

Our Reference: FPL/685/02672

Your Reference:

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By post and email

Transport Infrastructure Ireland
Mr Aidan Foley
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Metrolink

Dear Sirs

We act for Griffith Avenue & District Residents' Association (**GADRA**). GADRA was founded in 1974 for the purposes of representing the interests of residents of the almost 1000 households along Griffith Avenue and adjacent roads.

As you know, GADRA has been an active participant in the ongoing MetroLink consultation - the current phase of which is aimed at selecting a Preferred Route for the project. While the Consultation Document indicates that MetroLink takes seriously its obligations under the Aarhus Convention to facilitate public participation in decision making on major public infrastructure projects, it is apparent that the public participation procedure adopted by MetroLink seriously breaches the relevant EU Directives intended to give effect to the public participation provisions of this Convention.

MetroLink should design a public participation procedure that is compliant with Directive 2001/42/EC on the assessment of certain plans and programmes on the environment (the **SEA Directive**) and Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (the **Habitats Directive**). If MetroLink continues with an unlawful process then any decisions made, including the selection of the Preferred Route, are likely to be overturned on judicial review.

We will briefly outline below how the procedure breaches EU law.

As a preliminary point it is clear that the selection of the preferred route for MetroLink is both a "plan or project" for the purposes of the Habitats Directive and a "plan or programme" for the purposes of the SEA Directive.

According to the Habitats Directive, specifically article 6(3), the Preferred Route can only be agreed if it can be excluded on the basis of objective information that the Preferred Route will have a significant effect on a Natura 2000 site whether individually or in combination with other plans or

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projects. Unless such significant effects can be excluded a competent authority lacks jurisdiction to agree to a plan or project unless the provisions of article 6(4) of the Habitats Directive apply.

In addition a strategic environmental assessment procedure must be carried out for plans or programmes which are likely to have significant environmental effects and which set the framework for future consents under the EIA Directive or which require an Appropriate Assessment pursuant to the Habitats Directive.

The purpose of the SEA Directive is to ensure public participation takes place at an early stage when all options are open, including the zero-option. Under that directive strategic options must be subject to environmental assessment (as that term is defined in the SEA Directive). In reaching a decision the competent authority is required to document how environmental considerations have been integrated into the plan or programme. Within the framework of strategic environmental assessment, the competent authority is required to define and implement a programme to monitor the significant environmental effects of the implementation of the plan or programme so that unforeseen adverse effects can be identified at an early stage allowing appropriate remedial action to be taken. A limited environmental assessment without proper public participation or monitoring, as seems to have been done here, does not meet the standards set by EU law for strategic environmental assessment.

Our client has not been able to locate any reference to the Habitats Directive or any screening decision within the MetroLink project website and it can only be concluded that your organisation has no objective information before it and therefore cannot exclude significant adverse effects on Natura 2000 sites.

It is therefore clear that your organisation lacks the jurisdiction to agree a Preferred Route.

Despite the soothing references to the Aarhus Convention there is also no apparent engagement with the requirements of the SEA Directive. In particular it is apparent that strategic choices are being made without any real assessment other than what seems to be cherry picking environmental benefits in support of decisions that appear to have already been taken. In particular, certain construction methodology decisions have been selected without a comprehensive strategic environmental assessment and comparison with alternate options.

Similarly, strategic options around station separation and the interaction with the Bus Connects project have not been considered or assessed.

These are not trivial or theoretical concerns. The choice of a single bore tunnel and the location of stations at Collins Avenue and Griffith Park (on the Home Farm football pitch) now requires the permanent loss of what looks like a significant portion of Albert Park in Glasnevin to construct a permanent above-ground intervention shaft and service yard. Our client notes that, despite exhaustive queries and engagement on their part, which eventually resulted in the provision of a hand-drawn sketch of the proposed intervention shaft at the eleventh hour, our client (and the general public) has been provided with no firm details of the extent of this aspect of the proposal.

By any stretch of the imagination the removal of a huge area of public parkland in this area is a permanent significant adverse environmental effect yet the public concerned has not been offered the opportunity to participate in the environmental assessment of the strategic options surrounding the choices that appear to have already been made and the environmental effects flowing from those choices.

Other strategic options have not been considered. For example, the phasing of the construction of Metrolink and Bus Connects or the interaction between the two projects in the Glasnevin area has not been considered from a strategic environmental point of view.

Notwithstanding that your organisation lacks the jurisdiction to adopt a preferred route in the absence of an Appropriate Assessment we are also confident that a court on judicial review will strike down any Preferred Route adopted without strategic environmental assessment and will order you to undertake a new round of public participation with all options open for consideration.

This eventuality would introduce significant delay to a much-needed project. We therefore invite you to ensure that your organisation takes the opportunity now, before any more money is wasted on unlawful decision making, to engage in a compliant public participation procedure.

If you persist with the current decision-making procedure our client reserves its right to issue judicial review proceedings at the appropriate time. Those proceedings would be aimed at ensuring that the strong environmental protections and rights of public participation guaranteed by EU law and the Aarhus Convention are fully observed.

Yours faithfully

A handwritten signature in black ink, appearing to read 'FP Logue', written in a cursive style.

FP LOGUE