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7 May 2002

Our Ref: 20238/cor/jo070502

By fax & by post (045) 876875

Mr. John Murphy,
Project Manager,
Kildare County Council,
St. Mary's,
Naas,
Co. Kildare.

RECEIVED

SANITARY DEPT.

09 MAY 2002

**RE: KILDARE WATER STRATEGY
PROPOSED WELLFIELD DEVELOPMENT AT HYBLA, MONASTEREVIN**

Dear Sir,

We refer to the objections received by Kildare County Council from Mr. Peter Sweetman and Mr. Michael Hoey in relation to the above development and respond as follows.

In considering the objections we requested the opinion of Dr. Yvonne Scannell of Arthur Cox Solicitors to respond to matters relating to EU Legislation and alleged project splitting (refer to appendix one). We also obtained a response from the Project Hydrogeologist, Mr. Kevin Cullen addressing the point of how the proposed Hybla Abstraction relates to other water abstractions in the county (refer to appendix two).

The submission by Mr. Peter Sweetman, on behalf of various bodies, that the proposals are "a blatant case of project splitting" is dealt with in Dr. Scannell's opinion. She does not consider that the approach adopted by the council is a case of project splitting.

The objection from Mr. Hoey comprises of an introduction, principal points and appendices. The points raised in the introduction are repeated in the principal points and as such a response to each principal point is contained below.



Directors:

R. Crown BE, MEng Sc, CEng, MIEI (Managing)
J.G. Cross BE CEng, MIEI MCIWEM, Eurling
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J.H. Langridge BSc, CEng, MIEI

Nicholas O'Dwyer Ltd
Incorporated in Dublin
No. 54998

1. **Objection:**
Project Splitting, The cumulative effect of all the projects has not been assessed or considered.

1. **Response:**
The cumulative impacts of all the abstractions have been considered and were found to be insignificant. Therefore an EIS is not required for the scheme as a whole and the Council are not 'project splitting' when considering the Hybla Development as a separate scheme. (Refer to Dr. Yvonne Scannell/Kevin Cullen responses)

2. **Objection:**
The developer has not considered or established properly the sources of the River Barrow, by implication of ancillary works. The developer fails to identify or document the role of the Bogs as a source of water for the River Barrow. Hybla Report 3.5.1 states, "The Monasterevin abstraction involves groundwater that would form part of the Barrow River base flow through contributions from its tributaries"

2. **Response:**
The measured record of flows in the Barrow includes all factors that contribute to that flow including the role of the Bogs. The statement in Section 3.5.1 of the Hybla Environmental Report describes the existing environment. The proposed Hybla Wellfield is located in the Barrow Catchment and as such some portion of the Barrow flow could be attributed to this aquifer. However the potential impact caused by the proposed development at Hybla or by any of the other developments on the base flow of the River Barrow is immeasurable (Refer to KT Cullen response).

3. **Objection:**
The base flow figures of the River Barrow are inaccurate (with regard to the cumulative effect of loss of water as a result of proposed developments or any other developments in the Allenwood formation)

3. **Response:**
An allowance was made in the Barrow E.I.S. for a reduction in base flow in the River Barrow for the proposed groundwater abstractions. This was a conservative approach at the time, as well testing works had not been completed at the proposed wellfield sites. The well testing works are now complete and have shown that the proposed abstractions will not have a measurable impact on each other or on base flows in the River Barrow (Refer to KT Cullen response).

4. **Objection:**
The cumulative effect on the Curragh Aquifer, Kildare By-Pass, Groundwater Abstraction, the River Barrow and Pollardstown Fen has not been considered..... I submit that neither Duchas, Waterways Ireland nor the Minister for Arts, Heritage, Gaeltacht and the Islands..... have not been notified.....

4. **Response**

The responses from Dr. Yvonne Scannell and K.T. Cullen address this objection and conclude that the cumulative effect of these abstractions has been considered and has been found to be insignificant and immeasurable. Furthermore the appropriate prescribed bodies have been notified of the proposals.

5. **Objection**

We submit here the content under "Interference Notice" and we submit a copy of "the Interference Notice".

5. **Response**

The question of an interference notice is not relevant for the Hybla Development as it only relates to the proposed Abstraction from the River Barrow. (Furthermore, a Navigation Authority is the only authority that can issue an interference notice and Waterways Ireland is the relevant Navigation Authority.)

6. **Objection**

No provision to obviate the loss has been proposed.

6. **Response**

This is not a requirement for the Hybla Development. Furthermore no significant impacts have been identified that would require provision to obviate any loss.

7. **Objection:**

No alternatives have been proposed, such as dispersing the increased proposed volumes of people to live in the Kildare area, such that other counties can get a fair share of steady growth and development.

7. **Response**

The Kildare Water Strategy was prepared in accordance with the County Kildare Development Plan to meet the projected growth in population for the county. The Water Strategy considers a range of alternative water supply sources and recommends preferred supply options. The proposed wellfield at Hybla is one of those preferred supply options.

8. **Objection**

The proposals violate the 1977 Water Pollution Act in that, to abstract water from a water source, constitutes pollution where it significantly adversely affects the users of, the waters and waterways.

8. **Response**

The proposal does not violate the 1977 Water Pollution Act, as it does not significantly adversely affect the users of the waters and waterways.

9. **Objection:**
The developers have acted contrary to the EIA Directives re-consultation and providing information

9. **Response:**
The County Council have not acted contrary to the EIA Directives (Refer to DR Yvonne Scannell response)

10. **Objection:**
Everywhere it states "Grand Canal" replace with "River Barrow"

10. **Response:**
No reference is made in the quoted 1993 submission by the OPW regarding the Kildare By-Pass to suggest that everywhere it states "Grand Canal" it should be replaced with "River Barrow"

11. **Objection:**
I submit a possible alternative could be the flooding of several thousand acres of cutaway bog. Bord na Mona at present pump water up to 24 feet to drains, which connect to tributaries of River Barrow and Boyne. A solution could be switching off the electric pumps and allow the water to build up naturally.

11. **Response:**
Retention of water in cutaway bogs happens naturally to some extent at present, impounding of such water artificially would bring a requirement for ensuring water tightness over a wide perimeter and of the floor of the impoundment. Nothing in the current proposal would prejudice any future plans to maintain these areas as wetlands for wildlife or other purposes.

12. **Objection:**
The base line data for any wellfield in the Curragh aquifer is not included in the Robertstown EIS or the EIS for the Barrow River Abstraction.

12. **Response**
This objection does not refer to the proposed Hybla Development.

13. **Objection**
The EIS fails to identify the advantages for the greater Dublin Area. The EIS for Robertstown abstraction fails to identify the connection with the EIS for Barrow Water abstraction, the Hybla water abstraction and other well fields that are currently drilled and tested without official sanction and the Kildare by pass.

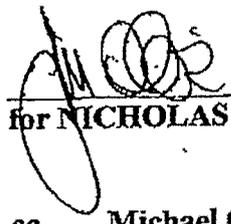
13. **Response:**
The issue of any advantages for the Dublin Area are fully dealt with in the Water Strategy. The Water Strategy is referred to in all the various reports and EIS's but the

issue of any advantages for the Dublin Area is not repeated because they do not have a bearing on any potential environmental impacts. There is no measurable connection between each of the proposed developments (refer to KT Cullen's response).

Throughout Mr. Hoey's submission objections are made on the grounds that an EIA is required for the Hybla project and all references to EU Directives and legislation are dealt with by the response from Dr. Yvonne Scannell.

We trust that the above is in order but should you have any queries in relation to the matter please do hesitate to contact us.

Yours faithfully,



for **NICHOLAS O'DWYER LTD.**

cc **Michael Garrick, P.J. Tobin Limited**

APPENDIX ONE

RESPONSE FROM DR. YVONNE SCANNELL

1.1 I have been asked to address some of the legal issues which arise from observations made by Mr Michael Hoey and Mr Peter Sweetman with respect to water abstraction schemes being developed by Kildare County Council. Although Mr Hoey's observations are somewhat generic, they seem to be as follows:

- (1) that Kildare County Council has not considered the cumulative impacts of all the water abstraction schemes which it is proposing to undertake
- (2) Kildare County Council has engaged in project splitting to avoid the necessity of preparing an EIS for some developments
- (3) Duchas, Waterways Ireland and the Minister for Arts, Heritage, Gaeltacht and the Island have not been notified of proposed developments (not clear which development).

Mr Sweetman's observations are essentially (1) and (2)

Cumulative Impacts

1. It is true that EIA is required for plans and projects (of which the Kildare Water Strategy might be an example) under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. However, the deadline for implementing this Directive is 21 July 2004. Consequently there is no legal requirement for a generic EIA on the Kildare Water Strategy.
2. I am instructed that Kildare County Council's advisers, KT Cullen, did in fact consider the cumulative impacts of the various projects when preparing various water abstraction schemes and that they concluded that they were not significant. I understand that this was, *inter alia*, partly because of the amounts of water being abstracted, partly because the Kildare aquifer, although sometimes referred to as a single aquifer, is not in fact a single water body and partly because of the distances between the various abstraction points.
3. Directive 85/337/EEC, as amended, requires that an EIS be prepared for *likely significant* effects. If the effects are not likely or significant, there is no obligation

to describe them. Article 1 states that the directive applies to EIA for projects likely to have significant effects on the environment. The EIS must describe the main or significant effects on the environment, not all the effects. The best summary of this obligation is that of Sullivan J in *Mirje*¹ where he stated that the environmental statement does not have to describe every environmental effect, however minor, but only the 'main effects' or 'likely significant effects'. This, he said, is because an EIS that attempted to describe every environmental effect of the kind of major projects where assessments is required would be so voluminous that there would be a real danger of the public during consultation and the local authority in determining the application, "losing the wood for the trees".

4. The persons who have made observations have not indicated how the effects can be significant. If information as to cumulative impacts is given, Kildare County Council is obliged to take them into consideration.

Project Splitting

5. Arguments on project splitting normally arise when a developer has deliberately split projects in order to avoid having to prepare an EIS. It can hardly be claimed that the County Council did this when they have prepared an EIS when it was required and prepared environmental reports when there was no legal requirement to do this. Moreover, this point about project splitting was raised in:

O'Connell v. O'Connell [2001] IEHC 69 (29th March, 2001)

This case concerned an inquiry into the making of a scheme by a road authority under the Roads Act 1993. Section 49 of the Act requires the road authority to submit a scheme to the Minister for the Environment for his approval when it proposes carrying out the kinds of road development prescribed in section 47. An environmental impact statement (EIS) must be prepared for the kinds of road developments specified in section 50. The Minister has power under section 49(3) to approve the scheme with or without

¹ 2001 JPL 470

modifications or to refuse to approve it. In this case, Louth County Council made a road scheme and submitted it and an accompanying EIS to the Minister for his approval. A public local inquiry was held.

The respondent, whose lands would be affected by the proposed scheme if approved, sought leave to amend his original application for judicial review under Order 84 Rule 23(2) by adding thereto additional reliefs and grounds. He submitted, *inter alia*, that the Minister's warrant was *ultra vires* in that it limited the inquiry to the scheme and failed to require the inspector to inquire, in addition, into "all matters" relating to the scheme including a possible future extension of the road as required by section 49(2)(a). Leave to amend on this ground was refused, the court holding that an inquiry does not require an inquiry into a road which will be the subject matter of a future scheme. Such an extension would, the court held, be the subject of a separate inquiry.

This case is analogous to the present in that both developers were public authorities. Indeed, in the O'Connell case, the proposed extension to the motorway was adjacent to the project for which approval was sought.

6. Failure to Notify Prescribed Authorities

It would be *ultra vires* not to notify prescribed authorities but I have been instructed that appropriate prescribed authorities have been notified.

Dr Yvonne Scannell,

Environmental Law Group,

Arthur Cox, Solicitors.

8 May 2002

APPENDIX TWO

RESPONSE FROM K.T. CULLEN

M66

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K.T.Cullen & Co. Ltd.

Mr. John Murphy,
Senior Project Engineer,
Kildare County Council,
St. Mary's,
Nass,
Co. Kildare

3rd May, 2002

Re: Planned Water Abstractions in Co. Kildare

Dear Mr. Murphy,

The planned groundwater abstractions at Johnstown Bridge, Robertstown, Monasterevin and Rathangan effectively take groundwater from the aquifer systems that underlie this part of County Kildare. The aquifer systems receive recharge annually from the effective rainfall that falls on the extensive Boyne and Barrow river catchments.

The proposed groundwater abstractions are small in comparison to the quantum of groundwater stored in the aquifer systems and the volumes of available recharge.

Extensive well testing at each of the abstraction sites have confirmed that the proposed groundwater withdrawals are of such a size and are sufficiently distant from each other so as not to have a measurable impact on each other.

These well tests have also confirmed that the planned groundwater abstractions will not have any measurable impact on the Curragh gravel aquifer or the groundwater system feeding Pollardstown Fen.

Furthermore the well tests indicate that the abstractions from the North Kildare Aquifer at Johnstown Bridge, Robertstown, Monasterevin and Rathangan will not have a measurable impact on the flows in the River Barrow at the planned abstraction location.

Yours Sincerely,

EurGeol Kevin T. Cullen