



Our Ref: 18105

22.01.2021

The Secretary  
Environment and Planning Review Tribunal  
St. Francis Ravelin  
Floriana

Dear Sir,

Re: ERA Board Decision EP 0012/19

Please refer to the board decision taken by ERA with reference to the environmental permit application of my client Mr Dennis Baldacchino, EP 0012/19, to operate a facility for the dumping of clean construction waste at sea.

Three reasons were given by ERA to substantiate its decision, namely, quoting *verbatim*:-

1. *The proposal shall be generating unnecessary traffic of heavy traffic and air pollution;*
2. *The resorting of dumping of clean inert waste at sea shall be utilized as a last resort for projects located in close proximity to the coast where the necessary infrastructure is already in place; and*
3. *The proposed activity shall be disincentivizing the minimization of construction and demolition waste, reduction and recycling thereof.*

We consider the above reasons for refusal as being grossly unfair and incomprehensive for the following reasons.

1. Refusal 1 states “The proposal shall be generating unnecessary traffic of heavy traffic and air pollution.”
  - a. The point on traffic and linked air pollution was already addressed at an earlier stage of the process, ie at permit evaluation stage PA/09323/18 dated 12.05.2020 (copy attached). Transport Malta was consulted during the process in their capacity as external consultees and interested third parties to the process and there were no objections from the entity on this regard. Transport Malta, in actual fact, confirmed its no objection in writing in email dated 04.03.2019 expressly stating “.....the Authority, after due consideration, has acceded to such request and.....finds no objection to the construction

of a weighbridge, elevated deck and waste reception area at Quay Wall 1, situated at Xatt il-Mollijiet, Marsa in accordance with PA application number PA/09323/18." (vide document 67a). Transport Malta's decision was based upon actual evaluation of the vehicle movement plans submitted by the applicant in conjunction with the permit application PA/09323/18 and its subsequent approval.

- b. It is also to be noted that ERA did not raise any objection on the subject matter during the consultee and third party consultation stage.
- c. Hence the rebuttal of this first ground for refusal.

2. Refusal 2 states "The resorting of dumping of clean inert waste at sea shall be utilized as a last resort for projects located in close proximity to the coast where the necessary infrastructure is already in place."

- a. The clause "where the necessary infrastructure is already in place" gives rise to a misnomer in its interpretation, is inconsistent, and actually is an illogical statement, the reason being as follows. If actually having the "necessary infrastructure in place" were one of ERA's requirement at the outset and as a general policy, ERA would surely have pointed this out at permit application stage during the consultation period. Whether the necessary infrastructure was already in place is something that ERA would have definitely been aware of since the early stages of the application process, and hence would have objected during the external consultee period by expressly stating it is objecting on the basis that it is against new infrastructure. The fact that it engaged with the applicant and discussed the project with the applicant to the extent that it even discussed the nature and origin of the waste material as well as the intended use of the reception area/office further confirms that ERA was considering the introduction of new infrastructure through PA/09323/18 positively. This engagement from ERA's side cannot, in any way, be interpreted as having a general policy or direction that no new projects should be considered. Hence, ERA's non-objection at consultation stage and its engagement with the applicant is to be interpreted as meaning that it was not against the infrastructure proposed through PA/09323/18.
- b. The Project Description Statement (PDS), a copy of which is being attached with this appeal, outlined clearly all the details of the proposed activity. The PDS was available to ERA and hence ERA could have easily showed its objection during the consultation period of PA/09323/18. No objection tantamounts to endorsement and hence it is totally unfair of ERA to change its goalposts only after the applicant has gone through practically the entire application and permit process, and raise its objection at this late stage.
- c. It is also to be noted that ERA's website specifically addresses disposal at sea - <https://era.org.mt/topic/disposal-at-sea/>. It specifically mentions the site where such an activity can take place – "In Malta, disposal of waste at sea can only take place at the spoil

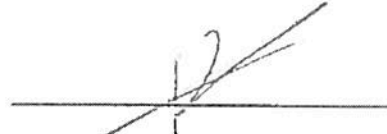
*ground located 350 55.1' N, 0140 34'E (outside the Grand Harbour- figure below), and such an activity is regulated by ERA through the Waste Consignment Note Procedure."*

This is the site on which PA/09323/18 was obtained. This further proves the inconsistency and illogical thinking being put forward at this stage by ERA. Since the proposed activity is being done within the already approved co-ordinates, there should be no reason to object on the basis raised in this reason for refusal.

- d. Reference is also being drawn to email correspondence between ERA and the applicant on 28.11.2019 in which ERA expressly communicated the current price stating "...the current price of dumping of excavation waste at sea is of €8 per tonne excluding VAT." Why should ERA communicate its pricing if it were not going in favour of new infrastructure? Why didn't ERA simply not communicate? Is this a case of leading the applicant on to no purpose?
  - e. Hence the rebuttal of this second ground for refusal.
3. Refusal 3 states "The proposed activity shall be disincentivizing the minimization of construction and demolition waste, reduction and recycling thereof."
- a. The comment outlined at point 2a. above in respect of the scope of the Project Description Statement and ERA's position is applicable on this point too.
  - b. Furthermore it is totally unfounded and incorrect to state that the applicant's proposal would disincentivize the minimization and reduction of waste. Waste is generated by the ongoing projects in the industry. Whether there is an increase in regulated and permitted waste facilities and depots or not, waste will still be generated. In actual fact, increasing regulated and permitted waste facilities would help to minimize illegal dumping.
  - c. It is also totally unfounded and incorrect to state that the applicant's proposal would disincentivize recycling, the reason being that only clean inert waste is allowed, which in itself automatically requires a process of recycling. In actual fact this proposal could potentially help increase the take-up of recycling.
  - f. Also, the email correspondence between ERA and the applicant on 28.11.2019, mentioned earlier in point 2d. above, in which ERA expressly communicated the current price stating "...the current price of dumping of excavation waste at sea is of €8 per tonne excluding VAT." further defeats ERA's argument that the applicant's proposal would disincentivize the minimization and reduction of waste. If it were the case, ERA would not be promoting and communicating its price.

In view of the above, the applicant considers the refusal of ERA of the environmental permit application EP 0012/19 as being unfair and would like to respectfully request that you review ERA's decision and in light of the above reasons for rebuttal decide in favour of the applicant's application.

Sincere regards



Charles Buhagiar A&CE

Encl: PA 09323/18, PDS, bank receipt, copy of refusal

cc: Mr Dennis Baldacchino

Planning Authority