



An
Bord
Pleanála

Inspector's Report ABP-301773-18

Description

Request for an alteration to the permitted Ringsend Waste Water Treatment Works Extension (case reference number 29N.YA0010) comprising an amendment to the wording of condition number 1.

Location

Ringsend Wastewater Treatment Plant, Pigeon House Road, Dublin 4

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

N/a

Requester

Irish Water

Type of Application

Section 146B request.

Date of Site Inspection

N/A

Inspector

Patricia Calleary

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1.0 Introduction

- 1.1. This case relates to a request by Irish Water to alter the terms of a development, previously submitted to An Bord Pleanála by Dublin City Council in 2012 and which was subsequently approved by An Bord Pleanála (**An Bord Pleanála Ref. 29N.YA0010**) under Section 226 of the Planning and Development Act 2000 (hereinafter 'the Act'). The development relates to the extension of the Ringsend Wastewater Treatment Works to cater for a capacity of 2.4 million population equivalent (PE) within the confines of the existing site.
- 1.2. The nature of the request relates solely to Condition No.1 attached to the Approval.

2.0 Details of Request

- 2.1. The Section146(B) request received by the Board includes the following documentation:
 - Cover Letter;
 - Project report (Proposed Alteration to Condition No.1).

3.0 Requester's Submission

- 3.1. Irish Water made the request, effectively seeking an amendment to the wording of Condition No.1 attached to the Approval granted under An Bord Pleanála Ref. 29N.YA0010, 'the 2012 Approval', by the addition of text at the end of the condition, as set out in Section 6.2.2 of this report below.
 - 3.1.1. The requester states that the amendment to the wording of Condition No.1 is sought to ensure that if permission is granted in respect of a current application (Ref: ABP-301798-18) for revisions and alterations to the existing and permitted development at the Ringsend Wastewater Treatment Plant and for a new regional biosolids storage facility (RBSF), the overall project can be completed in compliance with condition No.1 attached to the 2012 Approval while also being consistent with current proposals. In addition, the requester states that no physical works are entailed in connection with the request and they consider that the proposed amendment to the

condition would not constitute any material alteration within the meaning of Section 146B of the Act.

4.0 Legislation

- 4.1. Section 146B(1) of the Act provides that on the request of any person who is carrying out or intending to carry out a strategic infrastructure development, An Board Pleanála can alter the terms of the development, the subject of a planning permission, approval or other such consent granted under the Act.
- 4.2. Section 146B(2)(a) requires the Board to decide whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned. The Board may invite submissions prior to making this decision under Section 146(B)(2)(b).
- 4.3. Under Section 146B(3)(a), if the Board decides that the making of the alteration would not constitute the making of a material alteration, then it must alter the approval accordingly. If it determines under Section 146B(3)(b) that it would constitute the making of a material alteration, it shall determine whether to (i) make the alteration, (ii) make an alteration that would be different from that to which the request relates (but not one which is a more significant change to the terms of the development than that which would be represented by the latter alteration) or (iii) refuse to make the alteration.
- 4.4. Section 146B(4) requires that before making a determination under subsection (3)(b), the Board must determine whether the extent and character of the alteration requested under subsection (3)(b)(i), or any alternative alteration it is considering under subsection 3(b)(ii) of the Act, would be likely to have significant effects on the environment.
- 4.5. Section 146B(5) requires that where the Board determines that the making of either kind of alteration referred to in subsection (3)(b) is **not likely** to have significant effects on the environment, it shall proceed to make a determination under subsection (3)(b), or where it is determined the alterations **are likely** to have such effects, the provisions of section 146C shall apply.

- 4.6. Section 146(6) requires that if in a case to which subsection (5)(a) applies, the Board makes a determination to make an alteration of either kind referred to in subsection (3)(b), it shall alter the planning permission, approval or other consent accordingly.
- 4.7. Section 146(7) requires the Board to have regard to criteria for the purposes of determining which classes of development are likely to have significant effects on the environment set out in any regulations made under section 176.
- 4.8. Section 146(8) relates to making information available for inspection and for inviting submissions or observations.

5.0 Planning History

5.1. Approvals

5.1.1. **An Bord Pleanála Ref. 29N.YA0010** – The Board granted approval (16th November 2012) for the following:

- Ringsend Wastewater Treatment Works Extension Project, which will expand the existing wastewater treatment works at Pigeon House Road, Ringsend, Dublin to its ultimate capacity of 2.4 million PE within the confines of its current site and achieve the required discharge standards.

5.1.2. The proposed extension includes the following elements:

- Additional secondary wastewater treatment capacity at the wastewater treatment works site (c.400,000 PE) including associated solids handling and ancillary works.
- A 9km-long sea outfall (in tunnel), commencing at an onshore inlet shaft approximately 350m east of the wastewater treatment works and terminating in an underwater outlet riser/diffuser in Dublin Bay.
- Road network improvements in the vicinity of the site (during the construction phase).

5.1.3. Condition No. 1 attached to the Approval is set out under:

- **Condition No.1:** The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and the information contained in the environmental impact statement, including the mitigation measures contained therein, as amended by further plans and particulars submitted at the oral hearing, except as may otherwise be required to comply with the following conditions.

5.2. Alteration Decisions

- 5.2.1. **PL29N.YM0002** – In June 2016, the Board altered the Approval (**29N.YA0010**) in respect of certain temporary works and removal of temporary landscaping bunds at the Ringsend Wastewater Treatment Works Extension at Pigeon House Road, Poolbeg Peninsula, Dublin.
- 5.2.2. **PL29N.YM0004** – In January 2018, The Board altered the Approval (**29N.YA0010**) to allow for the omission of three construction site compounds previously permitted and the provision of three new temporary construction site compounds at Ringsend Wastewater Treatment Works, Poolbeg, Dublin 4.

5.3. Relevant Planning Cases

- 5.3.1. **ABP-301798-18** – This is a current application made directly to An Bord Pleanála by Irish Water under Section 37E of the Act seeking a 10-year permission for development of the Ringsend wastewater treatment plant upgrade project including a regional biosolids storage facility at Ringsend Wastewater Treatment Plant, Pigeon House Road, Dublin 4 and Newtown, North Road (R135), Dublin 11. It comprises revisions and amendments to that which was previously approved under case ref. no.29N.YA0010 as altered by: 29N.YM0002 and 29N.YA0004 including:
- Replacement of the 9-km Long sea outfall tunnel with a nutrient retrofit of the existing plant which would allow continued discharge into the River Liffey using existing discharge location. This would include the use of Aerobic Granular Sludge (AGS) technology to treat wastewater to a higher standard than is currently achieved at the Ringsend wastewater treatment plant.
 - Use of the existing outfall at the Liffey Estuary.

- Ancillary and sundry works, including, *inter alia*, alterations to the entrance and circulation in and around the site.

5.4. Pre-Planning Consultation

- 5.4.1. The application for the current proposal was received by the Board on the 6th of June 2018 and it followed on from pre-planning consultations under case No. **29S.PC0203** in which the Board decided that the proposals would constitute SID (21st March 2018).

6.0 Assessment

6.1. Introduction

- 6.1.1. As noted in Section 4 above, Section 146B of the Act is a two-stage process. The first stage is for the Board to consider whether or not the making of the proposed alterations would constitute 'the making of a material alteration of the terms of the development concerned' under Section 146B(2)(a). If the decision is that the making of the alteration would not constitute the making of a material alteration, then the Board must alter the Approval under Section 146B(3)(a).
- 6.1.2. The second stage only arises if the Board decides that the proposed alterations would constitute such a material alteration. In this case the Board, before determining to make such a material alteration or to refuse to make such an alteration, must determine whether the proposed alteration 'would be likely to have significant effects on the environment' under Section 146B(3)(b) and (4). This determination requires consideration of the requirement for Environmental Impact Assessment (EIA) and public consultation under Section 146B(7) and (8).
- 6.1.3. Clearly, if the outcome to stage one is a decision that the proposed alteration would not constitute a material alteration, then there is no basis for addressing the matters referred to in stage two.
- 6.1.4. In deciding in the first instance on this issue of materiality, the Board has the discretion to invite submissions from any person or class of persons as the Board considers appropriate.

6.2. Stage One – Material Alteration

6.2.1. I have read all the information on file including a report, which sets out the planning history of the approved development under 29N.YA0010 and previous Section 146B requests (29N.YM0002 and 29N.YM0004). The requester states that certain works are progressing under the Approval. The report also sets out the relationship between the current proposals (case reference ABP-301798-18) and the 2012 Approval.

6.2.2. The amendment to the wording of condition No.1 is sought for reasons stated by the requester to ensure that if permission is granted in respect of case reference APB-301798-18, the overall project could be completed in compliance with condition No.1 of the 2012 Approval and be consistent with both the 2012 Approval and the proposals for alterations to any permission granted under the current proposals. To that end, the applicant is seeking additional text to be added to the wording of Condition no.1 so that it would read as set out below with the added text in bold.

- **Condition No.1:** The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and the information contained in the environmental impact statement, including the mitigation measures contained therein, as amended by further plans and particulars submitted at the oral hearing, except as may otherwise be required to comply with the following conditions, **and except as modified by any other consent granted in respect of the permitted development.**

6.2.3. It is of relevance to note that no physical works are proposed and the 2012 Approval would not be altered *per se*. What is required is a technical amendment to the wording of condition No.1. The request would appear to form part of the requester's due-diligence in anticipation of the outcome of their current application before the Board and any future application. They are of the view that under the terms of the existing condition, the development is required to be completed as per the plans and particulars related to the 2012 Approval only, notwithstanding the outcome of the application for the current proposal which seeks alterations to the 2012 Approval. For this reason, alterations to Condition No.1 would appear to be sought to remove any ambiguity.

6.2.4. While I am satisfied that notwithstanding the current wording set out in Condition No.1 attached to the 2012 Approval under File Ref: 29N.YA001 (as altered under 29N.YM0002 and YM0004) would automatically be superseded whereby permission is subsequently granted for alterations under a new planning consent, I see no reason to withhold the alteration sought as it would bring further clarity to the wording of the condition. The alteration required is minor and non-material to the terms of the previously approved development.

6.3. Conclusion on Stage One

6.3.1. It is considered that the alteration requested would not constitute the making of a material alteration of the terms of the development concerned within the meaning of Section 146B(2)(a) of the Act. The Board should, therefore, make its decision in accordance with section 146B(3)(a) and there is no requirement for the Board to consider the significance of environmental effects in this instance.

6.3.2. The only other matter that needs to be considered is that provided for in Section 146B(2)(b) whereby the Board, prior to deciding as to whether the making of the alteration would constitute the making of a material alteration of the terms of the development, may invite submissions in relation to the matter by such persons or class of persons, and which may include the public, as the Board considers appropriate. I am satisfied that the proposed alteration is of such a minor nature that such consultation is not warranted in this instance.

7.0 Appropriate Assessment

7.1. Having regard to the nature of the request, no appropriate assessment issues arise and it is not considered that the proposed alteration to the wording of the condition would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that the Board:

(a) Decides under section 146B(3)(a) of the Planning and Development Act 2000, as amended, that the making of the alteration to the wording of Condition no.1 would not constitute a material alteration to the terms of the development concerned and should;

(b) Alter the Approval granted under ABP Ref: 29N.YA0010 as requested and in accordance with the following Draft Order:

REQUEST received by An Bord Pleanála on the 6th day of June 2018 from Irish Water under section 146B of the Planning and Development Act, 2000, as amended, in respect of a strategic infrastructure development described as the Ringsend Wastewater Treatment Works Extension at Pigeon House Road, Poolbeg Peninsula, Dublin.

WHEREAS the Board made a decision to approve, subject to conditions, the above-mentioned development by order dated the 5th day of November 2012 under case reference number 29N.YA0010 and the development was the subject of two subsequent alterations, one by order dated the 24th day of June, 2016, under case reference 29N.YM0002 and a second by order dated the 12th day of January, 2018, under case reference 29N.YA0004.

PROPOSED ALTERATIONS consist of amendment to the wording of condition number one by inclusion of additional wording to the condition, so that the condition reads as follows:

- The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and the information contained in the environmental impact statement, including the mitigation measures contained therein, as amended by further plans and particulars submitted at the oral hearing, except as may otherwise be required to comply with the following conditions, and except as modified by any other consent granted in respect of the permitted development.

AND WHEREAS the Board has received a request to alter the terms of the development, the subject of the approval,

AND WHEREAS having regard to the nature of the issues involved, the Board decided, in accordance with section 146B(2)(b) of the Planning and Development

Act 2000, as amended, not to invite submissions or observations in relation to the matter,

AND WHEREAS the Board decided, in accordance with section 146B(2)(a) of the Planning and Development Act 2000, as amended, that the proposed alterations would not constitute a material alteration to the terms of the development, the subject of the 2012 Approval,

AND WHEREAS having considered all the documents on file and the inspector's report, the Board considered that the making of the proposed alterations would not be likely to have significant effects on the environment or on any European site,

NOW THEREFORE in accordance with section 146B(3)(b) of the Planning and Development Act, 2000, as amended, the Board hereby alters the above-mentioned decision so that the approved development shall be carried out in accordance with the particulars received by An Bord Pleanála on the 6th day of June, 2018.

9.0 **Matters Considered**

9.1. In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Act 2000, as amended and Regulations made thereunder, it was required to have regard.

10.0 **Reasons and Considerations**

10.1. Having regard to the nature, scale and location of the proposed development, the documentation submitted with the request and the report of the inspector, the Board considered that the requested alterations would be of a minor amendment to a planning condition bringing further clarity to the terms of the development previously approved, being the extension of the Ringsend Wastewater Treatment Works to a capacity of 2.4 million population equivalent (PE). The proposed alterations to condition no.1 would, therefore, not be material in terms of the proper planning and sustainable development of the area.

Patricia Calleary
Senior Planning Inspector

24th January 2019