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Pembroke Wood,
Passage West,
Co. Cork.

An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

29th July, 2019.

RE: ABP-304860-19

Planning authority: Cork County Council

Applicant: IDA Ireland

Planning application: 18/6038 for construction of a below ground foul pumping station incorporating a below ground emergency storage tank, a below ground storm water pumping station, a 3.1m high control building and ESB substation, a 2.65m high chemical dosing unit, provision of a 2.15m high standby generator with acoustic barrier, a 1.5m high air handling unit with acoustic barrier, a 4m high mobile lifting gantry and a 2.4m high security fence along with indigenous plant screening. Pipework associated with the development includes a foul rising main along the R613, local roads and green fields from the foul pumping station to the Shanbally wwtp as well as 3 no. short sections of pipeline associated with the storm water and foul pumping station. Also installation of 2 no. new reinforced concrete manhole chambers on existing pipelines, associated site work, site excavation works above and below ground and the demolition of a derelict bungalow.

Dear Sir/Madam,

Cork County Council has granted planning permission to IDA Ireland for the above proposed development. An appeal against the proposed grant of planning was lodged with An Bord Pleanála by Martin & Maria Finnan on 8th July last. My concerns in relation to the proposed development are outlined below in this observation in support of that appeal.

- **This is an industrial development on residentially zoned lands**

The area proposed for development is zoned in the Ballincollig-Carrigaline Municipal District Local Area Plan 2017 as “existing built up area”. The first schedule of the Manager’s Order granting planning permission describes the site as being “within residentially zoned lands”. It is not clear in their decision-making process whether Cork County Council considered the proposed foul and storm water pumping station to be an industrial or a utility development.

This area is a small pocket of residential land within a large area of industrial zoning in the Ringaskiddy Strategic Employment Area. It is situated on the shores of Loughbeg. The established use in this existing built up area is residential. ZU3-1 of the County Development Plan has as an objective to “normally encourage through the Local Area Plan’s development that supports in general the primary land use of the surrounding existing built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas will be resisted”. Objective ZU3-2 also outlines the objective for residentially zoned lands as promoting “development mainly for housing, associated open space, community uses and, only where an acceptable standard of amenity can be maintained, a limited range of other uses that support the overall residential function of the area”.

The proposed development

- does not support the primary land use of the existing residential area
- threatens the vitality of the residential primary land use by virtue of its function, size and associated potential noise and odour impact.

A planning authority cannot grant permission for a development which would materially contravene a County Development Plan without bringing it before the elected members. This proposal was not brought before the elected members.

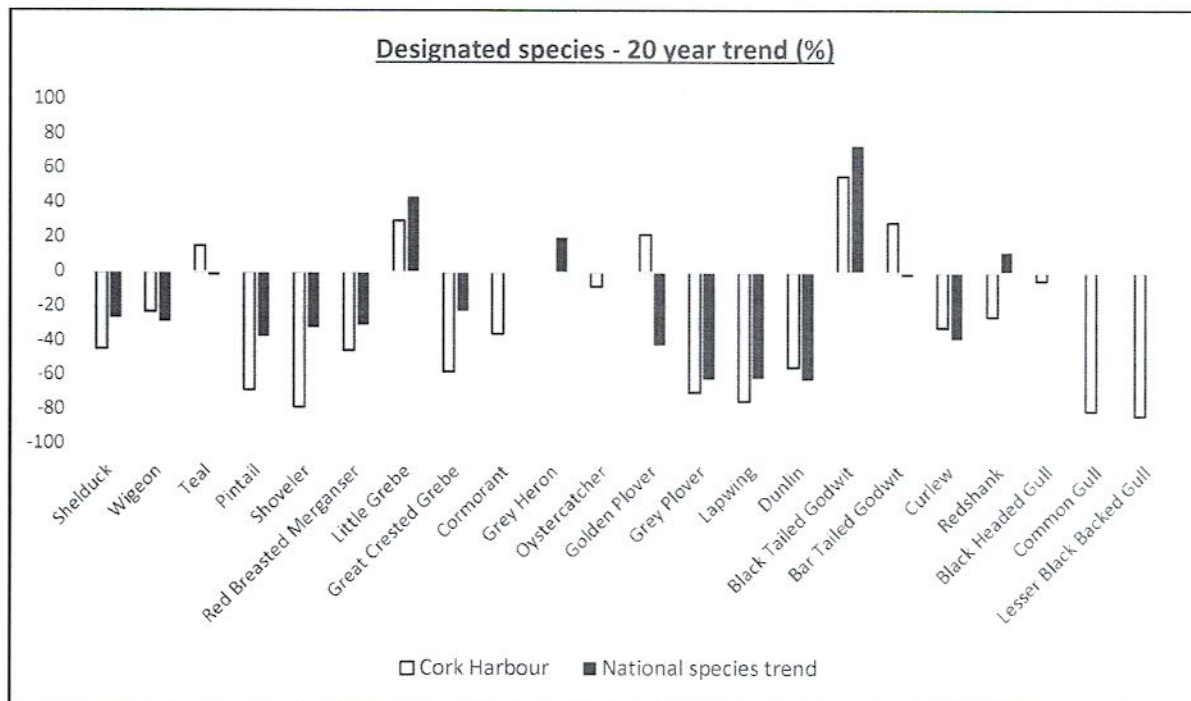
As an elected member, I have tremendous sympathy for residents who live in the Ringaskiddy Strategic Employment Area. In practice, their needs are so often secondary to those of industry. They live with heavy traffic associated with the industries and port. Workforce traffic at shift change is a constant daily challenge around which they organise even the most basic of domestic runs. Odours, particularly from the larger chemical processes, are frequently discernable around their homes and gardens. Noise from traffic, from the port and from industrial speakers has become often an unwelcome part of their daily lives. Limited tracts of land zoned for open space to act as a buffer between proposed industry and established uses are increasingly whittled away, with RY-O-06, RY-O-07 and RY-O-08 being most recently under attack. It is increasingly important that the limited number of residential homes remaining in the Ringaskiddy Strategic Employment Area would be protected such that residents can preserve a reasonable quality of life.

Whilst the pocket of residentially zoned land for which the pumping station development is proposed may currently on the ground look as if it is in deep countryside, the purpose of the proposed development is to enable large-scale industrial development on RY-I-06, RY-I-07, RY-I-08 and part of RY-I-10. When the zoning aim is achieved, this pocket of residentially zoned land will be surrounded by industry of unknown scale and characteristics. There is plenty of room to accommodate the relatively small footprint of the proposed development within these industrial zonings or within lands with established industrial use. To propose it merely 30 metres from established residential dwellings on residentially zoned land is unnecessary, unacceptable and is in contravention of the Cork County Development Plan.

- **The conservation objectives of the Cork Harbour SPA are not currently being achieved**

The proposed pumping station is intended to provide a drainage network of adequate capacity to take storm water from industrially zoned lands RY-I-06, RY-I-07, RY-I-08 and part of RY-I-10. This storm water will discharge at the head of Loughbeg. In times of high tide and heavy rainfall, it proposes to pump collected storm water past the tidal head. The development also includes the proposed construction of an underground foul tank to store foul discharges from the same industrially zoned lands. Under normal conditions of operation, the IDA proposes that these would be pumped from the foul storage tank to Shanbally. In emergencies, the IDA proposes that the foul discharges would also be released at the head of Loughbeg.

Loughbeg is a key part of the Cork Harbour SPA. A summary of rulings by the European Court of Justice on Article 6 of the Habitats and Birds Directives [1] explains that the two directives require Member States to not merely prevent the deterioration of the species and habitat types for which sites are designated but also to take positive management measures to ensure their populations are maintained and restored to a favourable conservation status. Bird counts in Cork Harbour undertaken by iWebs over the past 20 years indicate that the populations of many of the winter waders for which the Cork Harbour SPA is designated have declined significantly. As indicated in the graph below, 16 of the 22 identified species are exhibiting a negative population trend. For three of the designated species, numbers have declined by as much as 80%. National species trends are available for 19 of the 22 identified species (they are not available for any of the three gulls). For 14 of those 19 species, population trends in Cork Harbour are less favourable than national trends.



Species trends in the Cork Harbour SPA are not analysed at all in the Habitats Directive Screening Report accompanying the planning application. Had they been analysed, it would be clear that management of the Cork Harbour SPA is not in compliance with the requirements of the Birds Directive or the Habitats Directive. Reversing current trends requires more than a business as usual approach.

- **The precautionary principle has not been applied in the screening assessment for the proposed development**

The precautionary principle is implicit in the Habitats Directive. It requires that the conservation objectives of Natura 2000 should prevail where there is uncertainty. In Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging*, the European Court of Justice ruled that a plan or project should be approved only after the competent authority is convinced that it will not affect the integrity of a designated [Natura 2000] site: “where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation”.

The proposed pumping station development is to fulfil the foul and storm drainage needs of industrially zoned lands RY-I-06, RY-I-07, RY-I-08 and part of RY-I-10. Nobody can predict what scale or type of industry will be established on any of these lands. Neither can anybody predict the nature or characteristics of their foul effluent nor what process areas will be licensed to enter the storm water discharge. It is not possible to conclude with even a modicum of certainty that all these unknowns discharged at the head of Loughbeg will have no significant impact on the Cork Harbour SPA.

The Habitats Directive Screening Report considers that “*the storm water discharge from the flood relief scheme will not contain any additional level of contaminants than is already flowing into Lough Beg via the existing IDA storm water outfall pipeline*”. There are two IDA storm water outfall pipes discharging into Lough Beg. One is that to which this planning application refers; the other serves Janssen. To which one is the report referring? If the proposed pumping station is to serve a drainage system from a yet-to-be-developed 74.8 hectares of industrial land, it is quite impossible to equate the quality of the existing storm water discharge with that in the future.

Moreover, the planning application contains no analysis of existing discharges into Loughbeg from either of the two IDA storm water outfalls. In the absence of same, there is no justification for the stated consideration that current discharges are having no impact on receiving waters.

Having gone through all the “likely” and “unlikely” scenarios in relation to the emergency foul overflow, Table 3 of the Habitats Directive Screening Report concludes that the discharged foul industrial effluent would “likely” create a plume which would be dispersed with the outgoing tide and dissipated within the estuarine waters or washed out into the greater Cork Harbour area. What would be the effect were the emergency foul effluent to discharge on an incoming tide? Where is the tidal model confirming that this likely dispersion would actually happen?

Moreover, whilst it is true that periodic nutrient loadings are often assimilated into estuarine environments, nutrient overloading of a contained estuarine area such as Loughbeg can have several deleterious effects. One such is to support excessive growth of sea lettuce such as was seen in Loughbeg in May/June 2019. It is not possible to conclude that further nutrients would have no impact when neither the existing nutrient loading of the estuary nor the potential nutrient loading of any future foul effluent streams is known.

In the absence of assessing the characteristics of the current IDA storm water outfalls, knowing the nature and volume of the future industrial foul and storm water discharges, understanding existing nutrient loadings within Loughbeg, studying tidal behaviour within the estuary at all stages of the tide, modelling how a plume discharged under pressure would move within the estuary at all stages of the tide and understanding what is impacting so unfavourably on the conservation status of the SPA, it is simply not possible to say with any possible certainty that the development as proposed would have no impact on Loughbeg. The European Commission’s guidance on the provisions of Article 6(3) and (4) of the Habitats Directive [2] advises that the precautionary principle presupposes a scientific evaluation of the risks. If the data is insufficient or if it is inconclusive or imprecise, it is not possible to determine with sufficient certainty the risks in question. This is indeed the case with regard to the proposed development and consequently the precautionary principle, absent in the screening assessment accompanying the planning application, must be applied.

- **Screening for the proposed development does not adequately assess cumulative impacts**

MN2000 makes it clear that the phrase “*in combination with other plans or projects*” in Article 3(3) of the Habitats Directive refers to cumulative effects caused by the projects or plans that are currently under consideration together with the effects of any existing or proposed projects or plans [2]. Official

guidance from DG XI defines cumulative impacts as being those which “result from incremental changes caused by other past, present or reasonably foreseeable actions together with the project” [3].

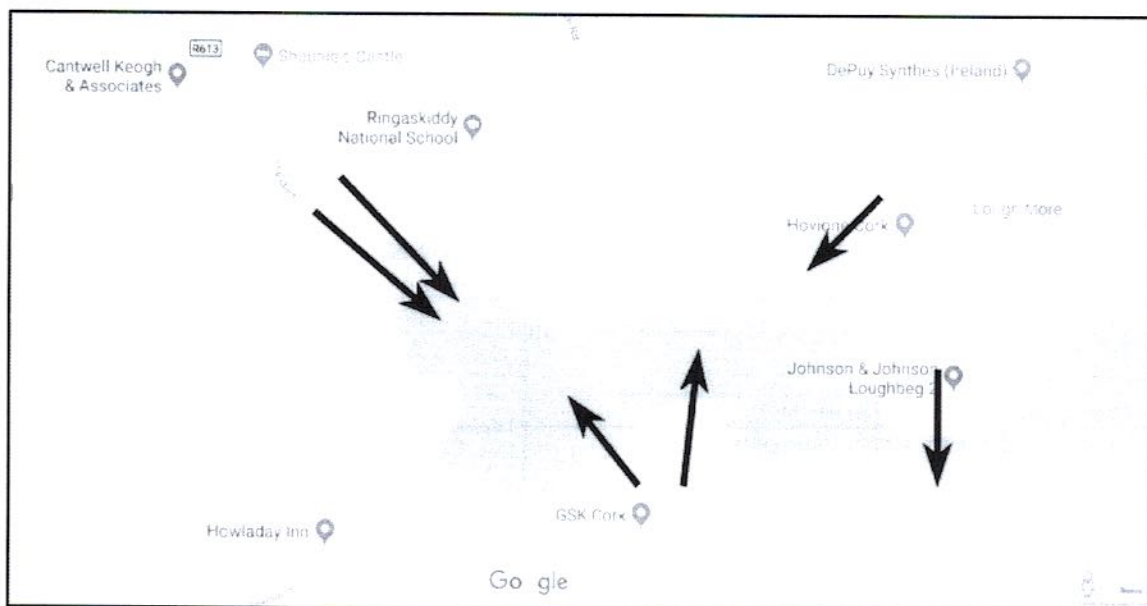
There is much potential for cumulative interaction in Loughbeg. Existing industrial discharges directly into Loughbeg include:

- Janssen (stormwater and runoff from process areas via IDA storm sewer)
- GSK (wastewater treatment plant discharge)
- Hovione (API and tablet plant).

One of the principal purposes of the proposed development is to provide wastewater infrastructure which facilitates the future development of an industrial landbank comprising RY-I-06, RY-I-07, RY-I-08 and part of RY-I-10. The Planning Report accompanying the planning application clarifies that as there is currently no wastewater network in the vicinity of these landbanks, the proposed foul pumping station and associated pipelines would “provide a dedicated means of connecting any proposed developments on this portion of the IDA lands to the local wastewater network”. Further enabling works on site RY-I-08 have already been permitted by Cork County Council under Planning Reg. Ref. 16/5658. As described in the Planner’s Report on 16/5658, the site preparation approach is intended to “facilitate the quick delivery of industrial development in the future and to overcome time constraints associated with the existing site topography”. There is therefore no doubt but that cumulative and indirect assessment of the impact of the proposed pumping station must include industrial development of the landbank it is enabling.

Existing nutrient loading to Loughbeg may also include that arising from adjacent agricultural activity.

Yet the cumulative impact assessment carried out in the Habitats Directive Screening Report accompanying the planning application considers only the site preparation works on RY-I-08. This is patently a grossly inadequate attempt at cumulative impact assessment. It states that “there are no other plans or projects identified with the potential to give rise to in-combination effects”. This is clearly not the case. Its conclusion is that because the project “alone” effects are not considered significant, no significant in-combination effects will arise either. Given that the whole purpose of the project “alone” is to provide a drainage network to 70+ hectares of industrially zoned land, this conclusion is entirely inaccurate.



Existing point discharges into the Cork Harbour SPA at Loughbeg

- **Cork County Council’s preliminary screening is inadequate**

As part of its assessment of the planning application, Cork County Council undertook a preliminary screening of the proposed development. Having undertaken that screening on 25/09/2018, it concluded that further information on hydrocarbon capture was necessary. Having received that further information and having repeated the screening exercise on 11/06/2019, Cork County Council concluded that it agreed with the findings of the Habitats Directive Screening Report submitted with the planning application, i.e. the proposed development would cause no significant impact on the Cork Harbour SPA.

There is very little consistency between the screening undertaken on 25/09/2018 and that undertaken on 11/06/2019. Some of the most basic information differs. The primary screening considers the proposed project to not be within the SPA at all whilst the final screening correctly identifies that it does indeed encroach on the SPA. Extraordinarily, given the nature of the proposed development, neither assessment identifies that the proposed project would involve non-domestic discharges to watercourses. Section 5 of the assessment undertaken on 11/06/2019 is especially strange. Although the screening conclusion is that potential for significant impacts on the SPA are ruled out, this conclusion does not appear to have been certified as required. Although the answers to the questions in Section 3 are clearly not all “No”, that certification box is not ticked at all.

It is necessary to examine Section 4 of both assessments. This proposed development would discharge both directly to sea and directly to the wastewater network feeding the Shanbally wastewater treatment plant. It would also connect to individual wastewater treatment systems, i.e. those serving the industries to be developed on landbanks RY-I-06, RY-I-07, RY-I-08 and part of RY-I-10. It is not possible to certify whether those individual wastewater treatment systems will comply with EPA guidelines because they do not yet exist. Yet the screening assessment undertaken on 11/06/2019 makes this assumption whilst the screening undertaken on 25/09/2018 does not identify that these individual connections would exist at all. The screening undertaken on 25/09/2019 certifies that the public wastewater network to which the proposed development would discharge has capacity to take the increased load arising from the development. Nowhere in the planning application is the capacity of the Shanbally wastewater treatment plant discussed nor is it possible to identify whether the Shanbally treatment plant has adequate capacity because the additional loading from these as undeveloped landbanks cannot yet be identified.

That the first screening may have made incorrect assumptions is important because it is after this first screening that information gaps necessary for accurate assessment are identified. In this case, the only further information requested was a requirement of the Area Engineer relating to hydrocarbons in surface water runoff. It is clear though that if both screening exercises were undertaken to reflect reality, because this proposed pumping station is to enable a range of future industrial development of as yet unknown nature, layout and effluent characteristics, it is simply not possible to make the certifications required for a conclusion of “no potential significant impact”.

Comparison between screening exercises undertaken by Cork County Council:

	25/09/2018	11/06/2019
Section 3		
General Impact Assessment		
Is the proposed project within the SPA?	N	Small proportion
Is the proposed project within 100m of the SPA (landbased)?	N	Y
Does the proposed project involve development in the intertidal or coastal zone within the potential impact zone of the SPA e.g. extensions or improvements to marine infrastructure (piers, slips, pontoons, marinas), or coastal protection works?	N	Y

Does the proposed project involve dredging of marine sediments within the potential impact zone of the SPA?	N	N
Is the proposed project located within an area identified to be at risk of flooding within the potential impact zone of the SPA?	N	Y
Is there a surface water linkage between the development site and the SPA?	N	Y
Does the proposed project involve any discharges to watercourses (other than surface waters from domestic sources) during the operational phase?	N	N
Does the proposed project involve the development, extension or upgrade of a cycleway or walkway within 200m of the SPA?	N	N
Could the proposed project significantly increase the level of (landbased) human use within 200m of the SPA?	N	N
Could the proposed project increase the level of recreational or other use of marine or intertidal areas within the potential impact zone of the SPA?	N	N
Does the proposed project involve the erection of wind turbines, masts or electric lines within 3km of the SPA?	N	N
Could the proposed project result in a change land management practises within the SPA?	N	N
Section 4: Assessment of Proposals for Treatment of Wastewater <i>In order to ensure that there will be no impact on water quality, the following must be certified (mark the relevant box with X)</i>		
For developments proposing connection to individual waste water treatment systems the waste water treatment system must comply with EPA guidelines.		X
For developments connecting to public waste water treatment systems discharging effluent to watercourses within the catchment of this SPA, the public system must have the capacity to treat the proposed additional loading.	X	Y
Section 5: Screening Conclusion – Please tick either A or B		
A) Potential for significant impacts on the SPA have been ruled out. (In order to make this conclusion, you must certify the following, having regard to the information provided in sections 1, 2, 3, and 4).		√
Answers to all questions in section 3 is No.		
Where applicable, waste water treatment facilities comply with EPA Guidelines or receiving WWTP has capacity to take increased load without causing a breach to license conditions (see section 4).		
B) Potential for negative impacts have been identified or impacts are uncertain.	√	
Notes or comments	Further information required in relation to the treatment of potential hydrocarbons and surfacewater runoff to enable a full screening assessment	Following consultation with the Ecologist and on the basis of the information submitted, it is considered that the proposed development would not be likely to give rise to significant impacts on the Cork

		Harbour SPA. The Planning Authority agrees with the conclusion of the submitted Habitats Directive Screening Report.
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- **Proposed mitigation measures have been included at screening stage to achieve the conclusion of “no significant impact”**

The Habitats Directive Screening Report included with the planning application identifies that there is a potential for an increase in water sediment load and subsequent settlement during construction of the pipelaying and manhole chambers. However protective measures, presumably those outlined in the Method Statement for the Works, have been built into the design of the project to minimise these risks.

In case C-323/17 People Over Wind and Peter Sweetman v Coillte, the European Court of Justice ruled that mitigation measures could not be taken into account at the screening stage of an appropriate assessment. The planning application proposed by Coillte identified that in the absence of protective measures, there was potential for release of suspended solids into the waterbodies along the proposed cable route. To prevent against that release, protective measures had been built into the design of the project. However in examining this proposal, the ECJ considered that to include mitigation at the screening stage would compromise the practical effect of the Habitats Directive generally and could undermine and circumvent the purpose of the assessment stage.

If construction of the pumping station and pipelines were to proceed without mitigation, there would of course be significant impacts on sedimentation in Loughbeg. The consideration is then a different one: would the sedimentation effects result in a significant impact on the Cork Harbour SPA? In the context of the information provided by the Habitats Directive Screening Report (or indeed anywhere in the planning application), that question remains unanswered. One of the key values of Loughbeg for wintering waterfowl is its extensive areas of mudflat. However that is not to say that additional sedimentation is of no consequence. European Commission guidance on the implementation of the Habitats Directive in estuaries [4] specifically identifies that sedimentation in an estuary reaches a certain balance before the estuary begins to release sediment rather than to retain it. If that balance is modified, it may lead to subsequent modifications in those habitats that comprise estuarine and coastal ecosystems such as mudflats.

After consideration of the ECJ judgement, the only conclusion that is possible is that it is not possible to reach a conclusion of no significant impact.

- **Conditions attached to Cork County Council’s grant of planning directly oppose commitments made for the protection of wintering wildfowl in the planning application**

The Cork Harbour SPA is designated by virtue of its value as a habitat for wintering waterfowl. One of the commitments made in Table 3 of the Habitats Directive Screening Report accompanying the planning application is that disturbance impacts to wintering waterfowl during the pipe laying and manhole construction works, including demolition of the derelict house at the pumping station site, will take place during May – September, i.e. outside the wintering bird period.

However Condition 17 of the grant of planning issued by Cork County Council requires “any and all demolition and/or tree felling work [to] only be carried out in the period from September to February (inclusive). This is directly contrary to the protective commitment made in the Habitats Directive Screening Report and compels development to take place during the exact period for which the SPA is at its most valuable for species of conservation concern.”

Moreover, Condition 23 of the grant of planning instructs that “no clearing, cutting, grubbing, burning or destruction by other means of vegetation growing on uncultivated land or in hedges or ditches [is permissible] during the nesting and breeding season for birds and wildlife, from 1 March to 31 August, unless with prior authorisation of the NPWS”. Without seeking the authorisation of the NPWS to carry out the necessary ground clearance at the site of the proposed pumping station and along the proposed pipeline route, this condition would also clearly be at odds with the protection of wintering waterfowl as committed to in the Habitats Directive Screening Report.

Both of these conditions were recommended for inclusion by the Environment Department of Cork County Council. They appear indicative of a sadly low level of engagement either with the conservation needs of the Cork Harbour SPA, this planning application or both. The IDA owns vast tracts of land around the shores of Cork Harbour and it is of great concern that neither they nor their consultants either spotted this anomaly or deigned to bring it to the attention of the planning authority or both. Moreover, because of the commitments made in the Habitats Directive Screening Report, compliance with Condition 1 of the planning permission issued by Cork County Council is not possible if Conditions 17 and 23 are also to be complied with.

- **Other concerns: odour generation, chemical dosing, road resurfacing**

Despite being asked to address it in the pre-planning consultation, the planning application does not address the issue of odour from the proposed pumping station at all. Consider that this is a pumping station intended to take mixed wastewater flows (whether treated or untreated is not yet known) from 74.8 hectares of industrially zoned land. The potential for odour generation is significant. It is addressed only in the developer’s response to a submission made by Martin and Maria Finnin. This response does not form part of the planning documentation to which Condition 1 of Cork County Council’s grant of planning obligates compliance nor does it describe the nature and/or operation of the proposed odour control units. None of the other conditions attached by Cork County Council to the grant of planning provide even close to adequate reassurance of absence of odour to the residents who would be living adjacent to the proposed development.

A 2.65m high chemical dosing unit is an identified part of the planning application. Yet despite the nature of this proposed development and the protected environment into which it is to be designed to discharge, nowhere in the planning application do we learn what chemicals might be in this dosing unit. We learn from the response to Martin and Maria Finnin’s submission that the chemicals are intended to be added to the foul water in the storage tank to control septicity. Condition 18 of Cork County Council’s grant of planning requires the dosing unit to be bunded to 110% of its capacity. We are told no more.

For the past two years and more, Irish Water has been installing the Lower Harbour Drainage System. This was a very significant construction project which necessitated the digging of many roads for sewer laying. There was consequent extensive disruption to traffic. It was all withstood in the knowledge that the aim of the project was to massively reduce the impact of wastewater discharges on Cork Harbour. Now that the sewer laying is complete, one of the benefits of the project has been that many of the roads in the Ringaskiddy area and beyond have received a full or a half width new surface. This project now proposed by the IDA will involve digging a trench along the Currabinny Road, along the R613 from the Currabinny Road to Coolmore Cross and along the L2492 in front of St. Bernadette’s

Place. All these roads have only very recently been resurfaced by either Irish Water or Cork County Council. It would be entirely unacceptable to residential amenity, to traffic flow and to the taxpayer's pocket to have them dug again to convenience the IDA.

- **Conclusion**

Although it looks relatively inconsequential, this is a very significant planning application. The development proposed is an industrial utility which would enable a drainage network for an industrially zoned landbank of 74.8 hectares. Despite the size of the industrial landbank, the utility is proposed for a residentially zoned area. It proposes to discharge storm water and effluent of unknown characteristics to a valuable part of the Cork Harbour SPA. Screening for appropriate assessment is, at best, woefully inadequate. Improved management of the Cork Harbour SPA is necessary to achieve its conservation objectives. I respectfully ask that the Board would refuse this planning application. A better alternative must be sought.

Please find enclosed the fee of €50.

Yours faithfully,



Marcia D'Alton
Independent Member, Cork County Council

References:

1. At https://ec.europa.eu/environment/nature/info/pubs/docs/others/ECJ_rulings%20Art_%206%20-%20Final%20Sept%202014-2.pdf
2. European Commission, 2001. *Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.*
3. Walker & Johnston (1999). *Guidelines for the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions.*
4. European Commission (2011). *Guidance on the Implementation of the EU Nature Legislation in Estuaries and Coastal Zones.*