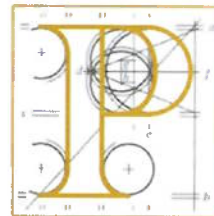


Our Case Number: ABP-314724-22

Your Reference: ~Transport Infrastructure Ireland (TII)



An
Bord
Pleanála

A&L Goodbody
c/o Alan Roberts
3 Dublin Landings
North Wall Quay
D01 C4E0

Date: 14 November 2024

Re: Railway (Metrolink - Estuary to Charlemont via Dublin Airport) Order [2022]
Metrolink. Estuary through Swords, Dublin Airport, Ballymun, Glasnevin and City Centre to
Charlemont, Co. Dublin

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned railway order application.

I refer to the submission made by Sabrina Joyce-Kemper on behalf of herself and Wild Ireland Defence CLG at the Metrolink oral hearing on 27th March 2024.

The Board invites you to respond to the submission made by Ms. Joyce-Kemper and Wild Ireland Defence CLG, in accordance with section 47D(1)(a) of the Transport (Railway Infrastructure) Act 2001, as amended. Please find submission attached.

Your response should be received within 4 weeks from the date of this letter (i.e. no later than 5.30pm on 11th December 2024).

Please quote the above mentioned reference number in any correspondence or telephone contact with the Board.

Yours faithfully,



Kevin McGettigan
Executive Officer
Direct Line: 01-8737263

JA19

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Glaó Áitiúil	LoCall	1800 275 175
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64 Sráid Maoilbhríde	64 Marlborough Street
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**An Bord Pleanála
Oral Hearing ABP-314724-22**

Transport Infrastructure Ireland (TII)

**Railway Order Application
(MetroLink – Estuary to Charlemont via Dublin Airport)**

**Brief of Evidence
EIA and AA Assessments**

Submitted by

**Wild Ireland Defence CLG
& Sabrina Joyce-Kemper**

Submitters:

1. **Sabrina Joyce-Kemper (individual) and Sabrina Joyce-Kemper as a consultant representative for Wild Ireland Defence CLG submits the following combined brief of evidence to the Oral Hearing.**
2. **Sabrina Joyce-Kemper is a planning and environmental consultant. She has an advanced diploma in Planning and Environmental Law from the Honorable Kings Inn. and has particular interest and experience in the area of Habitats Directive, EIA Directive, waste water treatment licensing, water pollution, The Water Framework Directive and planning compliance.**
3. **Wild Ireland Defence CLG is an Environmental NGO. They pursue the objectives of education, advocacy, and activism of all types in the protection, conservation, preservation and defence of the natural environment.**

Cumulative Impacts/ Project Splitting.

4. **The submitter(s) have concerns in relation to the splitting of the Metrolink Project into two planning cases. The instant consent, that is the subject of this oral hearing, 314724 (Railway Order) and 317831 MetroLink 110kV Underground Cables Strategic Infrastructural Development.**
5. **It is accepted that project splitting via separate planning consents may be required due to fact there may be separate jurisdiction by the two state bodies (TII and (ESB) that made the application in relation to CPO's etc. However by splitting the projects into two distinct projects there is a real danger that a complete and precise Environmental Impact Assessment and Appropriate Assessment without conflicts or lacunae may not be carried out.**
6. **On page 221 of the NIS for the Railway Order application, Table 17 Section that relates to In combination effects with the ESB Networks Grid connection makes reference to Section 6 of the same NIS which comes to a conclusion of the following in relation to in combination effects:**

"As assessed in Section 6, the proposed Project will not adversely affect the integrity of any European site in isolation. Therefore, the potential for in combination effects to arise are limited to those effects the proposed Project will have on the receiving environment that are measurable in some way, but themselves will not affect the conservation objectives of European sites. The potential for in-combination effects could be as a result of:

- Habitat degradation/effects on QI/SCI species as a result of hydrological and hydrogeological impacts**
- Habitat degradation as a result of introducing/spread"**

7. In the next column of the table entitled conclusion in relation to in combination effect the conclusion states the following:

"No in-combination effect. The proposed Grid Connections Project must comply with all applicable planning and environmental approval requirements and be in accordance with the objectives and policies of the relevant Development Plan. This land use plan contains objectives and policies to ensure the protection of European sites. The proposed Grid Connections Project will be subject to planning consent, including preparation of an EIAR and AA Screening Report/Natura Impact Statement, where required. Given that the potential impacts of the proposed Grid Connections Project would be no greater than that of the proposed MetroLink Project (as described in Chapter 15 Biodiversity of the EIAR accompanying this application), if equivalent mitigation measures were applied, there would be any negative residual impacts on any European sites as a result of the proposed Grid Connections at any geographic scale. Considering the environmental protection policies included within the relevant land use plans, the range of mitigation measures included in the proposed Project to avoid significant impacts and that alone the proposed Project will not have any residual effects on any European sites, the proposed Grid Connections Project will not act in combination with the proposed Project to have an adverse effect on the integrity of any European sites. The proposed Project will not adversely affect the integrity of any European sites, in its own right, nor in combination with other projects, including the proposed Grid Connections Project and has included mitigation in that regard to prevent any such adverse effects."

8. The submitter(s) advise that this approach and therefore conclusion, is legally unsafe. Cumulative impact or in combination assessment does not mean if each individual project has no impact in isolation then a multitude of in -combination of projects that have a finding of no significant affect in isolation, cannot have an affect. The term 'death by a 1000 cuts' was used in an Opinion by Advocate General Sharpston in Sweetman and Others C-258/11¹ and the applicant and Board must be cognisant of the methodology used to come to a finding of no in combination effects. Similarly If one project has a greater impact than another then it does not follow that the mitigation measure for the greater project would also mitigate the impacts of the smaller project, as is intimated in table 17 on page 221 of the NIS.

9. In the notice document Managing Natura 2000 sites² from the European Commission, the Waddenzee ruling (C-127/02 paragraphs 52-54, 59) is referenced:

"the Court emphasized the importance of using the best scientific knowledge when carrying out the appropriate assessment in order to enable the competent authorities to conclude with certainty that there will be no adverse effects on the site's integrity:

'As regards the concept of "appropriate assessment" within the meaning of Article 6(3) of the Habitats Directive, it must be pointed out that the provision does not define any particular method for carrying out such an assessment. None the less, according to the wording of that provision, an appropriate assessment of the implications for the site concerned of the plan or project must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives.'

1 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62011CC0258&from=DE>

2 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0125\(07\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0125(07))

‘Such an assessment therefore implies that all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those (conservation) objectives must be identified in the light of the best scientific knowledge in the field.’

‘The competent national authorities, taking account of the appropriate assessment of the implications of the plan or project for the site concerned in the light of the site’s conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.’ Assessments that confine themselves to general descriptions and a superficial review of existing data on ‘nature’ within the area cannot therefore be considered as ‘appropriate’ for the purposes of Article 6(3). According to the Court the appropriate assessment should 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 site concerned (C-304/05 paragraph 69) (52). It cannot be held that an assessment is appropriate where information and reliable updated data concerning the habitats and species in the site are lacking (C-43/10 paragraph 115).

10. The submitter(s) have viewed the NIS and EIAR and do not believe that there is any matrices that compares the impacts identified in other developments and layers or cumulates them to see if the individual cuts that are not significant add up to a thousand cuts which would be.
11. The submitter(s) are also concerned that the NIS references an ‘in combination assessment’ as described in Chapter 15 of the EIAR. It is important to note that the NIS is required to be a stand alone document and while interactions with the EIAR are permissible, all conclusions in relation to in combination effects need to be identified, assessed and mitigated against precisely, within the NIS document itself. This does not appear to have been the case and so an Addendum to the NIS may be required and we would ask that the inspector request this.

PFAS Pollution on the Dublin Airport Campus.

12. Very recent concerns have been raised about PFAS contamination of soils and water at the Dublin Airport Campus. The project team could not have anticipated this issue, but now that it has been identified it must be included in cumulative impact assessments for both the EIAR and the NIS. Fingal County Council and the EPA are currently investigating the issue and perhaps further consultation with these bodies on their findings may be appropriate.
13. Information has come to light of thousands tonnes of contaminated soil at Dublin Airport, some of which has been removed for treatment abroad, and some of which was reburied on-site. The PFAS contamination is believed to have come from fire fighting foams and de-icing agents for aircraft, which was used during the historical operations and for current operations at Dublin Airport. Due to the interaction of both the Metrolink project and the ESNB Grid cable project with the Airport Campus and with the water-bodies that are showing elevated levels of PFAS contamination (Sluice River, Mayne River, Cuckoo stream etc), it is necessary for this emerging impact to be evaluated and assessed.
14. The impact of PFAS contamination via surface runoff and ground water filtration needs to be assessed as part of this application. The TII must also revisit all Dublin Airport Planning applications that interact with this application to address in combination impact from PFAS contaminated soil, groundwater or surface runoff. The Board cannot seek to make a

decision without a full assessment via EIA and AA of the impact on SAC(s)/ SPA(s) in the ZOI and the water body catchments that are receiving waters of the Airports surface run-off and the Metrolink surface water (or potential Bentonite loss) contamination.

15. The assessment under the EIAR and NIS must adequately engage the Water Framework Directive regarding cumulative impacts on water bodies or how this project(s) will lead to improvements in the current status of water-bodies to help to prevent any further deterioration. It is of note that many of the water-bodies that will be crossed as part of the two separate project application are already at poor or bad status.
16. Having reviewed the EIAR and NIS it appears there is no risk assessment of the Sludge Hub Centre that makes up the live application for the Greater Dublin Drainage (GDD) Project 312131 at Clonshaugh/ Belcamp. The sludge hub centre includes a large biogas storage facility in the Public Safety Zone directly under the flight path to Dublin Airport. The biogas storage facility is close enough to the Belcamp substation that the Metrolink Grid and cable elements that connect to it, may be in any blast zone in case of major accident and therefore this interaction many need to be assessed under the EIAR chapter "Risk of Major Accidents".
17. Finally the submitter(s) wish to question the screening/ scoping out of the Ringsend Wastewater Treatment plant, regional biosolids facility and sewer network from the EIA and AA assessments. We suggest that there may be a risk of interaction with subsurface Sewer pipes such as the North Fringe Sewer (NFS), a major pressurised sewer that is located within the project(s) footprint. and that the project should be screened in in order to mitigate against accidental damage to any part of the sewer network in the Ringsend agglomeration. A similar consideration may also need to be given to the Swords, Malahide Agglomerations.
18. We thank the Inspector for allowing us to make this Oral Hearing submission and welcome the opportunity to help ensure robust assessment and mitigation on these projects.

Sabrina Joyce-Kemper & Wild Ireland Defence CLG