

National Paediatric Hospital proposed at Eccles St

Submission to the oral hearing by An Taisce, the national trust for Ireland
(represented at the hearing by James Nix)

Summary / introduction

An Taisce supports the development a world class National Paediatric Hospital. A world class hospital deserves world class planning. Unfortunately, the proposal before An Bord Pleanála is deficient in a number of respects.

Under the National Development Plan a full cost benefit analysis must be submitted for projects that entail the spending of more than €30 million of public monies. The methodology to be used is that set out in the 2005 guidelines published by the Department of Finance. Therefore the proposal does not accord with the National Development Plan.

In capacity terms, the proposed hospital is only expected to meet projected demands up until 2030, which would be approx 15 years after opening.

While an objective of hospital consolidation is to reduce running costs, the confined nature of the Eccles St site leads to a significant amount of surgery taking place in Tallaght, and so operating costs may not be reduced in practice. Ultimately, the confined nature of the chosen site will result in certain staff and patients travelling between Tallaght and Eccles St, and this impact has not been well quantified.

The study of alternative locations is lacking with the result that Irish and European legal norms have not been met. To assist the planning process and to aid decision-makers, An Taisce draws attention to two alternatives which would likely have been studied in the event the correct procedures were followed.

The first is a lower-cost alternative, namely a €102m expansion plan for Crumlin Children's hospital which was presented to Government in September 2008.

Second, An Taisce draws attention to a site located between St James's Hospital and Heuston rail station, easily accessible to both. The land here is owned by the HSE and OPW. The site offers more than double the footprint compared to the existing proposal. It is also substantially co-located with a major adult teaching hospital, requiring only a 90m link to St James's. In addition, it offers rail connection, adequate space for expansion, and larger floorplates to give scope to co-locate more medical devices on each floor (leading to what is known as better clinical adjacencies).

The alternatives highlighted may also assist in terms of helicopter access which expert medical opinion says must be present on site but is not accommodated within the current application.

Turning to architecture, An Taisce notes that Paul Arnold, expert for the applicant, declined to say that the proposed structure, some of which is 16 storeys (73m), would not hinder Dublin's bid to be listed as a World Heritage Site.

It is An Taisce's view that the proposed structure, if constructed, may potentially hinder Dublin's inclusion on the World Heritage by being an anomaly on the skyline owing to its bulk, height and scale.

Breach of the National Development Plan

An Bord Pleanála makes decisions in line with the National Development Plan, something not disputed by the applicants.

As provided by chapter 12 of the NDP, all capital projects involving more than €30 million of public expenditure require "a full cost benefit analysis in line with the Department of Finance guidelines of February 2005".

An Taisce believes An Bord Pleanála will make a decision on this application in line with the National Development Plan. Insofar as a cost benefit analysis was submitted, it does not meet the criteria specified under chapter 12 of the NDP. The analysis submitted is without figures and confines itself to verbal statements.

In May 2011 the Chair of An Bord Pleanála stated that the planning system had a “vital part to play in ensuring the most efficient use of existing infrastructure” and to ensure “that new infrastructure is provided in the most effective and efficient manner possible”. Mr O’Connor added that operational costs must be taken into account, saying there was a “need to maximise the return from public investment in infrastructure”.

In what may be seen as an acknowledgment to past shortcomings, Mr O’Connor said that the need to get proper return from investment in infrastructure was one of the issues that “have to be taken on board in a much more serious way than perhaps they were in the past”.

An Taisce believes it would be a grave step backwards were An Bord Pleanála to grant permission to a proposed development involving expenditure vastly in excess of €30m without a cost benefit analysis consistent with the NDP.

Irish and European Law

The McKinsey and Co. Report, published in February 2006, recommended the amalgamation of the services of three paediatric hospitals (Our Lady’s Children’s Hospital, Crumlin; the Children’s University Hospital, Temple Street; and the National Children’s Hospital (AMNCH), Tallaght) into one national paediatric hospital, ideally co-located with an acute adult teaching hospital in Dublin.

In May 2006, the Joint Task Group, which was established to advise on a location, pinpointed the Mater Campus for the new national paediatric hospital. This decision was endorsed by the Board of the HSE adopted by Government in June 2006.

At this point it is helpful to set out Article 5(1) of the SEA Directive. Article 5(1) states that -

Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the *likely significant effects on the environment* of implementing the plan or programme, and *reasonable alternatives* taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated (emphasis added).

In 2006 there was a failure to observe the European directive on Strategic Environmental Assessment (SEA) in that the “likely significant effects on the environment” were not taken into account, as is required. There was, in fact, no attempt whatsoever to observe the SEA Directive in 2006. The failure to observe SEA then continues to the present day.

In 2008 there was a partial attempt to apply the SEA Directive. Whether the default on the part of the State, which, at that point dated back to 2006 – i.e. the failure then to identify, describe and evaluate “likely significant effects on the environment” - could have been cured in 2008 is mute. The key problem is that the 2006 decision to locate at the Mater campus was taken as a *fait accompli* in 2008. “Reasonable alternatives” are not identified, described nor evaluated.

Insofar as “likely significant effects on the environment” are identified, described and evaluated, a wide range of probable and potential conflicts are noted. Potential conflict is flagged with the objectives in the (then) Draft Local Area Plan “to avoid significant adverse impacts on the landscape within the plan area and across the wider Dublin area”, as well as the objective to “preserve and protect the special character of architectural heritage found within the plan area”.

In sum, however, the analysis takes place in a vacuum as the height and bulk of the future structure are unknown; key issues are left hanging for another day. In 2008 likely significant effects were not weighed up in their true light, and they were also not weighed up in the context of reasonable alternatives.

As the EU Commission notes: “it is essential that the authority ... responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option” (Commission 2003).

In 2011 there was some review of locations, but no environmental report, and again, likely significant effects on the environment went unidentified, and neither were they described or evaluated. The table below summarises what took place from 2006 to date.

Summary of SEA non-compliance

Date	SEA / assessment	Identified, described and evaluated
2006	Likely significant effects on environment	Not done
	Reasonable alternatives	Not as required (no environment report)
2008	Likely significant effects on environment	Environment report partially prepared but no context given that reasonable alternatives were not assessed as required
	Reasonable alternatives	Not done (location taken as a given)
2011	Likely significant effects on environment	Not done
	Reasonable alternatives	Not as required (no environment report)

In effect, the failure to meet SEA begins in 2006 and persists into the arms of An Bord Pleanála. Indeed, looking at what took place over these five years, the decision making process is compromised by the very mischief that the SEA Directive seeks to avoid.

Over the last 5 years we see a systems failure, or process failure, in which the likely significant effects on the environment and reasonable alternatives are never holistically weighed up together. A constraint has intervened; either the likely environment effects are not under consideration by the decision makers (2006 and July 2011, for example), or the location has been predetermined (as in 2008).

An Taisce is fortified in its view that the SEA process is non-compliant by two recent cases, *Cala Homes* and *Seaport Investments*.

Environmental Impact Statement

Under Article 5(3) of (consolidated) Directive 85/337 the information to be provided by the developer shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects, [and]
- a non-technical summary of the information mentioned in the previous indents.

The information at issue here concerns the fourth indent, namely “an outline of the main alternatives studied by the developer and an indication of main reasons for his choice, taking into account the environmental effects”.

As is clear from the documentation presented by the developer, this never took place. At many stages there is reference to other possible sites studied under processes undertaken by others. But never once are alternatives studied and reasons proffered for the choice taking into account environmental effects.

This emerges perhaps most clearly from the statements of evidence by Mr O’Toole and Mr Skehan. Environmental effects – which Mr Skehan ultimately terms “residual” – arise from, as he puts it, “previously-determined policies and factors”.

Mr O’Toole’s analysis proceeds in a similar vein. Mr O’Toole is “aware of the Government decision in July 2011 to construct the new national children’s hospital on the site of the Mater hospital campus” and “for the purposes of my assessment the ‘extent’ of the brief is a given, as is the location”.

This approach is not legally compliant with EU Directive 85/337.

The leading case in Ireland concerning the assessment of alternatives is *Klohn v An Bord Pleanála* [2008] IEHC 111. There, a company, Moloney and Matthews Animal Collection Ltd, sought to build a facility for fallen animals. The Environmental Impact Statement documents their work in studying alternatives taking into account environmental effects before they take a decision to apply for planning permission on a given site. Paragraph 1.1 of their EIS, headed “Description of Alternative Locations”, states:

Moloney and Matthews Ltd reviewed a number of potential sites for ... the proposed facility with most deemed unsuitable. These disadvantages were principally in terms of inadequate road infrastructure and number and proximity of residences. A site which Moloney and Matthews Ltd deemed relatively suitable was located at Cully, Curry, Co. Sligo. Matthews and Moloney submitted a planning application to Sligo County Council for a fallen animal inspection unit at Cully, Curry...

In the *Klohn* case the applicants were issued with a request for further information by Sligo County Council, and a significant number of submissions were made by statutory bodies and local residents’ groups.

Subsequently, Matthews and Moloney withdrew the application on the Curry site, and in line with the above process, identified a better site at Achonry, near Tubbercurry. Again they studied environmental factors as part of this process – finding, for example, that there were only 6 residences within a 1km radius of the site – and concluded there was scope to develop at Achonry.

Hence, it is clear from *Klohn* that even from the earliest stage environmental effects (impact on nearby homes, for example) are being taken into account as part of the decision-making process as to location.

That is not evident with regard to the application before the Board, where, for example, it is crystal clear that the environmental effects of the bulk and height of the proposed structure

are only being studied after the location is irrevocably fixed, and the applicant has, in essence, decided not to observe the Directive.

For An Bord Pleanála to decide what the applicant has done here complies with Directive 85/337 would constitute a severe weakening of the Klohn case in the first instance, and be a breach of the Directive. This is also clear from documents produced by the Environmental Protection Agency and the Commission.

According to the EPA, a key component of an Environmental Impact Assessment (EIA) is to provide alternatives. “The presentation and consideration of the various alternatives investigated by the applicant is an important requirement of the EIA process. For the purpose of the Regulations, alternatives may be described at three levels; Alternative Locations, Alternative Designs and Alternative Processes.” (EPA, 2002:17).

The European Commission states that a review of an EIA should ask “are the alternatives realistic and genuine alternatives to the Project?” (European Commission, 2001:21)

In appendix 1 An Taisce offers its view on the record of discussions that took place between the applicant and the Board prior to lodgement. In summary, all An Taisce can say is that these discussion do not appear to be fully cognisant of the requirements under EU law.

For An Taisce the issue is simple, namely, the approach ultimately adopted by the applicant does not comply with EIA, and is not therefore legally valid.

As a result, the Board is precluded from granting permission. An alternate approach was open to the applicant, elaborated on below.

Lower cost alternative

Goodbody Consulting (2004) produced a report for government noting the case to provide decision makers with a lower-cost alternative. This alternative should come in addition to what is proposed and is to aid the decision making process. In taking on board the Goodbody advice, the Department of Transport have put it very frankly:

There is a need to define options in such a way that decision-makers are faced with realistic decisions. For example, in appraising strategies to combat urban congestion, it is necessary to include some options that broadly achieve the same impact on congestion. This is to avoid the situation where a simple choice between a low level option that does not really address the problem, and a grandiose or gold plated option (2007, p6).

The above pertains first and foremost to cost-benefit analysis, but as a NDP-compliant cost-benefit analysis is not before us, the Department's advice takes on greater relevance for the Board.

In November 2008 a Site Feasibility Study was produced for Our Lady's Children's Hospital Crumlin, detailing three options for its development. The estimated cost of the preferred design option is €102 million. Extracts of the document are contained in appendix 4 and the full document is also available.

The Crumlin enhancement plan provides 210 inpatient beds, 36 day beds, and 37 other beds catering for a number of patient categories, bringing the total to 283. The plan includes the expansion of the operating department for one additional theatre as well as a small number of proximate day beds (5) in a separate package of work. This would leave the balance of the ground floor available for a hospital cafeteria, kitchen and a new server room.

Further development would take place on the site of the School of Nursing following refurbishment of the vacant main building space, and/or on the site of the vacated single-storey inpatient units and/or laboratories.

As was stated in the letter to the Minister from representatives of Our Lady's Children's Hospital Crumlin, significant investment has already been made in the hospital.

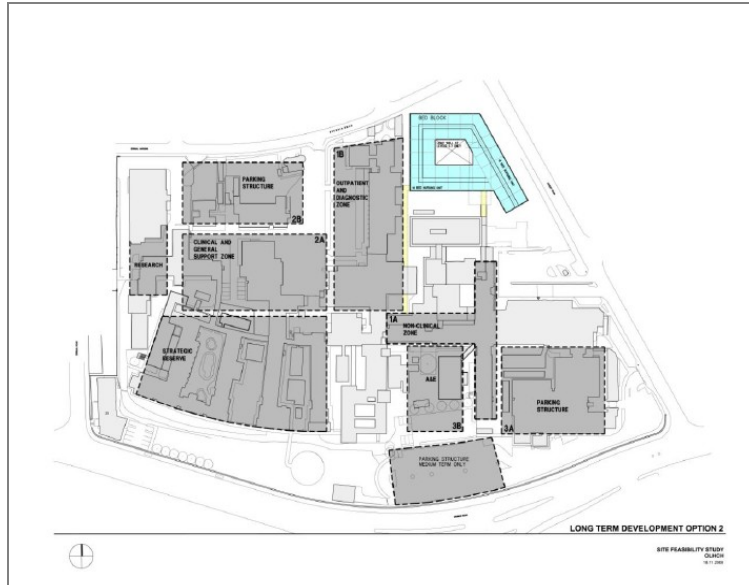


Figure 1.0 illustrates the long term potential of the preferred design option outlined by Crumlin. Source: Site Feasibility Study Our Lady's Children's Hospital Crumlin.

It is accepted that Our Lady's Children's Hospital in Crumlin is not co-located. However, McKinsey advised co-location as the "ideal". As a medium term solution, Crumlin is well positioned, for a lower cost solution in particular.

A letter sent in October 2008 by representatives of the hospital to the then Minister for Finance Brian Lenihan, copied to Mary Harney, then Minister for Health, is available, as is the reply acknowledging receipt of the Crumlin enhancement plan by Minister Harney.

Finally, as shown in an appendix, it is instructive to note we have far more cost data on the €100m project than we do on the proposal before the Board with anticipated expenditure far in excess of €650m.

Transport

The applicant proposes to reserve 30 car park spaces for emergency arrivals by means of surface signage, similar to the signage used in shopping centres (and elsewhere) to retain spaces for persons with a disability. It is not clear, in the event the proposal is approved, how these spaces would be managed to ensure a minimum number of spaces would always be available.

Overall, the developer reduced car parking from the level provided in the development plan, 1,084 spaces, down to 972 on the basis of a series of factors including an examination of parking at a number of other hospitals, some of which are in Ireland, and some of which are abroad.

The frailty inherent in this process was that parking – both unlawful and lawful – in the streets and roads surrounding the comparator sites was not counted. So, for example, Crumlin has in the region of 400 car spaces. But based on a survey undertaken on 24 October 2011, there is estimated to be a minimum of 120 cars belonging to staff and visitors parked on neighbouring streets.

We can estimate that because on 24 October the car park became full and was closed. This resulted in fly parking by approx 120 cars. While it is true that not all unlawful parking may have been by staff or visitors, only a small amount is likely to be attributable to residents, as most residents have driveways. Indeed, allowing for some displacement of residents by staff or visitors arriving early in the morning and opting to park in lawful areas on nearby streets, the figure will be higher, not lower. Pictures of the high volume of fly parking in the vicinity of Crumlin are shown in appendix 2.

The point is this. Parking for staff in the proposed building, and on surrounding streets, will come at a cost of €2.20 or more per hour. (The oral hearing heard that the hourly rate for staff within the basement would be in this cost region, while the on-street parking rate is higher.)

Public transport provision to the proposed facility is at a reasonable level. But it is a fair generalisation to say that for staff not in a position to walk, cycle or take public transport, this will be an expensive place to work. To summarise, the approach is ‘a lot of stick; no more carrot, most likely’.

The plight of medics is somewhat different from 9-to-5 employees. Many medical personnel have to be present before 7am when public transport tends to be infrequent at best. Again, evening departures often occur late into the evening and night.

Moving to a situation where most staff pay €120 per year (Crumlin) to one where staff face parking bills of €100 - 120 per week will raise issues, for both low and medium paid staff, and indeed anyone on a tight budget. Wider competitiveness and staff retention issues would appear to arise.

For An Taisce this highlights the choice of location, emphasising the case to locate such a hospital at a critical public transport node.

Studying alternatives

In May the HSE was notified of the case to utilise lands located between Heuston Station and St James's Hospital. This site is outlined graphically on the powerpoint slides. As can be seen the site is bounded by St Steeven's hospital to the east, St John's Road to the north, the Eircom development to the west and Bow Lane West to the south. A short new connection approx 90m in length would result in a link to St James's hospital, delivering co-location with a major adult teaching hospital. Receipt of this submission was confirmed to the oral hearing by Mr De Freine.

Whatever mode would be used, the St James's-Heuston site is clearly more centrally positioned in the Dublin and indeed national context. It affords better access from both sides of the Liffey. It will be far less affected by major events at Croke Park as compared to the Eccles St area.

[See slides, which outline site and detail further advantages in terms of access and building form.]

From the point of view of vehicular access, the location takes advantage of the relatively new James Joyce bridge. Rail access at the St James's-Heuston site is clearly superior. The site is walking distance from Ireland's main rail terminus. It is also beside the Luas Red line, which runs from the O2 Arena to the Tallaght area. The Red Line connects with DART, suburban and mainline rail services at Connolly Station, includes such stops as the Red Cow Park-and-Ride, serves a substantial catchment in the north city, and would have the added benefit of linking Tallaght Hospital (already served by Luas) with the new national paediatric hospital.

Aside from the city centre – where space for such a large building is not readily available – the St James's-Heuston St offers a level of access that is particularly difficult to rival.

An Taisce is not saying that this site would ultimately have emerged as the best site in the context of compiling an EIS or undertaking a full SEA. What the national trust is saying, however, is that proper adherence to the SEA and EIA process could have brought this site into view – but because both processes were so incomplete as to render them non-compliant, this opportunity was lost.

Architectural Heritage

Mr Paul Arnold, the expert retained by the applicant, declined to say that the proposed structure would not hinder Dublin's bid to be listed as a World Heritage Site.

While Mr Shane O'Toole did present a number of examples of buildings to the hearing, these proved to be of a different scale to the construction proposed for Dublin. For example, the largest facade of the Graz building is roughly 60m in length by 23m in height. The Bruges example is approx 120m long and around 50m high. The building in Amsterdam is around 100m in length while its height varies between 15 and 23m.

The bulk, scale, and, as a result, the imposition on the urban fabric of the building proposed for Dublin is much greater. It is some 204m long with a height reaching up to 74m. Its depth is also around 50% greater than the Bruges building, and double those from Graz and Amsterdam. It's relationship in term of size to other structures in Dublin can be seen from Irish Times coverage (appendix 5).

My colleague, Kevin Duff, is in a position to provide further assistance to the Board on this matter.

Other issues

There remains a doubt regarding helicopter access to the proposed Eccles St site, which is critical ("must be provided") according to the medical experts that authored the independent review published in July 2011.

No work appears to have been done by the applicant in terms of what use the Crumlin medical campus would be put to if this application were to be successful. This is a clear indirect, or secondary, effect of the proposal before the Board and, under EIA, requires assessment.

As is shown in appendix 3, Melbourne's paediatric hospital benefits from large floorplates, thereby allowing for high levels of clinical adjacencies. For example, operating theatres, the paediatric intensive care unit, MRI, ultrasound, CT, medical imaging and day surgery are all located on its second floor.

Having theatres in Tallaght undertaking (an unspecified amount of) day surgery carries with it higher operational costs in terms of staffing and transport. When one considers that the cost to taxpayers of an experienced medic of senior rank is €200,000 - €250,000 per annum these are not minor concerns. They lie foursquare within the operational cost issues identified by Mr O'Connor in May 2011, outlined above.

In conclusion

As outlined, the proposal does not have a cost benefit analysis as set out in the NDP.

The proposed development has not been subject to a strategic environmental assessment in accordance with EU law.

An Taisce's overview with regard to the compilation of the EIS is as follows. It appears to proceed on the basis that a site selected by Government – without planning considerations (as noted by the Board on 5 Nov 2010) – is the right one. The applicant told An Bord Pleanála that alternative locations “will not” be assessed. But what must inhere within the EIA process is the latitude to show that, at times, a proposed location is in fact misguided or unnecessary when assessed against environmental effects and alternatives.

But here, by failing to ascertain and study alternatives, we witness an unshakeable faith that the decision must be right in the first place. This cannot be the process, and is indeed the last thing the framers and those adopting Directive 85/337 intended. Every now and again the latitude must rest within the process that a more sensible alternative with fewer environmental effects is available.

Biographical note

James Nix holds a degree in Law from Trinity College Dublin (LL.M, 2001) and is a Barrister-at-Law (Kings Inns, 2004). He holds a Masters in transport and planning from Dublin Institute of Technology and a Masters in Real Estate Development from the same institution.

From 2004 to 2007 he worked for property development company Treasury Holdings. He has researched a number of programmes for RTE including *Transport in Crisis* and *The Pressure Zone*, a documentary by Prime Time Investigates.

He co-authored *Chaos at the Crossroads* in 2005 with Frank McDonald, a book chronicling the development path Ireland took during the Celtic Tiger years, and contributes occasionally in the national press.

Since 2008 he co-ordinates transport and planning policy for the Irish Environmental Network (www.ien.ie), where he works on behalf of its 33 member organisations, and most particularly for four - An Taisce, Friends of the Earth, Friends of the Irish Environment, and FEASTA, in a joint initiative known as PlanBetter. Selected policy submissions and press releases are available online (www.planbetter.ie). He appears at this hearing on behalf of An Taisce.

References / Bibliography

- Department of Environment, Heritage and Local Government, 2004, *Implementation of SEA Directive (2001/42/EC): Assessment of the effects of Certain Plans and*

Programmes on the Environment Guidelines for Regional Authorities and Planning Authorities'. (pps. 1-97).

- Environmental Protection Agency (EPA), 2002, '*Guidelines on the Information to be contained in Environmental Impact Statements*'. (pps. 1-45).
- European Commission, 2001, '*Guidance on EIA – EIS Review*'. (pps. 1-32).
- European Commission, 2001, '*Guidance on EIA Scoping*'. (pps. 1-38).
- European Commission, 2003, 'Implementation of Directive 2001/42 on the assessment on the effects of certain plans and programmes on the environment'
http://ec.europa.eu/environment/eia/pdf/030923_sea_guidance.pdf
- European Health Property Network (EHPN), 2011(1), '*National Paediatric Hospital Independent Review, Part 1 Financial Analysis*'. (pps. 1-45).
- Klohn (2008), IEAC 111
- National Association of Children's Hospitals and Related Institutions (NACHRI), 2011(2), '*National Paediatric Hospital Independent Review, Part 2 Clinical Analysis*'. (pps. 1-17).
- <http://www.newchildrenshospital.ie/> (accessed 14/10/2011)

Appendix 1

An Taisce has closely read the minutes of meetings held in November and December 2010. The exchange is replete with contradicting and less-than-clear contentions. On 3 December 2010, however, the applicant communicated its own legal advice to the Board which said (among other things) that if its study of alternatives “were to be restricted in the present case to the no-scheme scenario and alternative designs within the confines of the site, the substantial risk of An Bord Pleanála deeming the EIS insufficient (sic) or a Court setting aside a decision to grant approval if issued by the Board on that ground would arise”. An Taisce goes much further: the EIS is insufficient and a Court would, following Klohn, set aside a decision to grant.

For completeness, it must be noted that An Taisce (and the Heritage Council) did seek to tease this issue out further in order to assist the Board. However, counsel for the applicant appeared unaware of the exchanges which took place between the applicant and Board in this regard.

To attempt a summary of what happened over the course of the three meetings from early November to late December 2010 is difficult, but what appears to have happened is that the Board was initially strongly concerned that the applicant’s approach would be in breach of EIA. Over time it became less tied to its original position by re-assurances from the applicant that it did not have to consider alternative locations. However, An Taisce submits that the Board was correct in its original understanding of the law.

As recorded by the minutes of the meeting which took place on 5 November 2010, the applicant told the Board that the location of the proposed new hospital was determined by Government policy (informed by the McKinsey report and that of the Joint Task Group) and said that “no alternative sites will be assessed in the EIS to be submitted by planning application”. The following is then recorded:

The Board raised the issue of how such a strategy sits with the requirement of the EIA which requires alternatives for a proposed development to be considered.

The discussion wound up with (what appears to be) both sides requesting each other to obtain legal opinion:

The Board asked the prospective applicant to consider receiving legal opinion on carrying out an EIA process in a situation where the site location would *not* be based on planning considerations but would be based on a reliance on Government policy. The prospective applicants, in turn, requested the view of the Board on this issue (emphasis added).