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United Nations Economic Commission for Europe,
Environment Division,
Palais des Nations,
CH- 1211 Geneva 10,
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27th October 2020

Attention: Ms Fiona Marshall,

Secretary to the Compliance Committee – Environmental Affairs Officer Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention),

Re: - ACCC/C/2013/107

Public Participation

Extension of Duration without Assessment

Dear Ms Marshall

Further to yours of the 1st inst and also to the recent correspondence from Ireland [Department of Communications, Climate Change & Environment], I am grateful for the opportunity to respond.

I welcome the clarification and updates regarding the proposed amendments to the Planning and Development act. As it happens, yet one more quarry, recently applied for extension of duration. This too had major compliance issues together with unauthorised developments. When I enquired whether it was open to me to make a submission thereon, on the 5th August last, I was informed: -

'Presently you cannot make a submission on an Extension of Duration application'.

Section (a) (II) of the proposed amendment states: -

'an environmental impact assessment or an appropriate assessment, or both of those assessments, was or were not required before the permission was granted,'

Is this a bit cumbersome? Additionally given that EIA only applies to those quarries above 5HA, it would therefore exclude all those quarries under 5HA in size of which there are many. Enforcement of quarries in Ireland has been very problematic. Speaking from experience, to permit any of them to extend their activities without public consultation would not be wise in my opinion.

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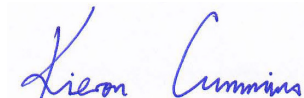
Furthermore, in a judgment delivered on the 3rd July 2020, by the Irish Supreme Court in *AN TAISCE, PETER SWEETMAN & Others v. AN BORD PLEANÁLA and Others* [9/19, 42/19 and 43/19], Mr. Justice William M. McKechnie stated that the public should have an input at the earlier s.177 (c) stage and specifically cited the Aarhus Convention. Would this not now be an opportunity to also amend the same legislation so as to bring it into line with the recent Supreme Court decision *vis vis* public participation regarding s.177(c)?

I ask because likewise, I also encountered the same issue of no public notice/ consultation re s.177(c) on the very same quarry at the center of my Aarhus case **ACCC/C/2013/107** and witnessed a decision being hatched behind closed doors with *An Bord Pleanála*, who bizarrely granted permission on the basis that the applicant might not have known they needed planning permission. This in circumstances where there was a plethora of unauthorised developments, which would have been highlighted, had there been public engagement. I was obliged to challenge this in the High Court and following the recent Supreme Court decision; that looks inevitable.

Public participation would not be as critical, if the statutory authorities were functioning, as they should be regarding enforcement and also in their adjudication of future grants of planning for the same operations. Regrettably and for the most part they keep rolling out future grants of planning consents despite massive issues with unauthorised developments and non-compliance with existing consents to the very same quarry operators.

Finally, there are also public consultation issues regarding the 'Planning and Development (Strategic Housing Development) Regulations 2017' [SHD] where a developer is given access to *An Bord Pleanála* prior to any public consultation. A Pre-Application Consultation between the developer and *An Bord Pleanála* is in fact mandatory before any application is lodged. The public has no access until an application is lodged. I had personal experience of this recently when a large quarry operator (with unauthorised developments all over the place) availed of the SHD facility and essentially designed the development during pre-planning consultations prior to a planning application and without public participation. The application sailed straight through without any questions and appeared to be a *fait accompli* with acceptance of submissions from the public at the latter stage more of a box ticking exercise rather than of any meaningful engagement. Judicial review is now being considered. Apart from the track record of the promoters, there were major capacity and heritage issues re that particular proposal. People like myself together with the public in general should not be in the position of having to be considering legal actions. This too is unsatisfactory and I would recommend that the law be amended to facilitate public participation and transparency from the earliest stages in the process. This is quiet similar in fact to the circumstances of the recent Supreme Court judgment re s.177(c).

Yours sincerely,



Kieran Cummins