments: EPA PD Submission 13.06.14.pdf

From: raphaelmcevoy@gmail.com [<mailto:raphaelmcevoy@gmail.com>] **On Behalf Of** Raphael Mc Evoy
Sent: 16 June 2014 12:24
To: Licensing Staff
Subject: Lic Reference W0282-01 - Submission on a 3rd Party Objection

To whom it may concern

Glanpower Ltd wish to make a submission on a third party objection in respect of our IED licence Proposed determination REf W 0282-01.

Please find details of this submission in the attached document

Kindest Regards

Raphael Mc Evoy MSc
Managing Director
Glanpower Ltd

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13 June 2014

Environmental Licensing Programme
Office of Climate Licensing and Resource Use
Environmental Protection Agency
Johnstown Castle Estate
County Wexford

Reg. No. W0282-01

Dear Sir/Madam,

We acknowledge the EPA's letter (dated 15 May 2014) to us enclosing the Submission received by the Agency from Mr. Peter Sweetman dated 13 May 2014. We wish to respond to that Submission and our response is set out below.

Mr. Sweetman's submission to the Agency essentially asserts that there has been no adequate Environmental Impact Assessment carried out. At page 1 in the second paragraph of his letter Mr. Sweetman states: "..... no Environmental Impact Assessment according to Articles 2 to 4 of the Environmental Impact Assessment Directive has been carried out." It is clear that the balance of his letter is concerned with that assertion. No other submission or point of objection is made. In particular he states: ".... it is not an appeal against the conditions of the decision.....". Consequently it is clear that the entirety of his submission is concerned with an argument regarding environmental impact assessment.

We disagree fundamentally with the position set out by Mr. Sweetman. Because of the references to EIA procedures, to a European case and to the EIA Directive we have taken advice from our Solicitors, William Fry, in this matter. William Fry has advised that it is fundamentally incorrect to state that there has been no Environmental Impact Assessment according to the EIA Directive. Our views, as advised by William Fry, are summarised in the following points:

- it is clear that the essence of Mr. Sweetman's assertion is that because An Bord Pleanála attached certain pre-commencement (of development) conditions to the Planning Permission (those listed by Mr. Sweetman to as being objectionable are the conditions relating to a Construction Traffic Management Plan (CTMP), a Construction Management Plan (CMP), to landscaping and to a lighting layout) that that action on the part of An Bord Pleanála, *of itself*, meant the Board, for the purpose the Environmental Impact Assessment, did not consider those matters. Mr. Sweetman asserts that as the Board did not then provide additional observations to the EPA specifically dealing with those matters (the CTMP and the CMP-related matters etc.) the EPA, consequently, could not have carried out an EIA. Mr. Sweetman refers to the decision of the Court of Justice of the European Union in Case C-50/2009;
- it is absolutely incorrect of Mr. Sweetman to argue that the inclusion in the Planning Decision of pre-commencement of development conditions relating to a Construction Traffic Management Plan, Construction Management Plan, landscaping and lighting means that An Bord Pleanála could not have identified and assessed the effects on the environment relating to those matters;

- it is indeed extraordinary that that argument should be made because if one reads pages 22-25 of An Bord Pleanála's Inspector's Report it is clear that An Bord Pleanála, via the Inspector, repeatedly *identified* various construction-related impacts either by referencing various parts of the Environmental Impact Statement and/or by the Inspector himself making reference to acknowledged or potential construction-related impacts based on his general knowledge (gleaned from the application itself) relating to the Project. If one reads pages 25-28 of An Bord Pleanála's Inspector's Report it is clear that the Board, via the Inspector, repeatedly *assessed* various construction-related impacts - in terms of the environmental media potentially affected and in terms of those impacts' scale and significance and their potential for mitigation. In those circumstances, for Mr. Sweetman to argue that An Bord Pleanála did not conduct an assessment in respect of those matters (on the basis, again, that the Board attached pre-commencement conditions relating to a Construction Traffic Management Plan etc.) is completely unsupported by the history of the planning process and by what the record of the planning process discloses; and his entire submission is undermined and falls simply because, again, it is clear that his submission (as regarding inadequate EIA) is entirely premised on the fact that the attachment of pre-commencement conditions relating to construction etc. of itself meant the Bord did not conduct EIA.
- Not alone is Mr. Sweetman incorrect based on the record of the planning process but, it is submitted, that record (of the Board's assessment of the overall Planning Application and of environmental impact associated with the proposal) is notable for the degree and quality of attention accorded to the EIA relative to general practice of planning authorities previously in relation to other projects. Whereas in the past it was not always evident on the face of a planning decision or report that a formal EIA had been conducted (or the extent of that assessment) that cannot possibly be said in relation to the planning record on this proposal and not just is it evident that an assessment was conducted in respect of the impacts generally but, again, it is clear that there was a detailed identification and assessment of precisely those areas related to construction etc.
- We would submit that there is an extent to which that detailed assessment carried out by the Board is related to *the quality of the Environmental Impact Statement* prepared on behalf of the project developer. In relation to the adequacy of the EIS (as material assisting the decision-maker with the Assessment) it is perhaps significant that the Inspector (of An Bord Pleanála) was in a position to say (at paragraph 14.3.1 of the Planning Report):

"in relation to the adequacy of the EIS,.....,I submit that it contains the information specified in Schedule 6 of the Planning and Development Regulations 2001. In general the information provided is considered to be relatively clear and precise";
- Again the attachment of pre-commencement conditions in respect of certain matters does not mean there has been no, or an inadequate, EIA in respect of those matters. Apart from the fact that the record clearly shows that there has been appropriate EIA in respect of the matters of which Mr. Sweetman complains, it is absolutely clear that there can be perfectly reasonable circumstances and reasons explaining the attachment of pre-commencement requirements in EIA-related projects. It is clear that as a *planning authority* the Board (and the local planning authority) will be anxious to ensure there is adequate *planning control* in respect of different phases of the development - including the construction and operational phases - and, again as a planning authority, the local planning authority has an ongoing obligation, notwithstanding the conduct/completion of an EIA, to exercise its ongoing planning functions in relation to the development;
- All of this is aside at all from the extent to which the relevant pre-commencement conditions can be seen in terms of the planning authority requiring the implementation of the EIA mitigation measures; and it is clear from the planning record that An Bord Pleanála gave detailed consideration to the issue of mitigation of identified impacts.
- There is a wording/inaccuracy in the first page of Mr. Sweetman's letter that has the potential to cause considerable confusion and it is most important to appreciate this. On page 1 he states:

"an Environmental Impact Statement shall contain all the likely significant effects as An Bord Pleanála in its Decision on PL.19.238420 states that further information on the following which was not adequately covered in the Environmental Impact Statement needed to be supplied:

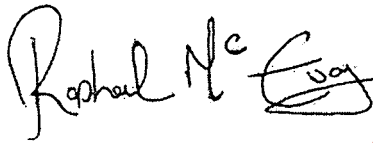
(a) prior to the commencement of development, details of a Construction Traffic Management Plan..... etc." (underlining/emphasis added)

- The above extract (in particular those parts underlined) are capable of suggesting, particularly in the context of his overall argument/submission, that An Bord Pleanála expressed the view (in its Decision PL.19.238420) that certain information was not adequately covered in the EIS and "needed to be supplied". As mentioned earlier in this response, it is clear, on the contrary, that An Bord Pleanála is of the view that the information in the EIS contained all of the information required under the EIA Regulations. Not alone is Mr. Sweetman, again, extrapolating from the attachment of a pre-commencement development condition that the EIS information was deficient but in the above paragraph/extract from his letter he appears to suggest that An Bord Pleanála expressed that view when in fact it is clear from paragraph 14.3.1 of the Inspector's Report underlying the An Bord Pleanála decision they were completely satisfied with the extent and quality of the information provided;
- We refer to Mr. Sweetman's (related) complaint that when the EPA came to deal with the Licence Application that there was no information provided on those matters to the EPA by the Planning Authority. The point is that these matters had already been, not just assessed, but *extensively assessed* by the Planning Appeals Board at that point;
- As regards his reference to Case C-50/2009, that case was concerned with how previous Irish legislative provisions created *the potential for* a non-holistic EIA. It was concerned with the *legislation/transposition arrangements*. Whether, under the old legislative arrangements or under the new legislative arrangements, an adequate EIA has taken place is a matter to be assessed based on the actions of the permitting authorities in that specific case. What is most important in the present context to appreciate about case C-50/2009 is that it does not require each and every point within the Environmental Impact Assessment to be the subject of a *joint liaison* of whatever bodies are dealing with the development consent. The Case clearly does not preclude more than one authority from being involved in the Development Consent process or more than one licence of authorisation comprising the Development Consent; and in fact the case expressly states that such an approach is acceptable. Again it does not require that all points in the assessment be always the subject of a joint liaison. It requires - whether by one or by both bodies - that all of the impacts be identified and assessed. It is concerned with ensuring that important impacts do not go unassessed. As regards the construction-related impacts etc., that Mr. Sweetman refers to, it is clear - whatever level of correspondence there was between the Board and the EPA (and he does not acknowledge the letter from the EPA to the Board) that construction-related impacts were extensively identified and assessed by An Bord Pleanála;
- Furthermore Mr. Sweetman is raising this issue with the EPA yet it is clear from his letter of 13 May 2014 that he is questioning the actions of *An Bord Pleanála*. He is essentially questioning the actions of An Bord Pleanála in a number of respects: he states that there was insufficient information in the EIS before the Board (although the Board considered there was sufficient information in the EIS). It is also clear from his letter that he considered An Bord Pleanála did not properly assess matters at the An Bord Pleanála stage e.g. he states "*as shown above the Decision of An Bord Pleanála shows that significant likely effects of the construction and operation phases of the Development were not assessed as they were subject to prior to (sic) commencement of development conditions*". Mr. Sweetman was aware since the planning decision issued in 2011 that there were pre-commencement conditions attached to the planning decision (which is what he essentially complains of) and he did not choose to challenge the actions of An Bord Pleanála in granting a planning permission on that basis and this is despite the fact that, under legislation, he can only challenge the actions of a planning authority or of the Board in the exercise of their functions under the Planning Act by way of judicial review and within a period of eight weeks from the action complained of;

- Finally, we note that Mr. Sweetman's submission is stated firstly to be "*on our own behalf*" (presumably a reference to "Peter Sweetman & Associates") and secondly we note that the letter also states "*We have been instructed by the "Derryclure Environmental Protection Group"*". While we have no wish to interfere with the consideration of information put before the EPA Mr. Sweetman's letter firstly does not provide any information regarding the composition/provenance/size of Derryclure Environmental Protection Group which, we submit, is all information that would be appropriate to put before the decision-maker (the EPA) and also to provide to the Applicant. In addition in circumstances where Mr. Sweetman is clearly *already* a participant/objector and there is now apparently a further objector yet it is not clear on whose behalf the fee of Eur 126 has been paid. Under the 2013 Regulations an objection by a person must be accompanied by a fee of Eur 126 and clearly now both Mr. Sweetman has objected as apparently (according to Mr. Sweetman) has the Derryclure Environmental Protection Group and it is not appropriate we submit that in circumstances where Mr Sweetman & Associates is already a participant/objector that there be another objector relating to that Group without the appropriate level of fee being paid.

We request that the Agency would take this response into consideration.

Yours faithfully,



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